LOCAL & MUNICIPAL GOVERNMENT

BAZALGETTE & HUMPHREYS

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THE LAW

RELATING TO

LOCAL AND ~~MUNICIPAL~~ Local GOVERNMENT,

COMPRISING THE STATUTES RELATING TO PUBLIC HEALTH, MUNICIPAL CORPORATIONS, HIGHWAYS, BURIAL, GAS AND WATER, PUBLIC LOANS, COMPULSORY TAKING OF LANDS, TRAMWAYS, ELECTRIC LIGHTING, ARTIZANS' DWELLINGS, &c., RIVERS' POLLUTION, THE CLAUSES CONSOLIDATION ACTS, AND MANY OTHERS, FULLY ANNOTATED WITH CASES UP TO DATE, A SELECTION OF THE CIRCULARS OF THE LOCAL GOVERNMENT BOARD, AND A FULL INDEX.

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26/5/05

BY

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Re-issue, with Addenda

CONTAINING

THE JUDICIAL DECISIONS AND LEGISLATION RELATING TO LOCAL AND MUNICIPAL GOVERNMENT SINCE 1885.

LONDON:
STEVENS AND SONS, 119, CHANCERY LANE,
Law Publishers and Booksellers.
1888

ADDENDA

TO

BAZALGETTE & HUMPHREYS'

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BEING

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NOTE.

The legislation of the past Session of Parliament, which by the establishment of representative County Councils marks a new era in the development of Local Government in this country, has practically left untouched the laws relating to Local and Municipal Government with which this work professes comprehensively to deal. This work and the Local Government and County Electors Acts, 1888, taken together, therefore, now cover the whole field of the laws relating to the existing Local and Municipal Government of the country. The Authors being about to publish a treatise on the Local Government and County Electors Acts, 1888, it appears to them desirable, simultaneously with the publication of that book, to re-issue the present work, with such additions thereto as shall bring the law of Local and Municipal Government there treated of fully up to date. For this purpose the judicial decisions and legislation relating to the subject-matter of this work since its publication have been carefully prepared in the form of Addenda for insertion at the proper places, and the book is now re-issued with the addition of these Addenda, so that the practitioner in the country may have in his hands a work comprehensive in its character, and brought up to date.

October, 1888.

ADDENDA.

Page 45, line 26.

On the other hand, an agent employed to collect rents may be liable as "owner," though he has no money of his principal in hand: *Mayor of St. Helen's* v. *Kirkham*, L. R. 16 Q. B. D. 403, 34 W. R. 440, 50 J. P. 647.

Page 49, section 7.

The effect of this part of the Act is that Improvement Commissioners, who are hereby made urban sanitary authorities, are reconstituted as new bodies under this Act, having vested in them the powers given by their local Acts as well as those given by this Act. And such commissioners in doing any act in the exercise of the powers originally conferred by their local Acts are acting under this Act, and are entitled to any protection or privilege given by this Act to members of local authorities acting under its provisions: *Lea* v. *Facey*, L. R. 19 Q. B. D. 352, 56 L. J. Q. B. 536, 35 W. R. 721, 51 J. P. 756.

Page 52, section 13, sub-section 1.

See *Bonella* v. *Twickenham Local Board*, L. R. 20 Q. B. D. 63, 57 L. J. M. C. 1, 52 J. P. 356.

Page 53, line 34.

See also *Bateman* v. *Poplar District Board of Works*, L. R. 37 Ch. D. 272, 36 W. R. 501.

Page 55, line 3 from bottom.

See also *Gas Light and Coke Co.* v. *Vestry of St. Mary Abbott's, Kensington*, cited in Addendum to p. 118.

But see *London and Brighton Ry. Co.* v. *Truman*, L. R. 11 App. Cas. 45, 55 L. J. Ch. 354, 54 L. T. N. S. 250, 34 W. R. 657, 50 J. P. 388.

Page 62, section 32.

The cleaning, levelling, and cementing the bottom of a pool, into which the effluent from sewage works flowed, was held to be a work for sewage purposes within this section: *Wimbledon Local Board* v. *Croydon Rural Sanitary Authority*, L. R. 32 Ch. D. 421, 55 L. T. N. S. 106.

Page 64, line 12 from bottom.

See also *Sellors* v. *Matlock Bath Local Board*, L. R. 14 Q. B. D. 928, 52 L. T. N. S. 762.

Page 86, section 90.

See now s. 8 of the Housing of the Working Classes Act, 1885, in Addendum to pp. 1251—1262, *post*.

Page 89, section 91 (5).

See now s. 9 of the Housing of the Working Classes Act, 1885, in Addendum to pp. 1251—1262, *post*.

Page 89, line 16.

See *London and Brighton Ry. Co.* v. *Truman*, cited in Addendum to p. 55.

Page 90, section 91, sub-section 7.

As to the effect of the second proviso, see *Weekes* v. *King*, 53 L. T. N. S. 51.

Page 92, line 10 from bottom.

See also, as to the liability of an owner who let the premises for a term of years, *Parker* v. *Inge*, L. R. 17 Q. B. D. 584, 55 L. J. M. C. 149, 55 L. T. N. S. 300.

Page 94, line 25.

And in *Reg.* v. *Wheatley*, L. R. 16 Q. B. D. 34, 55 L. J. M. C. 11, 54 L. T. N. S. 680, 34 W. R. 257, 50 J. P. 424, where an order of justices made under this section required the owner of premises to abate a nuisance arising from untrapped drains, "and to execute such works and do such things as may be necessary for that purpose," it was held that such order was bad on the very ground that it did not specify what works and things the owner should execute and do for the purpose of abating the nuisance.

Page 99, section 107.

Proceedings under this section must be ordinary proceedings known to the law. In the absence of special damage a local authority cannot sue in respect of a public nuisance except with the sanction of the Attorney-General by action in the nature of an information: *Wallasey Local Board* v. *Gracey*, L. R. 36 Ch. D. 593, 56 L. J. Ch. 739, 57 L. T. N. S. 51, 35 W. R. 694, 51 J. P. 740.

Page 99, section 110.

The Public Health (Ships, &c.) Act, 1885 (48 & 49 Vict. c. 35), by s. 2 provides that s. 110 of the Public Health Act, 1875, "shall have effect not only for the purpose of the provisions of that Act relating to nuisances, but also for the purpose of such of the provisions of that Act relating to infectious diseases and hospitals as are referred to in the schedule to this Act" (viz. ss. 120, 121, 124, 125, 126, 128, 131, 132 and 133 of the Public Health Act, 1875).

Page 103, line 18 from bottom.

And on the hearing of the summons the owner of the meat may give evidence as to the state of the meat at the time when it was condemned: *Waye* v. *Thompson*, L. R. 15 Q. B. D. 342, 54 L. J. M. C. 140, 53 L. T. N. S. 358, 33 W. R. 733, 49 J. P. 693.

Page 113, section 144.

This section does not make an urban authority liable, at common law, to indictment for non-repair of a highway: *Reg.* v. *Mayor of Poole*, L. R. 19 Q. B. D. 602, 56 L. J. M. C. 131, 52 J. P. 84.

But an indictment for such non-repair will lie under section 10 of the Highways and Locomotives (Amendment) Act, 1878: *Reg.* v. *Mayor of Wakefield*, L. R. 20 Q. B. D. 810, 52 J. P. 422.

Page 117, line 6 from bottom.

A private road may be a street within the meaning of this section: *Midland Railway Co.* v. *Watton*, L. R. 17 Q. B. D. 30, 55 L. J. M. C. 99, 54 L. T. N. S. 482, 34 W. R. 524, 50 J. P. 405.

Page 118, line 36.

Moreover the power of the urban authority over the streets may be subject to the rights of other bodies. Thus, where a gas company laid down gas pipes under the surface of the streets, as they were bound to do by statute, and the urban authority, in repairing the streets used steam rollers of such a weight as to injure the pipes, it was held that the gas company were entitled not only to recover damages, but also to have an injunction to restrain the urban authority from using steam rollers in such a way as to injure their pipes: *Gas Light and Coke Co.* v. *Vestry of St. Mary Abbott's, Kensington*, L. R. 15 Q. B. D. 1, 54 L. J. Q. B. 414, 33 W. R. 892, 49 J. P. 470.

Page 120, section 150.

"Not sewered to the satisfaction of the urban authority." The urban authority must make up their minds within a reasonable time: *Bonella* v. *Twickenham Local Board*, cited in Addendum to p. 52.

Page 120, line 6.

As to the meaning of the word "street," *Maude* v. *Baildon Board* was disapproved of by the Court of Appeal in *Corporation of Portsmouth* v. *Smith*, L. R. 13 Q. B. D. 184; but fresh doubt was thrown upon the point by the House of Lords, 10 App. Cas. 364, 54 L. J. Q. B. 473.

Page 120, line 22.

See also *Austerberry* v. *Corporation of Oldham*, cited in Addendum to p. 763.

Page 121, line 15 from bottom.

See also *Lightbound* v. *Higher Bebington Local Board*, L. R. 16 Q. B. D. 577, 55 L. J. M. C. 94, 53 L. T. N. S. 812, 34 W. R. 219, 50 J. P. 500.

Page 122, line 14 from bottom.

As to how far the urban authority in executing the works must follow the terms of their own notice, see *Local Board for Acton* v. *Lewsey*, L. R. 11 App. Cas. 93, 55 L. J. Q. B. 404, 54 L. T. N. S. 657, 34 W. R. 745, 50 J. P. 708.

Page 125, line 37.

But as to a Dissenting chapel, vested in trustees, see *Wright* v. *Ingle*, L. R. 16 Q. B. D. 379, 55 L. J. M. C. 17, 54 L. T. N. S. 511, 34 W. R. 220, 50 J. P. 436.

Page 126, section 155.

As to when the line must be prescribed, see *Newhaven Local Board* v. *Newhaven School Board*, cited in Addendum to p. 239.

Page 127, section 156.

This section does not apply to new buildings on land never before built upon: *Williams* v. *Wallasey Local Board*, L. R. 16 Q. B. D. 718, 55 L. J. M. C. 133, 55 L. T. N. S. 27, 34 W. R. 517, 50 J. P. 582.

Page 142, section 176.

A local authority has no power to charge the rates with the expenses of promoting a bill in Parliament for the purpose of obtaining powers to purchase land: *Cleverton* v. *Rural Sanitary Authority of St. Germain's Union*, 56 L. J. Q. B. 83.

Page 145, section 180, sub-section 1.

These provisions must be strictly complied with: *In re Gifford and Bury Town Council*, L. R. 20 Q. B. D. 368, 57 L. J. Q. B. 181, 36 W. R. 468, 52 J. P. 119.

Page 146, sub-section 9.

The Court cannot enlarge the time for making an award beyond the period limited by this sub-section: *In re Mackenzie*, L. R. 17 Q. B. D. 114, 55 L. J. Q. B. 309, 34 W. R. 487.

Page 153, section 193.

A contract which is forbidden by this section is void: *Melliss* v. *Shirley Local Board*, L. R. 16 Q. B. D. 446, 55 L. J. Q. B. 143, 53 L. T. N. S. 810, 34 W. R. 187, 50 J. P. 214.

See further on this section *Whiteley* v. *Basley*, L. R. 21 Q. B. D. 154, 36 W. R. 823.

In *Burgess* v. *Clark*, L. R. 14 Q. B. D. 735, a penalty was enforced against an officer of a local board for letting rooms to the board; and in *Todd* v. *Robinson*, L. R. 14 Q. B. D. 739, a penalty was enforced against such an officer on the ground that he was a shareholder in a company having a contract with the board. As a remedy for the hardship caused by these decisions the Statute 48 & 49 Vict. c. 53, was passed, which is as follows:

"Sect. 1. This Act may be cited as the Public Health (Members and Officers) Act, 1885, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

"Sect. 2. Notwithstanding anything in the hundred and ninety-third section of the principal Act, or any similar restrictions in any local Act, to the contrary, it shall not be unlawful for any officer or servant appointed or employed under the principal Act or local Act by the local authority to be concerned or interested in any contract with the local authority made with such consent or approval as is hereinafter mentioned for the sale, purchase, leasing, or hiring of any lands, rooms, or offices, or to be concerned or interested in any contract with the local authority as a shareholder in any joint stock company, and no officer or servant of a local authority shall be incapable of holding any office or of being employed under the principal Act or local Act, or be liable to any penalty by reason only of his having been concerned or interested either before or after the passing of this Act in any such con-

Page 153, section 193—*continued.*

tract as aforesaid. No such contract as aforesaid shall be made after the passing of this Act, or approved if made before the passing of this Act, for the sale, purchase, leasing, or hiring of any lands, rooms, or offices except with the consent of two-thirds of the number of the members of the local authority present at a meeting held after seven clear days notice shall have been published in some newspaper circulating in the neighbourhood, and after notice shall have been sent in writing to every member stating the nature of the contract, and the time and place of the meeting at which the question is to be considered.

"Sect. 3. Proceedings for the recovery of any penalty under Rule 70 of Schedule II. to the principal Act shall not be taken except with the consent in writing of the Attorney General.

"Sect. 4. No member of any local authority shall vacate his office by reason only of his having any share or interest in any newspaper in which any advertisement is inserted relating to the affairs of such local authority, or of the district subject to the jurisdiction of such local authority, anything in any general or local Act of Parliament to the contrary notwithstanding.

"For the purposes of this section the expression 'local authority' means any 'local board' or 'improvement commissioners' as defined by the principal Act."

Page 162, sub-section (b).

As to the meaning of "market gardens or nursery grounds," see *Purser* v. *Local Board of Health of Worthing*, L. R. 18 Q. B. D. 818, 56 L. J. M. C. 78, 35 W. R. 682, 51 J. P. 596.

Page 168, line 4 from bottom.

But where the covenant contained the word "outgoing," paving expenses were held to be within the covenant: *Aldridge* v. *Ferne*, L. R. 17 Q. B. D. 212, 55 L. J. Q. B. 587, 34 W. R. 578.

Page 169, section 229.

The Public Health and Local Government Conferences Act, 1885 (48 & 49 Vict. c. 22), now provides as follows:—

"Sect. 2. Any local authority may, when empowered by and subject to any regulations made by the Local Government Board in that behalf (which regulations the said Board is hereby authorized from time to time to make, vary, or rescind), pay the reasonable expenses of any member or members or clerk to the local authority attending any conference or meeting of members of local authorities held for the purpose of discussing any matter which is connected with the duties which devolve on them, and any reasonable expenses incurred in purchasing reports of the proceedings of any such meeting or conference, and may charge the amount to any rates applicable to the general purposes of the Public Health Act, 1875, within their district.

"Sect. 3. Expressions used in this Act have the same respective meanings as they have in the Public Health Act, 1875, save and except that in England the term 'local authority' shall not mean or include the urban authority of any borough."

Page 171, section 230.

See *Darenth Main Valley Sewerage Board* v. *Guardians of Dartford Union*, L. R. 19 Q. B. D. 270.

Page 184, section 256.

On a summons under this section justices may state a special case under section 33 of the Summary Jurisdiction Act, 1879: *Sandgate Local Board* v. *Pledge*, L. R. 14 Q. B. D. 730, 52 L. T. N. S. 546, 33 W. R. 565, 49 J. P. 342.

Page 185, line 2 from bottom.

See also *In re Bettesworth and Richer*, L. R. 37 Ch. D. 535, 36 W. R. 544.

Page 186, line 33.

See also *Midland Railway Co.* v. *Watton*, cited in Addendum to p. 117.

Page 186, line 36.

See also *Eccles* v. *Wirrall Rural Sanitary Authority*, L. R. 17 Q. B. D. 107, 55 L. J. M. C. 106, 34 W. R. 412, 50 J. P. 596.

Page 188, section 264.

A person who is in fact disqualified from being a member of a local authority, but acts in the *bonâ fide* belief that he is a member, is entitled to notice of action under this section: *Lea* v. *Facey*, cited in Addendum to p. 49.

Page 189, line 21.

See also *Sellors* v. *Matlock Bath Local Board*, L. R. 14 Q. B. D. 928.

Page 202, section 287.

Now the Public Health (Ships, &c.) Act, 1885 (48 & 49 Vict. c. 35), by sect. 3 provides as follows:

"In any case in which the Local Government Board are by the principal Act authorized permanently to constitute a port sanitary authority by provisional order they may permanently constitute a port sanitary authority by order.

"Every order made under this section shall specify a day on which it shall come into operation in the event of its not becoming a provisional order as hereinafter provided, and at least four weeks before such day a copy of it shall be sent by the Local Government Board to every riparian authority which is by the order or otherwise required to contribute to the expenses of the port sanitary authority, and if before such day notice in writing shall be received by the Local Government Board from any such riparian authority objecting to the order, and such notice is not withdrawn before such day, the order shall be deemed to be a provisional order duly made by the Local Government Board under the principal Act, and in the event of its being confirmed by Parliament shall come into operation on such day as may be provided in that behalf in the Act confirming it.

"Any order made under this section may, if the same has not become a provisional order, be repealed, altered or amended by any subsequent order made by the Local Government Board."

Page 225, rule 2.

See *Newhaven Local Board* v. *Newhaven School Board*, cited in Addendum to p. 239.

Page 228, rule 3.

"Or is rated to the relief of the poor."

In a case under a similar section in the Metropolis Management Act, 1855 (sect. 6), it was held that an owner of small tenements who agrees with the overseers to pay rates instead of the occupiers, under section 3 of the Poor Rate Assessment and Collection Act, 1869, is not himself a "person rated or assessed to the relief of the poor:" *Mogg* v. *Clark*, L. R. 16 Q. B. D. 79, 55 L. J. Q. B. 69, 53 L. T. N. S. 890, 34 W. R. 66, 50 J. P. 342.

Page 228, rule 5.

As to the meaning of composition with creditors, see *Reg.* v. *Cooban*, L. R. 18 Q. B. D. 269, 56 L. J. M. C. 33, 51 J. P. 500.

Page 231, section 19.

The town council of a borough is not bound under this rule to keep a register for the purpose of taking a poll with respect to the application of the borough funds to the promotion or opposition of bills in Parliament, under sect. 4 of the Municipal Corporations (Borough Funds) Act, 1872: per Cave, J., *Ward* v. *Mayor of Sheffield*, L. R. 19 Q. B. D. 22, 56 L. J. Q. B. 418.

Page 239, rule 65.

In case of a vacancy occurring through "failure duly to elect," the six weeks are to be computed from the day on which the retiring member goes out of office, and not from the day on which the election of a member to fill his place is held: *Reg.* v. *Cooban*, cited in Addendum to p. 228.

The filling up of vacancies under this rule is "business" within the meaning of rule 2 of Schedule I. But the Act does not say that, where the number of the Board falls below the quorum required by that rule, the Board is thereby dissolved. See *Newhaven Local Board* v. *Newhaven School Board*, L. R. 30 Ch. D. 350, 53 L. T. N. S. 571, 34 W. R. 172.

Page 240, line 8 from bottom.

See also *Gough* v. *Murdoch*, 35 W. R. 836.

Page 241, rule 70.

By 48 & 49 Vict. c. 53, s. 3, proceedings under this rule shall not be taken except with the consent in writing of the Attorney General. See this Act in the Addendum to p. 153, sect. 193, *ante*.

Page 242, Sched. II., Part II.

As to the lapse of a local board, and the silence of the Act as to the dissolution of it, see per Bowen, L. J., in *Newhaven Local Board* v. *Newhaven School Board*, cited in Addendum to p. 239.

Page 271. Municipal Corporations Act, 1882, section 9.

And now by sect. 3 of the County Electors Act, 1888, every person who is entitled to be registered as a voter in respect of the occupation of land of the value of ten pounds, is entitled to be enrolled as a burgess.

Page 271, section 9, sub-section 2 (b).

Occupation of a dwelling-house by virtue of an office, service, or employment within the meaning of the Representation of the People Act, 1884, s. 3, is no qualification for the municipal franchise: *M'Clean* v. *Prichard*, L. R. 20 Q. B. D. 285, 58 L. T. N. S. 337, 36 W. R. 508.

Page 271, section 9, sub-section 2 (b) and (c).

The Municipal Voters Relief Act, 1885 (48 Vict. c. 9), now provides as follows:—

"Sect. 2. From and after the passing of this Act a man shall not be disqualified from being enrolled or voting as a burgess at any municipal election in a borough, in respect of the occupation of any house, by reason only that during a part of the qualifying period, not exceeding four months in the whole, he has, by letting or otherwise, permitted such house to be occupied as a furnished dwelling-house by some other person, and during such occupation by another person has not resided in or within seven miles of the borough.

"Sect. 3. In this Act—

"The expression 'burgess' has, in England, the same meaning as in the Municipal Corporations Act, 1882.

"The expression 'municipal election' has, in England, the same meaning as in the Municipal Corporations Act, 1882."

Page 272, section 11, sub-section 3.

A person who is not qualified to be a burgess, but has been enrolled on the burgess roll and is therefore entitled to vote under section 51, is not thereby qualified to be elected a councillor by the terms of this proviso: *Flintham* v. *Roxburgh*, L. R. 17 Q. B. D. 44, 55 L. J. Q. B. 472, 54 L. T. N. S. 797, 34 W. R. 543, 50 J. P. 311.

Page 275, section 23.

See *Johnson* v. *Mayor of Croydon*, L. R. 16 Q. B. D. 708, 55 L. J. M. C. 117, 54 L. T. N. S. 295, 50 J. P. 487.

Page 279, section 34.

As to the effect of an alderman being elected a councillor, see *Reg.* v. *Mayor of Bangor*, L. R. 18 Q. B. D. 349, 56 L. J. Q. B. 326, 35 W. R. 158, 51 J. P. 51; in the House of Lords, L. R. 13 App. Cas. 241.

Page 280, section 36.

See *Reg.* v. *Corporation of Wigan*, L. R. 14 Q. B. D. 908, 54 L. J. Q. B. 338, 52 L. T. N. S. 435, 33 W. R. 547, 49 J. P. 372.

Page 285, section 60, sub-section 3.

As to the meaning of "outgoing alderman," see *Hounsell* v. *Suttill*, L. R. 19 Q. B. D. 498, 56 L. J. Q. B. 502, 51 J. P. 440.

Page 323, section 171, sub-section 1.

Where a county prison is locally situate within the limits of a city, the jurisdiction to hold inquests on prisoners dying in such prison is in the coroner for the county, and his jurisdiction is not affected by this section: *Reg.* v. *Robinson*, L. R. 19 Q. B. D. 322, 35 W. R. 843, 52 J. P. 22.

Page 345, line 6 from bottom.

The words "commonly understood" in the proviso to this section mean commonly understood by any person comparing the nomination paper and the burgess roll: *Moorhouse* v. *Linney*, cited in Addendum to p. 356.

Page 356, rule 2.

A nomination paper was subscribed with the full and correct name of "Charles Arthur Bowman" as an assenting burgess; his name was erroneously entered on the burgess roll as "Charles Bowman" only. It was held that he was ineligible to subscribe the nomination paper, and the nomination was bad, such defect not being cured by section 241: *Moorhouse* v. *Linney*, L. R. 15 Q. B. D. 273, 53 L. T. N. S. 343, 33 W. R. 704, 49 J. P. 471.

Page 419, at bottom.

See also on section, *In re Arbitration between Holliday and Mayor of Wakefield*, L. R. 20 Q. B. D. 699, 57 L. T. N. S. 559.

Page 420, section 28.

See *East London Waterworks Co.* v. *Vestry of St. Matthew, Bethnal Green*, L. R. 17 Q. B. D. 475, 55 L. J. Q. B. 571, 54 L. T. N. S. 919, 35 W. R. 37, 50 J. P. 820.

Page 422, line 10 from bottom.

Milnes v. *Mayor of Huddersfield* was affirmed in the House of Lords, L. R. 11 App. Cas. 511, 34 W. R. 761, 50 J. P. 676.

Page 423, line 11 from bottom.

See also *Moore* v. *Lambeth Waterworks Co.*, L. R. 17 Q. B. D. 462, 55 L. J. Q. B. 304, 55 L. T. N. S. 309, 34 W. R. 559, 50 J. P. 756.

Page 428, line 9 from bottom.

But where a company seeks to enforce payment of a water rate by summons before justices under section 74, the justices may determine a dispute as to value at the same hearing: *Lea* v. *Abergavenny Improvement Commissioners*, L. R. 16 Q. B. D. 18, 55 L. J. M. C. 25, 53 L. T. N. S. 728, 34 W. R. 105, 50 J. P. 165.

Page 429, section 74.

The Water Companies (Regulation of Powers) Act, 1887 (50 & 51 Vict. c. 21), now provides as follows:—

"Sect. 3. This Act shall apply to every water company which is a trading company supplying water for profit, and to which any of the provisions of the Waterworks Clauses Act, 1847, have been or shall be made applicable by any special Act or Provisional Order confirmed by Parliament, and every such special Act and Provisional Order shall be deemed to be amended by this Act, and shall be construed accordingly.

"Sect. 4. Where the owner and not the occupier is liable by law or by agreement with the water company to the payment of the water rate in respect of any dwelling-house or part of a dwelling-house occupied as a separate tenement, no water company shall cut off the water supply for non-payment of the water rate, but such water rate, without prejudice to the other remedies of the company for enforcing payment thereof from such owner, shall, together with interest thereon at the rate of five pounds per centum per annum, computed from the expiration of one month from the time when the same has been claimed by the company until receipt thereof by the company, be a charge on such dwelling-house in priority to all other charges affecting the premises; and (without prejudice to such charge) the amount may be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates may by law be recovered: Provided always, that proceedings shall not be taken against the occupier until notice shall have been given to him or left at his dwelling-house to pay the amount due for water rate out of the rent then due or that may thereafter become due from him, and he shall have omitted so to pay such water rate; and provided also, that no greater sum shall be recovered at any one time from any such occupier than the amount of rent owing by him, or which shall have accrued due from him since such notice shall have been given or left as aforesaid, and that every such occupier shall be entitled to deduct from the rent payable by him the sum so recovered from him or which he shall have paid on demand.

"Sect. 5. In the event of any such supply being cut off in contravention of this Act, the company cutting off the same shall be liable to a penalty not exceeding five pounds for each day during which the water shall remain cut off, which penalty shall be recoverable summarily from the company by, and shall be paid to, the person aggrieved."

Page 429, line 10 from bottom.

But where a private Waterworks Act provided that the annual value of a dwelling-house should not be fixed by justices at less than the gross sum assessed to the poor rate, it was held that "gross sum assessed to the poor rate" meant "gross estimated rental," and not "rateable or net value": *Bristol Waterworks Co.* v. *Uren*, L. R. 15 Q. B. D. 637, 54 L. J. M. C. 97, 33 W. R. Dig. 239, 49 J. P. 564.

Page 429, section 74.

Where a private Waterworks Act of George 3 gave the company power, in default of payment of water rate, to issue their own warrants for the recovery thereof by distress, and a subsequent private Act of 15 & 16 Vict. (passed in 1852), reciting the earlier Act, kept on foot all provisions then subsisting, it was held that nothing in the Waterworks Clauses Act, 1847, impliedly took away from the company their power of distress: *Richards* v. *West Middlesex Waterworks Co.*, L. R. 15 Q. B. D. 660, 54 L. J. Q. B. 551, 33 W. R. 902, 49 J. P. 631.

Page 430, line 17 from bottom.

See also *Reg.* v. *South Staffordshire Waterworks Co.*, L. R. 16 Q. B. D. 359, 55 L. J. M. C. 88, 54 L. T. N. S. 782, 34 W. R. 242, 50 J. P. 20.

Page 440.

"Street." As to the meaning of "street" in this Act, see *Maddock* v. *Wallasey Local Board*, 55 L. J. Q. B. 267.

Page 441, section 6.

Although the right of a gas company to lay down pipes and have them uninjured is subordinate to the right of the public to use the streets and have them kept in repair, the company are entitled to prevent the urban authority from using unnecessarily heavy steam rollers in repairing the streets, if such use injures the gas-pipes: *Gas Light and Coke Co.* v. *Vestry of St. Mary Abbotts, Kensington*, L. R. 15 Q. B. D. 1, 54 L. J. Q. B. 414, 33 W. R. 892, 49 J. P. 470.

Page 447, section 35.

As to the jurisdiction given to the court of quarter sessions by this section, see *Reg.* v. *Recorder of Hanley*, L. R. 19 Q. B. D. 481, 56 L. J. M. C. 125, 52 J. P. 100.

Page 450, at the bottom.

But see *Leamington Priors Gas Co.* v. *Davis*, L. R. 18 Q. B. D. 107, 56 L. J. M. C. 14, 55 L. T. N. S. 734, 35 W. R. 123, 51 J. P. 360.

Page 455, at the bottom.

But see *Leamington Priors Gas Co.* v. *Davis*, cited in Addendum to p. 450.

Page 578, section 3.

As to the meaning of "owner" in this Act, see *Reg.* v. *Vestry of St. Marylebone*, L. R. 20 Q .B. D. 415, 57 L. J. M. C. 9.

Pages 578—627. Artizans' Dwellings Acts.

See now the Housing of the Working Classes Act, 1885, 48 & 49 Vict. c. 72, which is set forth in the Addendum to pp. 1251—1262, *post*.

Page 633, section 6.

To constitute an offence under this section, the representation of the "nature, substance and quality" of the article must be made at the time of the sale. A prior false representation in this respect is no offence within the Act, provided a true one is made at the time the sale actually takes place: *Kirk* v. *Coates*, L. R. 16 Q. B. D. 49, 55 L. J. M. C. 182, 54 L. T. N. S. 178, 34 W. R. 295, 50 J. P. 148.

An offence may be committed under this section, although the seller does not know that the article sold is not of the nature, substance and quality demanded: *Betts* v. *Armstead*, L. R. 20 Q. B. D. 771, 36 W. R. 720, 52 J. P. 471.

See further as to the meaning of "nature, substance and quality," *White* v. *Bywater*, L. R. 19 Q. B. D. 582, 51 J. P. 821.

See also *Knight* v. *Bowers*, L. R. 14 Q. B. D. 845, 54 L. J. M. C. 108, 33 W. R. 613, 49 J. P. 614.

Pages 717—725. Public Libraries Acts.

The Public Libraries Acts Amendment Act, 1887 (50 & 51 Vict. c. 22), now provides as follows:—

"Sect. 2. This Act shall be construed with the Public Libraries (England) Acts, 1855 to 1884, and expressions used in this Act shall, unless the context requires a different construction, have the same meaning as in those Acts, and where any section in any of those Acts has been modified by a subsequent Act, the reference herein made to such section shall be construed to refer to the section so modified, and the reference shall have effect accordingly.

"Sect. 3. This Act shall not apply to Scotland, Ireland, or the City of London.

"Sect. 4. In this Act—

"'Metropolis' shall mean the metropolis as defined by the Metropolis Management Act, 1855, excluding the City of London;

"'Library authority' means the council, commissioners, board, or other persons or authority carrying into execution the Public Libraries Acts.

"'District board' means a district board constituted under the Metropolis Management Act, 1855, and 'district' shall have a corresponding signification.

"Sect. 5. The power to erect, establish, and maintain a library, given by the Public Libraries Act, 1855 (hereinafter called the principal Act), shall be extended so as to empower the library authority to establish and maintain a lending library without providing any separate building for containing the same, and to enable them to place such lending library under the care and superintendence of such person as they shall think fit, and in a building or room not appropriated for the purposes of the said Act, or erected, purchased, or rented by the library authority, and all the powers of the said Acts shall be applicable for the purposes of this section.

"Sect. 6. So much of section fifteen of the principal Act as incorporates with that Act certain clauses of the Towns Improvement Clauses Act, 1847, is hereby repealed.

Pages 717—725. Public Libraries Acts—*continued.*

"The Public Libraries Amendment Act, 1877, shall have effect as if the Public Libraries Act, 1855, were recited therein.

General Provisions.

"Sect. 7. Sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine, both inclusive, of the Public Health Act, 1875, shall apply, with the necessary modifications, to all money borrowed by any library authority after the passing of this Act, as if the library authority were an urban sanitary authority, and as if references to the Public Libraries (England) Acts, 1855 to 1887, were substituted in those sections and in the forms therein mentioned for references to the Sanitary Acts or the Public Health Act, 1875.

"So much of section seventeen of the principal Act as incorporates the clauses and provisions of the Companies Clauses Consolidation Act, 1845, with respect to the borrowing of money on mortgage or bond is hereby repealed except as to any money borrowed before the passing of this Act.

"Sect. 8. The powers and duties of the Commissioners of her Majesty's Treasury under the Public Libraries (England) Acts, 1855 to 1887, shall from and after the passing of this Act be transferred to the Local Government Board, and sections sixteen and eighteen of the principal Act shall be construed and have effect as if a reference to the approval of the Local Government Board were therein substituted for a reference to the approval of her Majesty's Treasury.

"Sect. 9. Where any parish is partly within and partly without any borough or district which shall have adopted or shall contemplate the adoption of the principal Act, the part of such parish without the borough or district shall, for the purposes of the fourth section of the Public Libraries Amendment Act (England and Scotland), 1866, be considered a parish within the meaning of the said section; and the overseers of the poor for the said parish shall, for the purposes of the said section, be considered the overseers of the part of the parish situate without the borough or district, and the expenses referred to in the said section shall, so far as such part of the parish is concerned, be defrayed out of a rate to be levied by the overseers in such part of the parish, either as an addition to the poor rate, or as a separate rate to be made and recovered in the same way as a poor rate, and to be subject to the same rights of appeal.

Provisions affecting the Metropolis only.

"Sect. 10. In the metropolis any district shall have power to adopt the principal Act, and for such purpose the said Act shall be altered and have effect as follows:—

(1.) Sections eight, nine, twelve, fifteen, twenty-one, and twenty-two shall be read as if the word 'district' was substituted for the word 'parish'; and the words 'district board' instead of the word 'overseers' and the word 'vestry' as the case may be.

(2.) Section thirteen shall not apply, and instead thereof the following provisions shall have effect:—

The expenses of calling and holding the meeting of the ratepayers, whether the principal Act shall be adopted or not, and the expenses incurred by the commissioners in carrying the said Act and the Acts amending the same into execution in any district, to such amount as shall be from time to time sanctioned by the district board, shall be paid out of the funds of the district board applicable to the general expenses incurred by them in the execution of the Metropolis Management Act, 1855, and the sums required for the purpose of defraying the expenses incurred by the commissioners as aforesaid shall be paid by the district board to such person as shall be appointed by the commissioners to receive the same, but nothing herein contained shall enable district boards to levy or expend for the purposes of the principal Act and the Acts amending the same any greater sum in any year than one penny in the pound.

(3.) Section fourteen shall be read as if the words 'district boards' were substituted for the word 'vestries'; the word 'district' for 'parish'; and 'funds applicable to the general expenses incurred by the district board in the execution of the Metropolis Management Act, 1855,' for 'money to be raised for the relief of the poor,' and section sixteen shall be read as if the words 'district board' were substituted for the word 'vestry,' and the words 'rates out of which the expenses of the commissioners are payable' for the words 'rates levied in pursuance of this Act.'

(4.) Where any parish has, previously to the passing of this Act, adopted the principal Act, or shall subsequently adopt the same:—

(a.) No person shall, by reason of being a ratepayer of such parish, be accounted as a ratepayer of the district of which it forms a part.

(b.) No representative on the district board for such parish shall take any part in any proceedings under this section.

(c.) Such parish shall not be called upon to contribute towards any expenses incurred, and no part of the funds of such parish shall be expended in or towards calling or holding the meeting of the ratepayers of the district, or carrying the Act into execution in the district.

(d.) And, in every respect, such parish shall, for the purposes of this section, be treated as if it were outside the district.

(e.) Any question of accounts arising between such parish and the other parishes in the district, or between such parish and the district, in consequence of this section, shall be decided finally by the Local Government Board.

"Sect. 11. This Act shall not deprive any parish in the metropolis of the power of adopting the principal Act, but after any district shall have adopted the said Act, no parish within such district shall also adopt it in manner provided by section one of the Public Libraries Amendment Act, 1877, or hold a meeting for considering its adoption, without the consent of the Local Government Board."

Page 758, line 8 from bottom.

In England it is never practically necessary to rely on prescription to establish a public way. As to the difference between English and Scotch law on this point, see *per* Lord Blackburn in *Mann* v. *Brodie*, L. R. 10 App. Cas. at p. 386.

Page 759, line 5 from bottom.

As to the dedication by a canal company of a towing path as a footpath, see *Grand Junction Canal Co.* v. *Petty*, L. R. 21 Q. B. D. 273, 57 L. J. Q. B. 413, 36 W. R. 795: affd. in C. A. June 26, 1888.

As to whether it is possible to dedicate a road to the public, subject to a toll, see *Austerberry* v. *Corporation of Oldham*, cited in Addendum to p. 763.

Page 763, line 6.

A road, made by private persons and declared by deed to be open to the use of the public as a turnpike-road, and subject to a toll, is not repairable by the inhabitants at large: *Austerberry* v. *Corporation of Oldham*, L. R. 29 Ch. D. 730, 55 L. J. Ch. 633, 53 L. T. N. S. 543, 33 W. R. 807, 49 J. P. 532.

Page 775, line 18 from bottom.

See also *Reg.* v. *Inhabitants of County of Southampton*, L. R. 19 Q. B. D. 590, 52 J. P. 52.

Page 779, line 9 from bottom.

As to the limited construction which has always been put upon this statute, see *Reg.* v. *Christopherson*, L. R. 16 Q. B. D. 7, 55 L. J. M. C. 1, 53 L. T. N. S. 804, 34 W. R. 86, 50 J. P. 212.

Page 782, line 22.

As to a line which is let by one railway company to another in consideration of a rent fixed by Act of Parliament, see *Altrincham Union Assessment Committee* v. *Cheshire Lines Committee*, L. R. 15 Q. B. D. 597, 34 W. R. Dig. 136.

Page 782, line 18 from bottom.

And as to harbours, see *Reg.* v. *Berwick Assessment Committee*, L. R. 16 Q. B. D. 493, 55 L. J. M. C. 84, 50 J. P. 71.

Page 782, line 15 from bottom.

As to the proper way of assessing land occupied by a local authority for public purposes, see *Dewsbury Waterworks Board* v. *Assessment Committee of Penistone Union*, L. R. 17 Q. B. D. 384, 55 L. J. M. C. 121, 54 L. T. N. S. 592, 34 W. R. 622, 50 J. P. 644.

Page 782, line 13 from bottom.

So also buildings used for public purposes connected with the Government of the country are exempt from rating: *Nicholson* v. *Assessment Committee of Holborn Union*, L. R. 18 Q. B. D. 161, 56 L. J. M. C. 54, 55 L. T. N. S. 775, 35 W. R. 230, 51 J. P. 341. But this does not include reformatory schools: *Tunnicliffe* v. *Overseers of Birkdale*, L. R. 20 Q. B. D. 450, 52 J. P. 452.

Page 782, line 9 from bottom.

As to exemption from rating on the ground of land being "struck with sterility," compare *West Bromwich School Board* v. *Overseers of West Bromwich*, L. R. 13 Q. B. D. 929, with *Altrincham Union Assessment Committee* v. *Cheshire Lines Committee*, L. R. 15 Q. B. D. 597. See also *Reg.* v. *School Board for London*, L. R. 17 Q. B. D. 738, and *Owen's College* v. *Overseers of Chorlton-upon-Medlock*, L. R. 18 Q. B. D. 403.

Page 798, section 66.

But see now the Highway Act Amendment Act, 1885, 48 Vict. c. 13, which empowers the highway authority, where the highway is prejudiced by the shade of trees, hedges, &c., to prune them with the consent of the owner of the land whereon they grow. The Act only extends to Wilts, Dorset, Somerset, Devon, and Cornwall.

Page 846, at the bottom.

Reg. v. *Rawlins*, cited in Addendum to this place, was affirmed by the Court of Appeal, 15 Q. B. D. 382.

Page 847, line 5 from bottom.

A *bonâ fide* admission by the waywarden that the road is a highway is binding on the highway board, and it is not competent for them, after such an admission, to deny that fact so as to oust the jurisdiction of the justices: *Loughborough Highway Board* v. *Curzon*, L. R. 17 Q. B. D. 344, 55 L. J. M. C. 122, 55 L. T. N. S. 50, 34 W. R. 621, 50 J. P. 788.

Page 853, section 39.

The powers given by this section are not taken away by the Highways and Locomotives (Amendment) Act, 1878, ss. 3, 4: *Guardians of Sheppey Union* v. *Overseers of Elmley*, L. R. 17 Q. B. D. 364, 55 L. J. M. C. 176, 35 W. R. 15, 50 J. P. 343.

Page 879, at the bottom.

As to the jurisdiction of the rural sanitary authority, where a parish has been subtracted from the district by an order under section 39 of the Highway Act, 1862, see *Guardians of Sheppey Union* v. *Overseers of Elmley*, cited in Addendum to p. 853.

Page 882. section 10.

The indictment spoken of in this section is an indictment against the highway authority, *i. e.*, in the case of a borough, the urban sanitary authority: *Reg.* v. *Mayor of Wakefield*, cited in Addendum to p. 113.

Page 883, line 20 from bottom.

Improvement Commissioners of Newton in Makerfield v. *Justices of Lancashire* was affirmed in the House of Lords, L. R. 11 App. Cas. 416, 56 L. J. M. C. 17, 55 L. T. N. S. 615, 35 W. R. 185, 51 J. P. 68.

Page 883, section 13.

Converting a macadamised road into a paved road is not within the meaning of "maintenance" in this section: *Leek Improvement Commissioners* v. *Justices of Stafford*, L. R. 20 Q. B. D. 794, 36 W. R. 654, 52 J. P. 403.

Page 884, section 16.

A road, which ceased to be a turnpike road between the specified dates and so became a main road, may be dealt with under the 2nd clause of this section at any time: *Reg.* v. *Local Government Board*, L. R. 15 Q. B. D. 70, 54 L. J. M. C. 104, 53 L. T. N. S. 194, 33 W. R. Dig. 94, 49 J. P. 580.

Page 898, line 18 from bottom.

See also *Bridgend Gas and Water Co.* v. *Dunraven*, L. R. 31 Ch. D. 219, 55 L. J. Ch. 91, 53 L. T. N. S. 714, 34 W. R. 119.

Page 908, section 30.

See *Shepherd* v. *Corporation of Norwich*, L. R. 30 Ch. D. 553.

Page 909, section 34.

See *In re Arbitration between Holliday and Mayor of Wakefield*, cited in Addendum to p. 419.

Page 927, line 7 from bottom.

As to the jurisdiction of the Court to make an order for a declaration of title, where the company deny that the claimant has any title, see *Birmingham Land Co.* v. *London & North Western Ry. Co.*, L. R. 36 Ch. D. 650, 57 L. J. Ch. 121, 57 L. T. N. S. 185, 36 W. R. 414.

Page 928, line 17.

See also *Mayor of Birkenhead* v. *London & North Western Ry. Co.*, L. R. 15 Q. B. D. 572, 49 J. P. 135.

Page 929, line 14.

But see *Reg.* v. *Esser*, in the Court of Appeal, L. R. 17 Q. B. D. 447, 55 L. J. Q. B. 313, 54 L. T. N. S. 779, 34 W. R. 587.

Page 976, line 17 from bottom.

Deficiency in the poor rate, which the promoters are bound by this section to make good, includes deficiency in the borough rate and county rate: *Farmer* v. *London & North Western Ry. Co.*, L. R. 20 Q. B. D. 788, 36 W. R. 590.

See also on this section *Governor, &c. of Poor of Bristol* v. *Mayor of Bristol*, L. R. 18 Q. B. D. 549, 56 L. J. M. C. 37, 56 L. T. N. S. 641, 35 W. R. 619, 51 J. P. 676.

Page 998, line 11 from bottom.

This view of the word "theretofore" was taken by the House of Lords, contrary to the opinion of the majority of the Court of Appeal, in *Mayor of Portsmouth* v. *Smith*, L. R. 10 App. Cas. 364, 54 L. J. Q. B. 473.

Page 1050, at the bottom.

Att.-Gen. v. *Horner* was affirmed by the House of Lords, L. R. 11 App. Cas. 66, 54 L. T. N. S. 281, 34 W. R. 641, 50 J. P. 564.

Page 1056, section 24.

Now the Markets and Fairs (Weighing of Cattle) Act, 1887 (50 & 51 Vict. c. 27), provides as follows:

"Sect. 2. This Act, save as is hereinafter provided, shall apply to all markets and fairs in which tolls are for the time being authorized to be taken and actually are taken in respect of cattle by any company, corporation, or person; and every such company, corporation, or person is in this Act called 'the market authority.'

"Sect. 3. In this Act the word 'cattle' includes ram, ewe, wether, lamb, and swine.

"Sect. 4. In or near to every market or fair to which this Act applies, the market authority shall provide and maintain sufficient and proper buildings or places for weighing cattle brought for sale within the market or fair, and shall keep therein or near thereto weighing machines and weights for the purpose of weighing cattle, and shall appoint proper persons to have charge of such machines and weights, and to afford the use of such machines and weights to the public for weighing cattle as may be from time to time required.

The market authority shall have the accuracy of such weighing machines and weights tested at least twice in every year by the local inspector of weights and measures of and for the county, borough, or place where the market is situate, and the cost of such testing shall be borne by such market authority.

If the market authority fail to comply with the provisions of this section, it shall not be lawful for them to demand, receive, or recover any toll whatever in respect of any cattle brought to the market or fair for sale so long as such failure continues, but this enactment shall not apply till after the first day of January one thousand eight hundred and eighty-eight.

Any person who demands or receives any toll in respect of cattle in any market or fair to which for the time being this Act applies, but in which the market authority have not complied with the provisions of this Act, shall be liable on summary conviction to a fine not exceeding five pounds.

"Sect. 5. Every person selling, offering for sale, or buying any cattle in a market or fair provided with accommodation for weighing cattle may require such cattle to be weighed, and the tolls payable in respect of the weighing shall be paid by the person requiring the cattle to be weighed to the person authorized by the market authority to receive the tolls.

Page 1056, section 24—*continued.*

"Sect. 6. Every person appointed by the market authority to weigh cattle sold in the market or fair, who—

(a) Refuses or neglects to weigh the same when required; or

(b) Refuses or neglects to deliver to the seller or buyer a ticket specifying the true weight of the cattle weighed; or

(c) Gives to any person a false ticket or account of any cattle weighed;

shall be liable on summary conviction to a fine not exceeding forty shillings and not less than half a crown.

"Sect. 7. Every person who knowingly acts or assists in committing any fraud respecting the weighing of any cattle weighed in pursuance of this Act, shall for every such offence be liable on summary conviction to a fine not exceeding five pounds.

"Sect. 8. The market authority may from time to time (unless otherwise expressly provided by any Act) demand and receive in respect of the weighing of cattle tolls not exceeding the amounts specified in the schedule to this Act, or such other amounts as may be authorized by the Local Government Board to be taken by the market authority; and sections thirty-six to forty-one (both included) of the Markets and Fairs Clauses Act, 1847, shall apply to the tolls mentioned in this section, as if this Act were the special Act, and the market authority were the undertakers.

"Sect. 9.—(1.) The market authority of any market or fair may at any time apply to the Local Government Board to be exempted from the provisions of this Act on the ground that the sale of cattle at such market or fair is or is likely to be so small as to render it inexpedient to enforce the provision and maintenance of a place for weighing cattle and of a weighing machine under this Act; and thereupon the Local Government Board may by order declare that this Act shall not apply to such market or fair until after the expiration of a time not exceeding three years to be limited by such order. Any order made under this section may at any time be wholly or partially rescinded, altered, or extended by any subsequent order of the Local Government Board.

(2.) This Act shall not apply to any market or fair to which any order under this section applies so long as it is declared by such order that this Act shall not apply thereto.

"Sect. 10. In the application of this Act to Scotland and Ireland this Act shall be read and construed as if for the expression 'the Local Government Board' there were substituted, as regards Scotland, the expression 'the Secretary for Scotland,' and as regards Ireland, the expression 'the Local Government Board for Ireland.'

"THE SCHEDULE.

	Not exceeding
For every head of cattle other than sheep or swine.....	Twopence.
For sheep or swine, every five or less number	One penny."

Page 1086, section 16, sub-section 2.

As to the duty to put up fences at the point of diversion, see *Hurst* v. *Taylor*, L. R. 14 Q. B. D. 918, 54 L. J. Q. B. 310, 33 W. R. 582, 49 J. P. 359.

Page 1087, line 4 from bottom.

Where a road is carried over a railway by means of a bridge in accordance with this section, the railway company are bound to keep in repair the roadway upon the bridge: *Mayor of Bury* v. *Lancashire and Yorkshire Ry. Co.*, L. R. 20 Q. B. D. 485, 57 L. J. Q. B. 280, 52 J. P. 341.

Page 1088, at the bottom.

Section 53 applies to a permanent diversion as well as a temporary diversion of a road: *Att.-Gen.* v. *Barry Docks and Ry. Co.*, L. R. 35 Ch. D. 573, 56 L. J. Ch. 1018, 56 L. T. N. S. 559, 35 W. R. 830, 51 J. P. 644.

Page 1107, section 33.

See *Reg.* v. *Croydon and Norwood Tramways Co.*, L. R. 18 Q. B. D. 39, 56 L. J. Q. B. 125, 56 L. T. N. S. 78, 35 W. R. 299, 51 J. P. 420.

Page 1112, section 43.

Under this section it is competent to the local authority to make and enforce a bye-law for regulating the number of passengers to be carried in and upon tram-cars, and the extent of accommodation to be afforded to them. The assent of the lessees of the line (under section 46), is not necessary to the validity of such bye-law: *Smith* v. *Butler*, L. R. 16 Q. B. D. 349, 34 W. R. 416, 50 J. P. 260.

Page 1113, section 55.

This section applies only to a wrongful act or default, and does not make the promoters answerable for a mere accident caused without negligence by their use of tram-cars: *Brocklehurst* v. *Manchester, Bury, Rochdale and Oldham Steam Tramways Co.*, L. R. 17 Q. B. D. 118, 55 L. T. N. S. 406, 34 W. R. 568.

Page 1158, section 11.

By the Burial Boards (Contested Elections) Act, 1885 (48 Vict. c. 21), the expenses incurred in taking a poll for the appointment of a burial board are to be defrayed by the burial board as expenses incurred in carrying the Burial Acts into execution.

Page 1162, section 32.

See *Stewart* v. *West Derby Burial Board*, L. R. 34 Ch. D. 314, 56 L. J. Ch. 425, 56 L. T. N. S. 380, 35 W. R. 268.

Page 1172, section 9.

The word "dwelling-house" does not, for the purposes of this Act, include the curtilage; therefore the hundred yards must be measured from the walls of the house itself: *Wright* v. *Wallasey Local Board*, L. R. 18 Q. B. D. 783, 56 L. J. Q. B. 259, 52 J. P. 4.

Page 1204, section 4.

The town council is not bound, under Sched. II., r. 19, of the Public Health Act, 1875, to keep a register of owners and proxies for the purpose of ascertaining, by means of a poll, the wishes of the owners and ratepayers as to incurring expense in promoting or opposing Bills: Per Cave, J., *Ward* v. *Mayor of Sheffield*, cited in Addendum to p. 231.

Pages 1206—1215. Local Loans Act.

See now 50 & 51 Vict. c. 16.

Page 1238.

Now by the Public Works Loans Act, 1887 (50 & 51 Vict. c. 37), s. 4, the expression "rating authority" in s. 7 of the Public Works Loans Act, 1882, is extended to mean as regards England, "(a) any authority being a rural sanitary authority under the Public Health Act, 1875, and the Acts amending the same; and (b) any justices in quarter sessions assembled, and any representative county body which may be hereafter created by Act of Parliament."

Page 1249, at bottom.

By 50 & 51 Vict. c. 72, expenses paid by any local authority whose accounts are subject to audit by a district auditor, shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board.

Pages 1251—1262. Labouring Classes Lodging Houses Acts.

Now the Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72), provides as follows:—

"*Labouring Classes Lodging Houses.*

"Sect. 1.—(1.) The Labouring Classes Lodging Houses Acts, 1851 to 1857, may be adopted—

(a) for the city of London by the Commissioners of Sewers of the city of London;

(b) for the metropolis, exclusive of the city of London, by the Metropolitan Board of Works if one of Her Majesty's Principal Secretaries of State approves of such adoption;

(c) for any urban sanitary district by the urban sanitary authority of such district in accordance with section ten of the Public Health Act, 1875; and

(d) for any rural sanitary district, by the sanitary authority of the district upon such certificate published by the Local Government Board, and after such delay as hereinafter mentioned.

(2.) A rural sanitary authority in any district desiring to adopt the said Acts may apply to the Local Government Board for the certificate required for such adoption, and shall specify in such application the area in which they consider that accommodation is necessary for the housing of the labouring classes, and thereupon the Local Government Board shall direct a local inquiry to be held by one of their inspectors, and if after such local inquiry the inspector shall certify that accommodation is necessary in such area for the housing of the labouring classes, and that there is no probability that such accommodation will be provided without the execution of the said Acts, and that having regard to the liability which will be incurred by the rates, it is under all the circumstances prudent for the said authority to undertake the provision of the said accommodation under the powers of the said Acts, the Local Government Board may if they think fit publish that certificate in the 'London Gazette,' and thereupon the sanitary authority may adopt the said Acts: provided that—

(a) unless the Local Government Board state in publishing such certificate that, by reason of the date of the next ordinary election of members of such authority or otherwise, an emergency renders it necessary to adopt the Acts immediately, such adoption in pursuance of the certificate shall not take place before the ordinary election of members of such authority which is held next after the date of the local inquiry; and

(b) after the end of twelve months from the date of the certificate the Acts shall not be adopted without a fresh certificate; and

(c) no land shall be acquired, nor buildings erected under the said Acts outside of the area mentioned in the certificate, except after a fresh application, inquiry, and certificate.

(3.) Where the rural sanitary authority think it just that the burden of the expenses of the execution of the said Acts should be borne by some contributory place or places only in their district, instead of by the whole of their district, the authority may in their application to the Local Government Board request permission to limit the burden of such expenses to such contributory place or places, and thereupon the justice of such limitation shall be inquired into at the local inquiry, and the Local Government Board, if satisfied after the local inquiry that the circumstances of the contributory place or places and of the rest of the district render such limitation just, may make an order to that effect, and thereupon the expenses of the execution of the said Acts in the area mentioned in the order shall be borne by the contributory place or places named in the order instead of by the whole district. The provisions of this enactment with respect to the burden of the expenses shall apply upon every application for a fresh certificate.

(4.) When the Labouring Classes Lodging Houses Acts, 1851 to 1867, have been adopted by the Metropolitan Board of Works, or by any sanitary authority, or by the Commissioners of Sewers of the city of London, then

(a) such board or authority or commissioners shall have power to carry the said Acts into execution within the area for which they are adopted, subject in the case of a rural sanitary authority to the foregoing provisions with respect to rural sanitary authorities, and for that purpose may exercise the same powers whether of contract or otherwise as in the execution of their duties under the Metropolis Management Act, 1855, and the Acts amending the same, or under the Public Health Act, 1875, or under the Acts conferring powers on such Commissioners of Sewers respectively;

Pages 1251—1262. Labouring Classes Lodging Houses Acts—*continued.*

(b) all expenses incurred by such board or authority in the execution of the said Acts shall be defrayed—

(i.) in the case of the Metropolitan Board of Works, out of the Dwelling House Improvement Fund under the Artizans and Labourers Dwellings Improvement Act, 1875;

(ii.) in the case of an urban sanitary authority, as part of the general expenses of their execution of the Public Health Act, 1875; and

(iii.) in the case of a rural sanitary authority, as special expenses incurred in the execution of the Public Health Act, 1875, and, save where the burden of such expenses is by order of the Local Government Board to be borne by one contributory place only, shall be deemed to be incurred for the common benefit of all the contributory places liable to bear such expenses: Provided that if on the application of the rural sanitary authority it is so declared at the time of the publication of the certificate by the Local Government Board, then the said expenses of the rural sanitary authority shall be defrayed as general expenses of the said authority in the execution of the Public Health Act, 1875, and if such expenses are not to be borne by the whole of the district, shall be charged to the contributory places which are to bear the same as an addition to the general expenses otherwise chargeable thereto;

(iv.) in the case of the City of London, out of the Dwelling House Improvement Fund under the Artizans and Labourers Dwellings Improvement Act, 1875;

(c) all receipts under the said Acts shall be paid to the fund out of which such expenses are payable, and the accounts of such receipts and expenses shall be audited in like manner and with the like incidents and consequences respectively as the accounts of the general or special expenses above mentioned; but separate accounts shall be kept of the receipts and expenditure for the purposes of the said Acts;

(d) such board and commissioners may borrow for the purpose of the execution of the said Acts, in like manner and subject to the like conditions as they may borrow for the purposes of the Artizans and Labourers Dwellings Improvement Act, 1875, and every such authority may borrow for the purpose of the execution of the said Acts in like manner and subject to the like conditions as for the purpose of defraying the above-mentioned general or special expenses;

(e) in the application of the said Acts to the City of London, 'district' shall mean the City of London, and 'board' the Commissioners of Sewers of that City; and in the application of the said Acts to the Metropolis, 'district' shall mean the metropolis exclusive of the City of London, and 'board' the Metropolitan Board of Works; and in the application of the said Acts to a rural sanitary district, 'district' shall mean the said district, and 'board' the rural sanitary authority. In any case where an urban sanitary authority does not levy a borough rate or any general district rate, but is empowered by a local Act or Acts to borrow money and to levy a rate or rates throughout the whole of their district for purposes similar to those or to some of those for which a general district rate is leviable, it shall be lawful for such sanitary authority to defray the expenses incurred in the execution of the said Acts by means of money to be borrowed, and a rate or rates to be levied, under such local Act or Acts.

"Sect. 2.—(1.) The expression 'lodging-houses for the labouring classes' when used in the Labouring Classes Lodging Houses Acts, 1851 to 1867, shall be deemed to include separate houses or cottages for the labouring classes, whether containing one or several tenements, and the purposes of the said Act shall be deemed to include the provision of such houses and cottages.

"(2.) Land for the purposes of the said Acts as amended by this Act may be acquired by the Metropolitan Board of Works, by the Commissioners of Sewers of the City of London, and by any sanitary authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that Act (relating to the purchase of land), shall apply accordingly, and shall for the purposes of this Act extend to the metropolis in like manner as if the Commissioners of Sewers and Metropolitan Board of Works respectively were a local authority in the said sections mentioned, and one of her Majesty's Principal Secretaries of State were substituted for the Local Government Board.

"Sect. 3. In the event of the removal from their present sites of Millbank Penitentiary or Pentonville Penitentiary, it shall be lawful for Her Majesty, on the recommendation of the Commissioners of Her Majesty's Treasury, and subject to such conditions as they may think reasonable, and in the event of the removal from its present site of Coldbath Fields Prison, or House of Detention, Clerkenwell, it shall be lawful for the justices of the peace for the county of Middlesex if the justices think fit so to do, to sell and convey those respective sites or any part or parts thereof to the Metropolitan Board of Works, at a fair market price.

Amendment of Artizans Dwellings Acts.

"Sect. 4. The owner of any premises who is required by an order of a local authority made under the Artizans and Labourers Dwellings Act, 1868, to execute any works on or to demolish any premises, shall cease to have the power to require the local authority to purchase such premises.

Amendment of Artizans and Labourers Dwellings Improvement Acts.

"Sect. 5.—(1.) The Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882, shall extend to all urban sanitary districts.

(2.) In either of the following cases:

(a) Where an officer of health has reported to any local authority in the metropolis, exclusive of the City of London, either in pursuance of the Artizans and Labourers Dwellings Act, 1868, that any premises are in a condition or state dangerous to health, so as to be unfit for human habitation, or in pursuance of section eight of the Artizans Dwellings Act,

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1882, that the pulling down of any obstructive buildings would be expedient, and such authority resolve that the case of such premises or buildings is of such general importance to the metropolis that it should be dealt with by a scheme under the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882; or

(b) Where any such official representation as mentioned in section three of the Artizans and Labourers Dwellings Improvement Act, 1875, has been made to the Metropolitan Board of Works in relation to any houses, courts, or alleys within a certain area, and the Metropolitan Board of Works resolve that the case of such houses, courts, or alleys is not of general importance to the metropolis, and should be dealt with under the Artizans Dwellings Acts, 1868 to 1882:

such local authority or board may submit such resolution to one of Her Majesty's Principal Secretaries of State, and thereupon the Secretary of State may appoint an arbitrator, and direct him to hold a local inquiry, and such arbitrator shall hold such inquiry, and report to the Secretary of State as to whether, having regard to the size of the area, to the number of houses to be dealt with, to the position, structure, and sanitary condition of such houses, and of the neighbourhood thereof, and to the provisions of section three of the Artizans and Labourers Dwellings Improvement Act, 1875, the case is either wholly or partially of any and what importance to the metropolis at large, with power to such arbitrator to report that in the event of the case being dealt with under the Artizans Dwellings Acts, 1868 to 1882, the Metropolitan Board of Works ought to make a contribution in respect of the expense of dealing with the case. The Secretary of State, after considering the report of the arbitrator, may, according as to him seems just, decide that the case shall be dealt with either under the Artizans Dwellings Acts, 1868 to 1882, or under the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882, and the officer of health or other proper officer shall forthwith make the report or official representation necessary for proceedings in accordance with such decision.

(3.) Where an arbitrator has under the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882, determined the amount of compensation, an appeal shall not lie to a jury from the decision of such arbitrator without leave of the High Court of Justice, but such court or any judge thereof at chambers may grant such leave upon application in a summary manner, and upon being satisfied that a failure of justice will take place if the leave is not granted.

Amendment as to Interest on Public Works Loans.

"Sect. 6. Any loan advanced by the Public Works Loan Commissioners in pursuance of the Labouring Classes Lodging Houses Acts, 1851 to 1867, or of the Artizans Dwellings Acts, 1868 to 1882, or of the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882, the Artizans and Labourers Dwellings Improvement (Scotland) Act, 1875, and any Acts amending the same, or of any of such Acts, or for labourers dwellings in pursuance of the Public Works Loans Act, 1875, shall bear such rate of interest, not less than three pounds two shillings and sixpence per cent., as the Commissioners of Her Majesty's Treasury may from time to time authorize, as being in their opinion sufficient to enable such loans to be made without loss to the Exchequer.

Provided that this section shall cease to be of effect after the thirty-first day of December one thousand eight hundred and eighty-eight.

Amendment of General Sanitary Law, &c.

"Sect. 7. It shall be the duty of every local authority entrusted with the execution of laws relating to public health and local government, to put in force, from time to time as occasion may arise, the powers with which they are invested, so as to secure the proper sanitary condition of all premises within the area under the control of such authority.

"Sect. 8. Whereas under section ninety of the Public Health Act, 1875, the Local Government Board can declare that section to be in force within the district of a sanitary authority, and after the publication of notice of such declaration such authority is empowered to make byelaws with respect to lodging-houses, and it is expedient to authorize every such authority to make such bye-laws without any declaration by the Local Government Board: Be it therefore enacted as follows:—

Every sanitary authority shall have power to make bye-laws for the matters specified in section ninety of the Public Health Act, 1875.

"Sect. 9.—(1.) A tent, van, shed, or similar structure used for human habitation, which is in such a state as to be a nuisance or injurious to health, or which is so overcrowded as to be injurious to the health of the inmates, whether or not members of the same family, shall be deemed to be a nuisance within the meaning of section ninety-one of the Public Health Act, 1875; and the provisions of that Act shall apply accordingly.

(2.) A sanitary authority may make bye-laws for promoting cleanliness in, and the habitable condition of tents, vans, sheds, and similar structures used for human habitation, and for preventing the spread of infectious disease by the persons inhabiting the same, and generally for the prevention of nuisances in connection with the same.

(3.) Where any person duly authorized by a sanitary authority or by a justice of the peace has reasonable cause to suppose either that there is any contravention of the provisions of this Act or any bye-law made under this Act in any tent, van, shed, or similar structure used for human habitation, or that there is in any such tent, van, shed, or structure any person suffering from a dangerous infectious disorder, he may, on producing (if demanded) either a copy of his authorization purporting to be certified by the clerk or a member of the sanitary authority, or some other sufficient evidence of his being authorized as aforesaid, enter by day such tent, van, shed, or structure, and examine the same and every part thereof in order to ascertain whether in such tent, van, shed, or structure there is any contravention of any such bye-law, or a person suffering from a dangerous infectious disorder.

(4.) For the purposes of this section 'day' means the period between six o'clock in the morning and the succeeding nine o'clock in the evening.

Pages 1251—1262. Labouring Classes Lodging Houses Acts—*continued.*

"(5.) If such person is obstructed in the performance of his duty under this section, the person so obstructing shall be liable, on summary conviction, to a fine not exceeding forty shillings.

(6.) This section shall apply to the metropolis, with the substitution of section nineteen of the Sanitary Act, 1866, for section ninety-one of the Public Health Act, 1875, and of nuisance authority, under the Nuisance Removal Acts, for sanitary authority.

(7.) Nothing in this section shall apply to any tent, van, shed, or structure erected or used by any portion of Her Majesty's military or naval forces.

"Sect. 10.—(1.) With respect to bye-laws authorized by this Act, or by the Labouring Classes Lodging Houses Act, 1851, to be made—

(a) Sections two hundred and two and two hundred and three of the Metropolis Management Act, 1855, where such bye-laws are made by the Metropolitan Board of Works, or any nuisance authority in the metropolis; and

(b) The provisions of the Public Health Act, 1875, relating to bye-laws, where such bye-laws are made by a sanitary authority,

shall apply to such bye-laws, and a fine or penalty under any such bye-law may be recovered on summary conviction.

(2.) For the purposes of the execution of their duties under this Act the Local Government Board may hold such local inquiries as the Board see fit, and sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, relating to inquiries by such Board shall apply.

"Sect. 11.—(1.) The Settled Land Act, 1882, shall be amended as follows:—

(a) Any sale, exchange, or lease of land, in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working-classes, may be made at such price, or for such consideration, or for such rent, as, having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

(b) The improvements on which capital money may be expended, enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall, in addition to cottages for labourers, farm servants, and artizans whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the Court is not injurious to the estate.

(2.) Any body corporate holding land may sell, exchange, or lease such land for the purpose of the erection of dwellings for the working classes at such price, or for such consideration, or for such rent as having regard to the said purpose and to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

"Sect. 12. In any contract made after the passing of this Act for letting for habitation by persons of the working classes a house or part of a house, there shall be implied a condition that the house is at the commencement of the holding in all respects reasonably fit for human habitation. In this section the expression 'letting for habitation by persons of the working classes' means the letting for habitation of a house or part of a house at a rent not exceeding in England the sum named as the limit for the composition of rates by section three of the Poor Rate Assessment or Collection Act, 1869, and in Scotland or Ireland four pounds.

Supplemental.

"Sect. 13. In this Act, unless the context otherwise requires—

The expression 'sanitary district' means the district of a sanitary authority:

The expression 'sanitary authority' means an urban sanitary authority or a rural sanitary authority:

The expressions 'urban sanitary authority' and 'rural sanitary authority' and 'contributory place' have respectively the same meanings as in the Public Health Act, 1875:

The expression 'metropolis' means the parishes and places within which the Metropolitan Board of Works have for the time being power to levy the consolidated rate:

The expression 'cottage' may include a garden of not more than half an acre; provided that the estimated annual value of such garden shall not exceed three pounds.

"Sect. 14. This Act, so far as it amends the Labouring Classes Lodging Houses Act, 1851 (14 & 15 Vict. c. 34), the Labouring Classes Dwelling Houses Act, 1866 (29 & 30 Vict. c. 28), and the Labouring Classes Dwelling Houses Act, 1867 (30 & 31 Vict. c. 28), (which Acts are in this Act referred to as the Labouring Classes Lodging Houses Acts, 1851 to 1867), shall be construed as one with those Acts, and together with those Acts may be cited as the Labouring Classes Lodging Houses Acts, 1851 to 1885.

This Act, so far as it amends the Artizans Dwellings Acts, 1868 to 1882 (31 & 32 Vict. c. 130; 42 & 43 Vict. c. 64; 45 & 46 Vict. c. 54, Part II.), shall be construed as one with those Acts, and together with those Acts may be cited as the Artizans Dwellings Acts, 1868 to 1885.

This Act, so far as it amends the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1882 (38 & 39 Vict. c. 36; 42 & 43 Vict. c. 63; 45 & 46 Vict. c. 54, Part I.), shall be construed as one with those Acts, and together with those Acts may be cited as the Artizans and Labourers Dwellings Improvement Acts, 1875 to 1885.

"Sect. 15. [Application of Act to Ireland.]

"Sect. 16. [Application of Act to Scotland.]

"Sect. 17. [Title.]

"Sect. 18. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule specified, without prejudice to anything done or suffered thereunder, or to any proceeding pending at the date of the passing of this Act.

Pages 1251—1262. Labouring Classes Lodging Houses Acts—*continued.*

SCHEDULE.

Enactments Repealed.

A description or citation of a portion of an Act in this Schedule is inclusive of the word, section, or other part first and last mentioned or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Short Title.	Extent of Repeal.
	Labouring Classes Lodging Houses Acts.	
14 & 15 Vict. c. 34.. [1851].	The Labouring Classes Lodging Houses Act, 1851.	Section two. Section three, except from "words importing the masculine" to the end of the section. Sections five to thirty-four. So much of sections thirty-five to forty-three as relates to parishes or to the Commissioners for a parish, or to the vestry, guardians, churchwardens, or overseers of a parish. Section thirty-seven. Section forty. Section forty-one. Section forty-three, from "and the surplus" to end of section. Section forty-four. In section forty-five, from "and as to any parish" to the end of the section. In section forty-six, the words "and Commissioners" wherever they occur, and from "provided always" to the end of the section. So much of sections forty-eight, fifty-one, and fifty-two, and of the schedule, as relates to parishes or to the Commissioners for a parish.
29 & 30 Vict. c. 28.. [1866].	The Labouring Classes Dwelling Houses Act, 1866.	So much of sections four, six, and seven, as authorizes any council, board, or other sanitary authority to borrow, or as relates to Commissioners authorized to carry into execution the Labouring Classes Lodging Houses Act, 1851.
29 & 30 Vict. c. 44..	The Labouring Classes Lodging Houses and Dwellings Act (Ireland), 1866.	So much of sections three to seven, of sections eleven to thirteen, and of section twenty-three, as relates to urban sanitary authorities and urban sanitary districts. Section twenty-five.
46 & 47 Vict. c. 60..	The Labourers (Ireland) Act, 1883.	Section twenty.
	Artizans Dwellings Acts.	
42 & 43 Vict. c. 64.. [1879].	The Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879.	Sections five and six.
	Artizans and Labourers Dwellings Improvement Acts.	
38 & 39 Vict. c. 36.. [1875].	The Artizans and Labourers Dwellings Improvement Act, 1875.	So much of section two as relates to the population of urban sanitary districts.
38 & 39 Vict. c. 49.. [1875].	The Artizans and Labourers Dwellings Improvement (Scotland) Act.	Section two.
45 & 46 Vict. c. 54.. [1882].	The Artizans Dwellings Act, 1882.	Section eleven.

Page 1265, section 2, paragraph 3.

It is not the duty of the returning officer to inquire whether any candidate is under any personal disqualification to be elected: *Reg.* v. *Mayor of Bangor*, cited in Addendum to p. 279.

Page 1265, line 7 from bottom.

And see now *Ackers* v. *Howard*, L. R. 16 Q. B. D. 739, 55 L. J. Q. B. 273, 54 L. T. N. S. 651, 34 W. R. 609, 50 J. P. 519.

Page 1265, line 6 from bottom.

See *Phillips* v. *Goff*, L. R. 17 Q. B. D. 805, 55 L. J. Q. B. 512, 35 W. R. 197.

Page 1284, section 24.

See *Daking* v. *Fraser*, L. R. 16 Q. B. D. 252, 55 L. J. Q. B. 11, 34 W. R. 366.

Page 1284, at the bottom.

But see now *Foskett* v. *Kaufman*, L. R. 16 Q. B. D. 279, 55 L. J. Q. B. 1, 54 L. T. N. S. 64, 34 W. R. 90, 50 J. P. 484; and *Dashwood* v. *Ayles*, L. R. 16 Q. B. D. 295, 55 L. J. Q. B. 8, 34 W. R. 53, 50 J. P. 132.

Page 1285, section 28, sub-section 2.

See *Bollen* v. *Southall*, L. R. 15 Q. B. D. 461, 54 L. J. Q. B. 589, 34 W. R. 44, 49 J. P. 119.

Page 1301, section 14.

See *Betteswortb* v. *Allingham*, L. R. 16 Q. B. D. 44, 34 W. R. 296, 50 J. P. 55.

Page 1301, section 20.

Where a candidate applied under this section for relief, and it appeared that he had been elected, and that a petition had been presented and was pending against his election, the Court refused to entertain his application for relief, which was ordered to stand over until after the trial of the election petition: *Ex parte Wilks*, L. R. 16 Q. B. D. 114, 55 L. J. Q. B. 576, 34 W. R. 273, 50 J. P. 487.

See *Ex parte Robson*, cited in Addendum to p. 1302.

Page 1302, section 21, sub-section 3.

The return of expenses and declaration must be sent to the town clerk, although no expenses have been actually incurred: *Ex parte Robson*, L. R. 18 Q. B. D. 336, 55 L. T. N. S. 813, 51 J. P. 199.

Page 1351, section 18.

By the Amendment Act of 1864 (27 & 28 Vict. c. 39), s. 1, there is to be no appeal to any sessions against a rate made in conformity with the valuation list, unless the appellant has first applied to the committee under this section, and failed. But if he has done this before the rate is made, he need not repeat his application, but may appeal to quarter sessions against any subsequent rate made in conformity with the list: *Reg.* v. *Justices of Denbighshire*, L. R. 15 Q. B. D. 451, 54 L. J. M. C. 142, 53 L. T. N. S. 388, 33 W. R. 784, 49 J. P. 788.

Page 1351, section 19.

See *Reg.* v. *Overseers of Langriville*, L. R. 14 Q. B. D. 83, 54 L. J. Q. B. 124, 52 L. T. N. S. 253, 33 W. R. 213, 49 J. P. 54.

Page 1391, section 1.

"Bridges broken in the highways." See *Reg.* v. *Inhabitants of County of Southampton*, cited in Addendum to p. 775.

Page 1465, line 4 from bottom.

For 10 Q. B. D. *read* 14 Q. B. D.

Compare also *Daniel* v. *Whitfield*, L. R. 15 Q. B. D. 408, 54 L. J. M. C. 134, 53 L. T. N. S. 471, 33 W. R. 905, 49 J. P. 694.

PREFACE.

THE object of the following work is to arrange and bring together in one volume the laws which urban and rural authorities, as constituted by the Public Health Act, 1875, and municipal corporations are called upon to administer. The work is not a mere commentary upon these laws; but in every case the exact words of the statute or part of a statute which governs or is administered by local and municipal authorities are fully set forth and annotated. In addition to the numerous statutes cited in the notes, the body of the work contains 142 statutes and substantial parts of statutes.

The Public Health Act, 1875, as first in importance, is the first statute treated. By way of introduction to this Act, it has been thought advisable to print a short history of sanitary legislation prior to 1875, taken from the report of the Royal Commission of 1869 on Sanitary Laws in England and Wales (exclusive of the Metropolis), and also the Circulars, explanatory of the Act, issued by the Local Government Board on 30th September, 1875. The Act itself will be found to be carefully and copiously annotated. Wherever cases are referred to throughout the work, references are given to all the reports in which the case appears. Thus, in the modern cases references are given to the *Law Reports, Law Journal, Law Times Reports, Weekly Reporter*, and *Justice of the Peace*. This, it is believed, will be found of especial value to practitioners in the country.

The Municipal Corporations Acts and the Local Government Board Act, 1871, as regulating and establishing municipal authorities and the Government Department, under the supervision of which local government laws are administered, follow the Public Health Act, 1875. This disposes of the *constitution* of local and municipal authorities.

Following the order suggested by the Public Health Act, 1875, as to the subject-matter of the laws which Local and Municipal Authorities have to administer, the text of the work contains the statutes, annotated, relating to the following subjects: Sewers and Rivers Pollution, Water (including the Waterworks Clauses Acts, 1847, 1863), Lighting (including the Electric Lighting Act, 1882, the Gasworks Clauses Acts, 1847, 1871, and the Gas and Waterworks Facilities Acts, 1870, 1873), Artizans' and Labourers' Dwellings, Infant Life Protection and Adulteration of Food, Nuisances (including Explosives, Petroleum, and Alkali Acts), Libraries, Museums and Schools of Art, Contagious Diseases (Animals), Highways (including the Tramways Act, 1870), Compulsory taking of Land, Burial, Loans, and Audit.

In addition to the statutes dealing with these subjects, the Clauses Consolidation Acts are set forth and annotated, viz., the Lands Clauses, Towns Improvement, Towns Police, Markets and Fairs, Commissioners, Railways and Companies' Clauses Consolidation Acts. Where any of these are incorporated with the Public Health Act, 1875, the fact and extent of the incorporation is carefully noted.

Various statutes relating to Municipal Corporations, Municipal Elections, Inclosure and Recreation Grounds, Rating, and Bridges, with many others, are also given.

It was originally intended to include the Model Bye-laws issued by the Local Government Board, and references have been occasionally made to them in the earlier notes, but having regard to the size of the work it was felt that this would unduly increase its bulk without corresponding advantage.

The legislation of 1884, at which period the work was so far

advanced in type as to render interpolation impracticable, has been placed out of order at the end of the book.

A selection of the Circulars and Orders of the Local Government Board and the Standing Orders of the Houses of Parliament relating to Local Bills and Provisional Orders will, it is hoped, prove of practical value.

Special pains have been taken in the preparation of the Index to make it as comprehensive and accurate as possible. A table of upwards of 2500 cases cited in the book is also given. The Addenda bring the cases up to date of publication, and are printed on one side only for convenience of removal to their proper places in the body of the work.

The authors desire to acknowledge their indebtedness to Mr. F. G. Rucker, Mr. W. W. Orr, and Mr. J. F. Rotton, legal adviser to the Local Government Board, Barristers-at-Law, for much valuable assistance in the preparation of the work. They have, also, to thank Mr. J. F. Moulton, Barrister-at-Law, for several notes upon the Electric Lighting Act, 1882, and for the Forms of Electric Lighting Provisional Order, and Licence for Electric Lighting.

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TEMPLE,
April, 1885.

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ADDENDA ET CORRIGENDA.

*** *The reader is requested to insert the cases on the following pages, and note the errors therein mentioned in their proper places in the work. The cases have, for convenience of removal, been printed on one side only.*

These addenda and corrigenda are referred to in the Index by the letters "Add.," *followed by the page to which the particular addendum refers.*

Page 44, line 10 from bottom—

After post. add "p. 860n."

„ 45, line 10 from bottom—

See also *Williams* v. *Wandsworth Board of Works*, L. R. 13 Q. B. D. 211, 53 L. J. M. C. 187, 32 W. R. 908, 48 J. P. 439, a decision on the Metropolis Management Act, 1855.

„ 47, line 6 from bottom—

The word "sewer" in this Act should receive the largest possible interpretation: per Kay, J., *Acton Local Board* v. *Batten*, L. R. 28 Ch. D. 283, 54 L. J. Ch. 251, 52 L. T. N. S. 17.

„ 52, section 13, sub.-s. 1—

A sewer made by the owner of some only of the houses in a street not yet a highway, though made for the purpose of draining his own amongst other houses, is not a sewer made by a person "for his own profit" within the meaning of this section: *Acton Local Board* v. *Batten*, cited in addendum to p. 47.

„ 53, line 18 from bottom—

See also, as to the general liability of a public body to avoid flooding adjoining premises, *Whalley* v. *Lancashire and Yorkshire Ry. Co.*, L. R. 13 Q. B. D. 131, 53 L. J. M. C. 285, 50 L. T. N. S. 473, 32 W. R. 711, 48 J. P. 500.

„ 55, line 3 from bottom—

See also *Truman* v. *L. B. & S. C. Ry. Co.*, L. R. 25 Ch. D. 423, 53 L. J. Ch. 209, 50 L. T. N. S. 89, 32 W. R. 364, 48 J. P. 260; affirmed by the C. A., W. N. 1885, p. 44.

„ 58, line 9 from bottom—

See also *Mayor of New Windsor* v. *Stovell*, L. R. 27 Ch. D. 665, 54 L. J. Ch. 113, 51 L. T. N. S. 626, 33 W. R. 223.

„ 63, line 13—

For "a me" *read* "same."

„ 71, line 18—

Kensit v. *Great Eastern Ry. Co.*, was affirmed by the C. A., L. R. 27 Ch. D. 122, 54 L. J. Ch. 19, 51 L. T. N. S. 862, 32 W. R. 885.

„ 72, line 2 from bottom—

See *Goodhart* v. *Hyett*, L. R. 25 Ch. D. 182, 53 L. J. Ch. 219, 50 L. T. N. S. 95, 32 W. R. 165, 48 J. P. 293, where the owner of a house having an easement of water flowing in pipes through adjoining land, obtained an injunction restraining the owner of the adjoining land from building a house over the pipes.

„ 73, line 6—

For "Wand" *read* "Waud."

„ 73, line 12 from bottom—

Although every owner of land has the right to appropriate water percolating under his land, yet he has no right to pollute it to the injury of any one else: *Ballard* v. *Tomlinson*, W. N. 1885, p. 36.

Page 77, section 62—

When a local authority have caused a supply of water to be brought in pipes along a street, and have given notice to the owner of a house to obtain a supply and to do all such works as may be necessary for that purpose, the water company are entitled to charge rates, although neither the authority nor the owner have caused the house to be connected with the main: *Southend Waterworks Co.* v. *Howard*, L. R. 13 Q. B. D. 215, 53 L. J. Q. B. 354, 32 W. R. 923, 48 J. P. 469.

„ 89, line 16—

See also *Truman* v. *L. B. & S. C. Ry. Co.*, cited in addendum to p. 55.

„ 94, line 25—

See also *Reg.* v. *Llewellyn*, L. R. 13 Q. B. D. 681, 33 W. R. 150.

„ 101, line 20 from bottom—

As to fish-frying, see *Braintree Local Board* v. *Boyton*, 52 L. T. N. S. 99, 48 J. P. 582.

„ 101, line 18 from bottom—

For "Northwick" *read* "Northwich."

„ 118, line 21—

See also *Wandsworth Board of Works* v. *United Telephone Co.*, L. R. 13 Q. B. D. 904, 53 L. J. Q. B. 449, 51 L. T. N. S. 148, 32 W. R. 776, 48 J. P. 676; where it was held that the corresponding section of the Metropolis Management Act, 1855, did not confer upon a vestry or a board of works such a property in the streets within their district, as to entitle them to maintain an action for an injunction against the erection of a telephone wire across a street, the wire being at a great height and causing no appreciable danger to the public or the traffic in the street.

„ 120, line 6—

See also *Reg.* v. *Sheil*, 49 J. P. 68, a case under the Metropolis Management Act, where it was held that in proceedings for recovering expenses of paving new streets in the metropolis, it is a preliminary question of fact whether the alleged street is a street, and this is for the magistrate to determine.

„ 121, line 15 from bottom—

See also *Williams* v. *Wandsworth Board of Works*, cited in addendum to p. 45.

„ 122, line 17, "The expenses incurred by them."—

If the sewering and paving of a street to an amount exceeding £50 has been done by contractors, employed by the urban authority, but without any written contract under their common seal, as is directed by s. 174, the authority are nevertheless entitled to recover the expenses from the frontagers: *Bournemouth Commissioners* v. *Watts*, L. R. 14 Q. B. D. 87, 54 L. J. Q. B. 93, 51 L. T. N. S. 823, 33 W. R. 280, 49 J. P. 102.

„ 123, line 26—

Ex parte Wake was affirmed by the C. A.; L. R. 12 Q. B. D. 142, 53 L. J. M. C. 1, 50 L. T. N. S. 76, 32 W. R. 82, 48 J. P. 197.

„ 125, section 152—

In order that a local authority may declare a street, not repairable by the inhabitants at large, to be a highway so that it may become so repairable, it is necessary that each of the works specified in this section shall, at the time of declaration, have been executed upon the street to the satisfaction of such authority. This section and section 150 are not correlative: *Att.-Gen.* v. *Bidder*, 47 J. P. 263.

„ 128, sub-s. 1—

A bye-law that "no person shall commence the erection of a building in a new street unless and until the kerb of each foot-path therein shall have been put in at such level as may be fixed or approved by the urban sanitary authority" was held unreasonable: *Rudland* v. *Mayor of Sunderland*, 33 W. R. 164.

See also on this sub-s. *Thompson* v. *Failsworth Local Board*, 46 J. P. 21.

„ „ sub.-s. 2—

As to the meaning of "party-wall" in bye-laws, see *Weston* v. *Arnold*, L. R. 8 Ch. 1084, 43 L. J. Ch. 123, 22 W. R. 284.

As to the meaning of "party wall" generally, see *Watson* v. *Gray*, L. R, 14 Ch. D 192, 49 L. J. Ch. 243, 42 L. T. N. S. 294, 44 J. P. 537.

Page 289, line 6 from bottom—

But section 23 of 17 & 18 Vict. c. 102, is now repealed by 46 & 47 Vict. c. 51, s. 66.

„ 291, section 87—

An election petition may be presented under this section against some only of the persons returned at a municipal election, although the ground of the petition is one affecting the validity of the election as a whole; and the court can on such petition declare the persons so petitioned against not to have been duly elected: *Line* v. *Warren*, L. R. 14 Q. B. D. 73, 33 W. R. 212; see also 51 L. T. N. S. 359, 48 J. P. 454; affirmed L. R. 14 Q. B. D. 548.

„ 294, section 93, sub-s. 7—

But see *Line* v. *Warren*, L. R. 14 Q. B. D. 548.

„ 345, line 2 from bottom—

See addendum to p. 286.

„ 400, line 5 from bottom—

See *Lea Conservancy Board* v. *Hertford*, 48 J. P. 628.

„ 424, line 12 from bottom—

The special remedy by penalties given by this section against a company for withholding water has not ousted the general jurisdiction to restrain the company by injunction from cutting off the supply of water pending proceedings for settling a dispute as to value; but such an injunction will not be granted on the application of an owner or occupier who will not undertake to commence proceedings with due speed before the justices under section 68: *Hayward* v. *East London Waterworks Co.*, L. R. 28 Ch. D. 138.

„ 428, section 68—

See *Hayward* v. *East London Waterworks Co.*, cited in addendum to p. 424.

„ 428, line 9 from bottom—

As to the proper method of fixing the annual value of licensed premises, see *West Middlesex Waterworks Co.* v. *Coleman*, L. R. 14 Q. B. D. 529.

„ 429, line 5 from bottom—

See *Hayward* v. *East London Waterworks Co.*, cited in addendum to p. 424.

„ 440, line 17, "The expression 'gas rate' shall include any rent, &c."—

The payment due to a gas company for gas supplied, though it is called rent in some Acts of Parliament is not really of the nature of rent, and consequently a gas company does not come within the words "other person to whom rent is due," in section 34 of the Bankruptcy Act, 1869: *Ex parte Harrison*; *In re Peake*, L. R. 13 Q. B. D. 753, 53 L. J. Ch. 977.

„ 607, section 27, sub-s. 2—

Where the local authority paid into court the sum awarded by the arbitrator, and on appeal a verdict for a larger sum was given by a jury, and the authority then paid into court the difference between the two sums; it was held that they must also pay interest at 4 per cent. on the difference from the date of the first payment to the date of the second payment: *In re Shaw and the Corporation of Birmingham*, L. R. 27 Ch. D. 614, 54 L. J. Ch. 51, 33 W. R. 74.

„ 633, section 6—

An inspector under this Act asked a milk seller for milk, and was supplied with milk, which had been skimmed, and was in consequence, as compared with normal milk as it comes from the cow, deficient in butter fat to an extent of 60 per cent.; it was held that no offence had been committed against this section: *Lane* v. *Collins*, L. R. 14 Q. B. D. 193, 33 W. R. 365, 49 J. P. 89.

„ 635, at the bottom—

Parsons v. *Birmingham Dairy Co.* was dissented from by the court in Ireland in *Enniskillen Guardians* v. *Hilliard*, 14 L. R. Ir. 214.

See also on this section, *Chappell* v. *Emson*, 48 J. P. 200.

„ 738, section 32—

For a case on an Order of Council under this section, see *Midland Ry. Co.* v. *Freeman*, L. R. 12 Q. B. D. 629, 53 L. J. M. C. 79, 32 W. R. 830, 48 J. P. 660.

„ 744, section 50—

A constable sued in respect of acts done under this Act is entitled to neither local venue nor notice of action: *Bryson* v. *Russell*, 33 W. R. 34,

Page 759, line 6—

For "Huskisson" *read* "Huskinson."

„ 761, line 7—

For "Hadlam" *read* "Headlam."

„ 761, line 16—

For "Hutchinson" *read* "Huskinson."

„ 780, line 12—

A school board is rateable to the relief of the poor in respect of a public elementary school occupied by them, whether they are owners or lessees of the site thereof: *West Bromwich School Board* v. *Overseers of West Bromwich*, L. R. 13 Q. B. D. 929, 53 L. J. M. C. 153, 32 W. R. 866, 48 J. P. 808.

As to the rateability of a house occupied by a constable, see *MacHarg* v. *Stoke-upon-Trent Assessment Committee*, 48 J. P. 775. And as to a house occupied by a caretaker, see *Hicks* v. *Dunstable Overseers*, 48 J. P. 326.

„ 782, line 15 from bottom—

As to telegraph wires and posts, see *Electric Telegraph Co.* v. *Overseers of Salford*, 11 Ex. 181; and as to telephones, see *Lancashire Telephone Co.* v. *Overseers of Manchester*, L. R. 14 Q. B. D. 267, 33 W. R. 203.

And as to a lighthouse and telegraph station, see *Mersey Docks and Harbour Board* v. *Llancilian Overseers*, 33 W. R. 97, 49 J. P. 164.

„ 783, line 32—

As to the course to be pursued where premises are claimed to be in each of two parishes, see *Reg.* v. *Jefferson*, 48 J. P. 398.

„ 812, line 14, "The expenses aforesaid"—

The charges of a solicitor employed by an urban authority to conduct proceedings at the instance of an individual for the stopping up or diverting a highway under this and the next section are not expenses within this section, so as to be recoverable in the manner pointed out by section 101: *United Land Co.* v. *Tottenham Local Board*, L. R. 13 Q. B. D. 640, 53 L. J. M. C. 136, 51 L. T. N. S. 364, 32 W. R. 798, 48 J. P. 726.

„ 846, at the bottom—

The fact that the salary of a clerk to a highway board is paid out of the highway fund collected as a poor rate by the overseers in pursuance of precepts issued to them under the Highway Act, 1864, section 33, does not disqualify him from serving as a guardian: *Reg.* v. *Rawlins*, L. R. 14 Q. B. D. 325.

„ 866, at the bottom—

It would seem that if the highway board issued a precept as directed by this section (s. 33), and the overseers had notice thereof and made a rate accordingly, such a rate would be valid, even though it should happen that the precept had never been actually delivered to the overseers. See *Glen* v. *Overseers of Fulham*, L. R. 14 Q. B. D. 328, 54 L. J. M. C. 9, 33 W. R. 165.

„ 882, line 3 from bottom—

Reg. v. *JJ. of Cheshire* is reported fully, 50 L. T. N. S. 483, 48 J. P. 262.

„ 883, line 7, "The county in which such road is situate"—

Although the road lies within a borough, it is nevertheless situate in the county within the geographical limits of which it is: *Mayor of Over Darwen* v. *Justices of Lancaster* L. R. 13 Q. B. D. 497, 53 L. J. M. C. 198, 48 J. P. 437; affirmed by the C. A., 51 L. T. N. S. 739, W. N. 1884, p. 233. But as to what would be the "county authority" if the borough were a liberty having a separate court of quarter sessions, see *Reg.* v. *Recorder of Dover*, 32 W. R. 876, 49 J. P. 86.

„ 883, line 20 from bottom—

A turnpike road ran through a district; the maintenance of all the highways within the district was vested in commissioners long before 31st December, 1870, and thereupon the trustees of the turnpike road ceased to repair the road within the district. The turnpike trust expired in 1877. It was held that the road only "ceased to be a turnpike road" on the expiration of the trust, and that the county authority must bear half the expense of maintenance: *Newton Improvement Commissioners* v. *Justices of Lancashire*, L. R. 13 Q. B. D. 623; affirmed by the C. A., 54 L. J. M. C. 1, 49 J. P. 149, W. N. 1884, p. 240.

Page 886, line 12 from bottom—

See also, as to extraordinary traffic, *Tunbridge Highway Board* v. *Sevenoaks Highway Board*, 33 W. R. 306.

„ 895, line 5 from bottom—

The Great Western Ry. Co. v. *The Swindon and Cheltenham Ry. Co.* was taken to the House of Lords. The actual decision of the C. A. was affirmed ; but Lords Bramwell and Watson thought that the easement in question was included in the word "lands," though Lord FitzGerald thought it was not : L. R. 9 App. Cas. 787, 53 L. J. Ch. 1075, 32 W. R. 957, 48 J. P. 821.

„ 899, line 40—

The Great Western Ry. Co. v. *The Swindon and Cheltenham Ry. Co.* was taken to the House of Lords, cited in addendum to p. 895.

„ 911, line 14—

After "Docks Co." insert L. R. 23 Ch. D. 292.

„ 929, line 14—

See also *Reg.* v. *Essex*, 33 W. R. 214, 49 J. P. 87.
See also on this section *In re Wadham and North-Eastern Ry. Co.*, 33 W. R. 215.

„ 937, line 10 from bottom—

See also *In re Ward's Estates*, L. R. 28 Ch. D. 100, 54 L. J. Ch. 231, 33 W. R. 149.

„ 947, line from botton—

See also *Charlton* v. *Rolleston*, L. R. 28 Ch. D. 237, 54 L. J. Ch. 233.

„ 955, section 92—

The acceptance by the solicitors of a railway company of a counter notice under this section to take property which the company is not compellable to take under this Act, is not binding on the company : per Kay, J., *Treadwell* v. *L. and S. W. Ry. Co.*, 33 W. R. 272.

„ 956, line 30—

See also *Barnes* v. *Southsea Ry. Co.*, L. R. 27 Ch. D. 536, 32 W. R. 976.

„ 998, line 5 and note (2)—

In *Corporation of Portsmouth* v. *Smith*, L. R. 13 Q. B. D. 184, 53 L. J. Q. B. 92, 50 L. T. N. S. 308, 48 J. P. 404, Brett, M.R. and Bowen, L.J., agreeing with Lindley, L.J., thought that "theretofore" meant before the passing of the special Act ; Baggallay, L.J thought it meant before the time when the commissioners do the work.

„ 1048, section 71—

For bye-laws as to the "Salvation Army," see *Reg.* v. *Powell*, 51 L. T. N. S. 92, 48 J. P. 740, and *Beaty* v. *Glenister*, 51 L. T. N. S. 304.

„ 1050, line 3 from bottom—

Goldsmid v. *Great Eastern Ry. Co.*, was affirmed by the House of Lords, L. R. 9 App. Cas. 927, 54 L. J. Ch. 162, 33 W. R. 81.

„ 1050, at the bottom—

As to a market not limited by metes and bounds, see *Attorney-General* v. *Horner*, L. R. 14 Q. B. D. 245, 33 W. R. 93.

„ 1124, section 3—

The paragraph numbered "secondly" is repealed by the Highways and Locomotives (Amendment) Act, 1878, s. 29, which see, *ante*, p. 890.

„ 1125, section 5—

This section is repealed by the Highways and Locomotives (Amendment) Act, 1878, s. 28, which see *ante*, p. 889.

„ 1125, section 8—

This section is repealed by the Highways and Locomotives (Amendment) Act, 1878, s. 31, which sec *ante*, p. 890.

Page 1150, section 37—

In *Martin* v. *Wyatt*, 48 J. P. 215, it was held by Mathew and Day, JJ., that a bye-law of a cemetery prohibiting a discharged servant from being admitted to the cemetery except by special leave of the directors, and authorising his removal, was reasonable, and that a discharged servant employed by the owner of a grave to do some work to the grave was properly excluded by force from the cemetery.

„ 1157, section 8—

And by the Registration of Burials Act, 1864 (27 & 28 Vict. c. 97), s. 1, "all burials in any burial ground in England which are not now by law required to be registered shall be registered in register books to be provided for each such burial ground by the company, body, or persons to whom the same belongs, and to be kept for that purpose, according to the laws in force by which registers are required to be kept by rectors, vicars or curates of parishes or ecclesiastical districts in England." Section 4 imposes a penalty of £5 on failure to comply with the Act.

„ 1160, line 32, "Any surplus money at the disposal of the board"—

The board is liable to be assessed to the income tax in respect of such surplus: *Paddington Burial Board* v. *Commissioners of Inland Revenue*, L. R. 13 Q. B. D. 9, 53 L. J. Q. B. 224, 50 L. T. N. S. 211, 32 W. R. 551, 48 J. P. 311.

„ 1195, section 24—

By the Baths and Wash-houses Act, 1882 (45 & 46 Vict. c. 30), s. 3, the powers given by this section are extended to lands in the immediate neighbourhood of such borough or parish as is therein referred to.

„ 1196, section 27—

By 45 & 46 Vict. c. 30, s. 2, this section is amended by the addition after the words "in any such borough or parish" of the words "or in the immediate neighbourhood of any such borough or parish."

„ 1203, line 2 from bottom—

For the similar right in overseers of a parish, see *Reg.* v. *White*, L. R. 14 Q. B. D. 358; sub nom. *Reg.* v. *Sibly*, 54 L. J. M. C. 23, 33 W. R. 248.

„ 1283, section 15, sub-s. 2—

See *Greenway* v. *Bachelor*, *Jacob's case*, L. R. 12 Q. B. D. 376, 53 L. J. Q. B. 179, 50 L. T. N. S. 270, 32 W. R. 320.

„ 1286, section 28, sub-s. 12—

See *Lynch* v. *Wheatley*, L. R. 14 Q. B. D. 504.

„ „ section 28, sub-s. 13—

See *Ford* v. *Hoar*, L. R. 14 Q. B. D. 507.

„ 1287, section 28, sub-s. 15—

See *Greenway* v. *Bachelor*, *Jacob's case*, cited in addendum to p. 1283.

„ 1302, section 20—

See *Ex parte Berry*, 48 J. P. 824.

„ 1318, line 15—

After "he or they is" *add* "and are."

„ 1437, section 12—

A telephone company registered under the Companies Act, 1862, and not incorporated under any special Act, does not fall within the phrase "the company" used in this Act, and therefore is not forbidden by this section to erect its wires across a street without the consent of the body having the control of the street: *Wandsworth Board of Works* v. *United Telephone Co.*, cited in addendum to p. 118.

THE

LAW OF PUBLIC HEALTH

AND

LOCAL GOVERNMENT.

HISTORY OF THE SANITARY LAWS.

THE following short history of the Sanitary Laws, previous to the passing of the Public Health Act, 1875, is taken from the report, presented to Parliament in 1871, of the Royal Commission appointed in 1869 to inquire into the operation of the Sanitary Laws in England and Wales (exclusive of the Metropolis).

"In the earlier periods of our history the common law afforded the only means by which a comparatively rude and scattered population could vindicate their right to protection from injury to health by neglect or nuisance.

"The Legislature, however, seems to have become speedily sensible of the need of taking additional precautions, and it is worthy of notice that in the year 1388 an Act was passed, imposing a penalty of no less than £20 upon persons who cast animal filth and refuse into rivers and ditches. This may properly be considered as the first Sanitary Law in the Statute Book. The next is an Act passed in 1489, which prohibits the slaughtering of cattle within cities and boroughs. Both these Acts (which are reprinted among our evidence) continued to be law until the year 1856, when they were with other obsolete statutes repealed.

12 Rd. II. c. 13.

4 & 5 Hen. VII.

19 & 20 Vict. c. 64.

"In the older records there is but little evidence to show to what extent the Courts of law and equity exercised remedial or restrictive interference in such matters, and the Sheriffs' Tourn and Courts Leet, which were in possession of sanitary powers, and probably in their day exercised useful local jurisdiction, fell at length into desuetude, and, unless in the case of exceptional Courts Leet, became obsolete. It is worthy of note that the Court Rolls of Stratford-on-Avon show that in 1552 Shakespeare's father was fined for depositing filth in the public street, in violation of the bye-laws of the manor, and again in 1558, for not keeping his gutter clean.

"Commissions of 'Sewers' for the purpose of draining off or controlling the action of waters within defined limits, and of providing (but incidentally and to this extent only) for the health of the population, appear to have been issued by the Crown at its discretion from very early times, and Acts were passed in the reigns of Henry VI. and Henry VII. relating to this subject. At length in the reign of Henry VIII. the Statute of Sewers authorised the issue of Commissions of Sewers, at the discretion of the Lord Chancellor, the Lord Treasurer, and Chief Justices, and enacted a general definition of the duties of the Commissioners appointed by them—such as—the overlooking (within the particular district) of sea banks and sea walls, and the cleansing of rivers, public streams, and ditches. Important Commissions were from time to time issued in conformity with this Act, and operated in their several districts more or less directly on the public health; but had they been much more numerous, they would to no appreciable extent have supplied the absence of general or local sanitary legislation.

6 Hen VI. c. 5.

8 Hen. VI. c. 3.

4 Hen. VII. c. 1.

23 Hen. VIII. c. 5.

"The more populous and wealthy towns began as early as the reign of George II. to seek a remedy in their individual cases by applications to Parliament for special legislation; and very numerous special Acts have been passed between that date and the present time for conferring on populous places powers of local government, pointed more directly in the earlier instances at the paving, lighting, cleansing, and

improving the districts embraced in them, but recognising in all later instances the importance of sanitary regulations, and affecting to make provisions accordingly; but until lately no general measure applicable to the whole kingdom provided for the health and comfort of the people.

"The attention of the Legislature has, however, been specially directed from time to time to meet the extraordinary attacks of pestilent and contagious diseases; as in the case of the stringent enactments introduced by James I. against the plague, and, as in later times, the Vaccination Acts have been directed against small-pox.

"The recent sanitary legislation in this country has been remarkably drawn out by, and connected with, three outbreaks of cholera which led to investigations of the means of preventing or mitigating infectious diseases, and so drew attention to the fact that the seats of endemic disease are generally where the air or water are polluted.

First cholera, 1831.

"The alarm caused by the ravages of Asiatic cholera in the year 1831 led to the first move in sanitary reform.

6 Geo. IV. c. 78.

2 & 3 Will. IV. c. 10.

"Debates immediately took place in Parliament, and the provisions of a section of the Quarantine Act of 1825, giving the Privy Council power to make regulations in case of emergency, were greatly extended by a temporary Act of 1832.

"Crowded parts of towns, and the courses of rivers fouled by refuse, were observed to be the chief resort of the epidemic. High, open, and dry situations were not attacked. The dense masses of working people, brought together by the rapid growth of manufacturing, mining, and commercial industry, had presented sanitary difficulties of such unprecedented magnitude as to be at once novelties and puzzles for legislative treatment.

3 & 4 Will. IV. c. 90. 11 Geo. IV. c. 27.

"The Lighting and Watching Act, 1833, repealing an older Act of 1830, made provisions for lighting and watching in parishes of England and Wales; enabled the ratepayers to appoint inspectors, who might contract for works; imposed penalties for contaminating waters by gas, and gave the surveyor of the Commissioners of Sewers power to enter the premises of gasworks.

"A vestry convened on application by three ratepayers, might adopt this Act.

5 & 6 Will. IV. c. 76.

"In 1835 the Municipal Corporations Act was passed, by which a better organization, with powers of making bye-laws for local government, and for the prevention and suppression of nuisances, was given to certain municipalities in England and Wales.

6 & 7 Will. IV. c. 86.

"In 1836 was passed the Act under which the Registrar-General of Births, Deaths, and Marriages was appointed. This Act considerably amended the machinery of registration, and gave the first means of deriving sanitary information from it by bringing the registers kept throughout the kingdom into collocation in the hands of a Registrar-General, and by ordering him to prepare and submit an annual abstract of them to Parliament.

Reports, 1838.

Report, Registrar-General, 1839.

Slaney's Committee, 1840.

"In 1838—9 three reports made to the Poor Law Commissioners, as to the causes of disease prevalent in the metropolis, led to an inquiry extending over Great Britain; and in 1839 the first report of the Registrar-General exhibited in a general survey the increasing amount, and the causes, of excessive mortality in towns. Mr. Slaney induced the House of Commons to appoint a Select Committee on the health of towns, which reported in 1840, recommending that Acts should be passed for a better regulation of buildings and construction of sewers, and for the appointment of Local Boards of Health and inspectors.

"The report drew attention to the evils of interments in populous cities; the importance of water supply; the want of open spaces in crowded cities; the necessity of some superintendence over common lodging houses; and the advantages which would result from the establishment of public baths.

Vaccination Acts, 1840, 3 & 4 Vict. c 29, and 4 & 5 Vict. c. 32.

"In 1840 and 1841 the first Vaccination Acts were passed, which empowered the guardians and overseers, under the supervision of the Poor Law Commissioners, to contract for the vaccination of all persons resident in their unions and parishes respectively. The Act of 1840 prohibited the production of small-pox by inoculation or other means, and the latter Act provided that the expenses of vaccination should be paid out of poor rates, but that vaccination should not be considered parochial relief.

"In 1842 Mr. Chadwick's report to the Poor Law Board on the results of the above-mentioned inquiry ordered in 1839, so elaborately described the unsatisfactory sanitary condition of the labouring population, gave so much evidence of the effects of preventive measures in raising the standard of health and chances of life, and so ably exposed the feebleness of the law on the subject and its capability of amendment on recognised principles, that the Home Secretary, Sir James Graham, brought the subject under the serious attention of the Cabinet.

Chadwick's report, 1842.

"In 1843 Sir Robert Peel issued a Royal Commission, of which the Duke of Buccleuch was chairman, to inquire into the state of large towns and populous districts; and the inquiry was specially directed to the causes of prevalent disease; to the best means of improving the public health by existing laws giving powers for drainage, water supply, and building regulations; and to possible amendments of those laws. This evidence elaborately traced, in the case of fifty sample towns, an excessive mortality to defective drainage, and other like causes capable of removal; and exhibited instances of reduced mortality where such causes had been removed.

Duke of Buccleuch's Commission, 1843.

"It appeared that the then existing law respecting drainage, namely the Statute of Sewers, under which Commissions of Sewers were issued, contemplated only surface drainage, and that in most of the large towns the communication of house drains with the main sewers was prohibited, or made a matter of special privilege.

23 Hen. VIII. c. 5.

"It also appeared that few of the Local Improvement Acts then passed gave any jurisdiction over sewers for the discharge of refuse, or were based on any complete schemes of sewerage, and that in relation to water supply, they only provided that mains should be laid in the principal streets.

"General uncleanliness, and deficiency and impurity of water, especially in the poorer parts of towns, were the result. Costly charges, for any improvement, were made on owners or occupiers, while more comprehensive plans might have been better carried out for a quarter of the cost.

In a second report, made in 1845, these Commissioners recommended that the Crown should inspect and supervise the sanitary improvement of towns and populous districts; that local authorities should have more power, and that their districts should be enlarged and made co-extensive with drainage areas; that the necessary arrangements for drainage, paving, cleansing, regulating buildings, and water supply should be under one administrative body; and that there should be compulsory rating for water supply as well as for sewerage, the local authority contracting with any companies which might have already undertaken the supply.

Duke of Buccleuch's second report, 1845.

"The legislation required for accomplishing these purposes was, after two failures, effectually commenced in the following year.

"In 1846 was passed the first of a series of Acts for the removal of nuisances. By this Act a summary jurisdiction in such matters was first given to justices in petty sessions, on the information of Town Councils, or Commissioners under Local Acts, or Boards of Guardians, as the case might be; nuisances were defined to be the filthy or unwholesome condition of any dwelling-house or other building, or of any accumulation of any offensive matter, dung, &c., or of the existence of any foul drain, privy, or cesspool.

Nuisances Removal and Diseases Prevention Act, 1846, 9 & 10 Vict. c. 96.

"This introduction of guardians among the authorities for such purposes may be said to have first extended sanitary legislation to rural districts.

"The Act also empowered the Privy Council to make regulations for the prevention of formidable contagious diseases. This Act was to remain in force until the end of the session of 1848.

"In 1847 the Towns Improvement Clauses Act and the Towns Police Clauses Act were, with several similar Acts, passed for consolidating in one Act respectively certain provisions generally required in local Acts for various public purposes, and by thus supplying provisions for many requisites for local government in the way of regulation of streets and buildings, consumption of smoke, supply of water, &c., &c., they considerably facilitated further legislation. Except in special cases their provisions have been adopted in all subsequent local legislation.

Clauses Acts, 1847. 10 & 11 Vict. c. 34. 10 & 11 Vict. c. 89.

"In 1848 was passed the first great and comprehensive measure which may be called the ground-work of our sanitary legislation. It, however, was principally

Public Health Act, 1848,

11 & 12 Vict. c. 63.

designed, as appears from the preamble, for towns and populous places in England and Wales, not including the metropolis, and it did not come into force in any locality unless petitioned for by ratepayers, or enforced by the Board of Health upon evidence of an exceptionally high rate of mortality. It seems, from the debate on Lord Morpeth's introduction of the bill, that dissatisfaction with the sanitary administration of the country, under the common law and local Acts, and in the absence of any general legislation, led to the establishment of the General Board of Health, consisting of a President and two other persons appointed by the Crown, of whom one was paid. A second paid member was added to the Board in the year 1850 by 'The Metropolis Interment Act,' which imposed new duties on the Board. The Board, which was to be continued during five years, was empowered to appoint inspectors.

General Board of Health.

11 & 12 Vict. c. 63, ss. 4, 6.

13 & 14 Vict. c. 52, ss. 2, 31. *Cf.* 15 & 16 Vict. c. 85, s. 1.

"The powers of local government supplied by this Act were generally an extension of those before given by sundry local Acts to Commissioners of Sewers in the metropolis, and to authorities in a few large towns. Many provisions corresponding to sections in the Towns Improvement Clauses Act are found in the Act; and communities were thus enabled to obtain by a simple process powers which they could not previously obtain except by a local Act incorporating sections of the Towns Improvement Clauses Act.

"The powers specified were for constructing or managing sewers and drains, wells, pumps, water and gas works, deposits of refuse, waterclosets, slaughter-houses; regulating offensive trades; removing nuisances, and protecting water-works belonging to Local Boards from pollution; paving, regulating streets, dwellings, common lodging houses, cellars, &c.; providing burial grounds, recreation grounds, &c., and supplying public baths with water.

"Facilities were also given for purchasing land, and authority for levying rates for such purposes. Local Boards were, moreover, made surveyors of highways.

"All public sewers were vested in the Local Boards.

"In corporate boroughs the Town Councils were to be the Local Boards of Health; in other districts Local Boards of Health were to be elected by owners and ratepayers.

11 & 12 Vict. c. 63, s. 36, ss. 37—40.

"The Local Boards might appoint committees to act, subject to their approval, for special purposes, and by subsequent sections the appointment of such officers as surveyors and inspectors of nuisances was directed, and that of a member of the medical profession, to be called an officer of health, who was to perform such duties as the general board might order, was authorised. Contracts for public works, special assessments, and appeals were also provided for.

"A cheap and easy mode of procuring the amendment or repeal of local Acts by the machinery of Provisional Orders was now introduced.

Nuisances Removal and Diseases Prevention Act, 1848.

"In 1848 was also passed the Nuisances Removal and Diseases Prevention Act of that year, in substitution for a similar Act of 1846 which was about to expire, and in 1849 this Act of 1848 was amended.

11 & 12 Vict. c. 123.

12 & 13 Vict. c. 111.

"These Acts were not (as the previous Act of 1846), passed for a limited period, a circumstance which indicates an increased confidence in this class of legislation; they strengthened the previous statutory remedies, but were repealed, so far as relates to England, in 1855, to make way for still more stringent provisions.

Second cholera, 1849.

"In 1849 the second visitation of cholera came, and the reports then made by the medical officers who had been established more clearly traced the most fatal ravages of the epidemic to the crowded alleys of large old towns, impure air and water, and foul streams.

14 & 15 Vict. c. 28. 16 & 17 Vict. c. 41. 15 & 16 Vict. c. 84.

"The Common Lodging Houses Acts of 1851 and 1853, and the Metropolitan Water Act, 1852, showed increased attention to the necessity of sanitary precautions. These enactments, affecting limited portions of our subject, are merely mentioned here to trace continued progress, and because by the latter a supervising power was given to the Board of Trade, introducing a new controlling power into, and so complicating, sanitary government.

"The Lodging House Acts we shall describe by-and-bye; Metropolitan Acts do not come into our inquiry.

Town sewerage works.

"Encouraged by the facilities which the Public Health Act, 1848, offered, the towns began to carry out large works for their own sewerage and drainage, taking

the rivers, on which most of them had been situated for water supply, as the means of discharging what they simply looked upon as refuse; regardless of the loss to themselves of pure water, of the waste of sewage, and of the injury to the inhabitants of the valleys through which these poisoned rivers were afterwards to flow.

"Thus men and cattle suffered by drinking from a polluted stream which should have afforded a pure supply to both town and country, whilst the towns were throwing to waste that which should have been employed as a valuable manure by the country, and the only remedy was by costly and tedious actions at law and suits in Chancery.

Third cholera, 1854.

"In 1854 the third visitation of Asiatic cholera came, somewhat less destructively, except in certain localities, and by those very circumstances carrying additional warning of the need and use of sanitary precaution.

"Its immediate effect in inspiring the Legislature with renewed activity is remarkable.

"Postponing the consideration of some subsidiary legislation for special objects incidentally conducive to sanitary improvement, we find the next step in the general course of legislation one which we have already noticed, namely, the substitution in 1855 of a comprehensive Nuisance Removal Act, for the Acts passed in 1848 and 1849, which were repealed.

Consolidated Nuisance Removal Act, 1855. 18 & 19 Vict. c. 121.

"This Act consolidated the law relating to removal of nuisances, made a fresh and extended definition of nuisances, enabled local authorities to appoint sanitary inspectors and allow them a proper salary, enabled surveyors of highways to cleanse or make ditches near highways, imposed penalties on pollution by gas of any streams or reservoirs, authorised sanitary inspectors to examine and seize unwholesome meats, and dealt with noxious trades. Under this Act the local authorities had certain limited powers of entry given them; there was also a provision against overcrowding of houses. It was to be executed by the Local Boards constituted throughout England and Wales, excepting the metropolis, and added to the category of Local Authorities Highway Boards; a committee called the Nuisance Removal Committee, which might be annually chosen by the vestry; a board of inspectors for lighting and watching, with the surveyor of highways; or the guardians and overseers of the poor and the surveyors of highways. The guardians *per se* were no longer an authority under the Nuisance Removal Act of 1855.

S. 29.

Diseases Prevention Act, 1855. 18 & 19 Vict, c. 116.

"The exceptional powers relating to formidable contagious or epidemic diseases were brought into a separate Statute of the same year, the Diseases Prevention Act, 1855, which continued the powers of preceding Acts, under which the Privy Council might issue orders during the prevalence of any 'formidable epidemic, endemic, or contagious' disease, and amended the powers of the Board of Health as to issuing regulations where such orders should be in force. Such regulations, when made, were to relate to the speedy interment of the dead, house to house visitation, the dispensing of medicines, and affording medical skill and accommodation, but were not to extend to cleansing of streets, &c., cleansing, disinfecting, &c. of houses, &c., and removal of nuisances.

"The separate treatment of 'nuisance removal' and 'diseases prevention' as subjects distinct from general sanitary administration, and from each other, illustrates the casual and experimental course of legislation, which has led not only to confusion by unmeaning distinctions between common provisions for public health, but to repetition of subjects in parallel enactments. This confusion is further increased by the authorities instituted for special purposes being frequently the same as the general authorities, under special designations.

Reconstruction of the General Board of Health, 1854.

"In the year 1854 the Board of Health was reconstructed, and thenceforth consisted of a President and the Secretaries of State, together with the President and Vice-President of the Board of Trade. The President was to receive a salary of £2000, and might sit in Parliament. The other members were not paid any salary in consideration of their new duties. The Board was to continue during one year and to the end of the next session.

17 & 18 Vict. c. 95. 18 & 19 Vict. c. 115.

"The Continuance Act of 1855 enabled the Board of Health to appoint a paid Medical Council, consisting of such number of persons as the Board, with the consent of the Treasury, might think expedient, and a *paid medical officer*, and

to assign to such Council and medical officer such duties as the Board might see fit. Under this Act the Board proceeded to appoint Mr. Simon, the medical officer, who (under the Privy Council) still ably executes the duties of the office. The Board was again continued during one year and to the end of the then next session.

"Although the Acts for the regulation of the metropolis are outside our inquiry, they are very significant of and have often taken the lead in sanitary progress, and we must mention, as showing the turn which public opinion was taking, that in the Metropolitan Local Management Act of this year, 1855, by which the Board of Works for the metropolis was created, and the old Commissioners of Sewers were abolished, provision was made for the appointment of a medical officer of health and an inspector of nuisances, by every vestry. The former officer is a legally qualified practitioner, and his duties are to inspect and report periodically on the sanitary condition of his district, to ascertain the existence of diseases, to point out the existence of any nuisance, and to give advice on the best sanitary expedients of all sorts. His practice is to consult always the books of the registrars, and of the hospitals, dispensaries, workhouses, and all public institutions affording sanitary information. The latter officer sets the law in motion. This Act was amended in 1862 in some particulars.

18 & 19 Vict. c. 120, ss. 132, 133.

25 & 26 Vict. c. 102.

General Board of Health expires 1858.

"In 1858 the General Board of Health was allowed to expire, having only been continued since its re-construction in 1854 by yearly renewals (1); and the powers given to that Board by the Diseases Prevention Act of 1855, to issue regulations in case of epidemics, were, with other powers for protection of health, vested in the Privy Council.

21 & 22 Vict. c. 97.

Local Government Act, 1858, 21 & 22 Vict. c. 98.

"In the same year, 1858, the Local Government Act, which is to be construed with the Public Health Act of 1848, as one Act, was passed, and took effect in all places where that Act was in force at the time of its passing; and the two together constitute the principal sanitary legislation now on the Statute Book (2).

"The Local Government Act, 1858, amended the Public Health Act of 1848 as to the constitution and powers of Local Boards of Health in towns or populous districts in England and Wales, excepting the metropolis. It handed over to the Home Secretary the few remaining functions of the discontinued General Board for the purposes of sanctions, provisional orders, and appeals, and the Local Government Act Office was made a sub-department of the Home Office for the execution of the Act, and for the central superintendence and assistance of all Local Boards.

"From the passing of this Act its provisions, read in connection with the previous Statute of 1848, became the governing powers of all existing Local Boards of Health, and became, without the necessity for any further legislation or any provisional order, or any sanction by the central authority, capable of adoption, in part or wholly, by the resolution of Town Councils in corporate boroughs, of Towns Improvement Commissioners in all ordinary cases of Improvement Commissioners; of owners and ratepayers in all other places having defined boundaries; and in all other places not having defined boundaries the provisions of the two Statutes were made capable of adoption in approved cases through the instrumentality of the Secretary of State.

"Local Boards armed with the powers of this Act in amendment of those of 1848, might even compulsorily interfere with private property by purchase, through means of provisional orders, confirmed by Parliament; and by the same process local Acts might be repealed or altered, and districts changed under amended provisions of the Act of 1848. The powers for compulsory taking of land under the 75th section mark an important and new step in legislation. The same Act greatly extended local powers for the execution of sanitary works in such urban districts as adopted it; and gave, in fact, most of the requisite powers of police and municipal government, if only they were duly sought and duly used.

Local Government Amendment Acts

"Besides the Local Government Act Amendment Acts of 1861 and 1863, further powers have been given to Local Boards by the Sanitary Acts of 1866, and following years.

(1) 17 & 18 Vict. c. 95; 18 & 19 Vict. c. 115; 19 & 20 Vict. c. 85; 20 & 21 Vict. c. 38.

(2) At the time this statement was made, the Public Health Act, 1875, had of course not been passed.

"The Local Government Act Amendment Act of 1861 provided for the costs of proceedings in adoption of the Act of 1858, gave powers of its partial adoption to any local authorities, under local Acts or otherwise, although not invested by the local Acts with powers of sanitary regulation and extended powers beyond districts for the outfall of sewers and for repairs of highways in parts of parishes not included within the boundaries of any Local Board district. It made other new provisions, especially as to borrowing. 24 & 25 Vict. c. 61.

"The principal objects of the Local Government Act Amendment Act of 1863 were to prevent the adoption, unless with the approval of the Secretary of State, of the Local Government Act, 1858, in places having less than 3000 inhabitants, and to declare that Act no longer in operation in places of like population which had adopted or might adopt it, unless within three months after adopting it they proceeded to elect their Board and appoint the officers required by the Local Government Act. This Act also amended the preceding Acts in some matters of detail. 26 & 27 Vict. c. 17.

"Before describing the Sanitary Acts, we must notice as earlier in date the Nuisances Removal and Sewage Utilization Acts. The former (nuisances being still treated as a separate subject), were amended by an Act of 1860, another Act of 1863, and Act of 1866, and the second part of the Sanitary Act of 1866 (1). Nuisance Removal Amendment Acts.

"The Nuisances Removal Amendment Act of 1860 amended the Nuisance Removal and Diseases Prevention Acts of 1855, again constituting the guardians the local authority, as in the Act of 1846, and enabling them to appoint committees for one or more parishes or places for executing the Act. 23 & 24 Vict. c. 77.

"The Nuisances Removal Amendment Act of 1863 gave powers to medical officers of health or inspectors of nuisances as to the seizure of unwholesome meat, fish, fruit, bread, &c. 26 & 27 Vict. c. 117.

"The Sewage Utilization Act of 1865, which applied also to Scotland and Ireland, was, as its title suggests, passed for the purpose of enabling existing authorities, *e.g.* Town Councils, Improvement Commissioners, Vestries, &c., to dispose of the sewage of their districts so as not to become a nuisance, and to make arrangements for its application to agricultural purposes. With these views it empowered those bodies under the designation of 'sewer authorities' to construct sewers, to exercise specified powers of the Acts of 1848 and 1858, and the amendment Acts (including those for acquiring land by compulsion), and to take measures for preventing the pollution of streams, &c. This Act largely increased the sanitary powers exercisable in rural districts, if indeed it may not be said to have introduced into such districts the first real instalment of active sanitary powers. The expenses of carrying the Act into execution were to be paid by Town Councils out of the borough fund or rate, by Improvement Commissioners or trustees out of the rates leviable by them, and by Vestries out of the poor rate. Sewage Utilization Acts. 28 & 29 Vict. c. 75, 1865.

"The Sewage Utilization Act of 1867 gave further power to the authorities to distribute sewage outside their districts and to purchase land for that purpose; and to several authorities to unite their districts, and their Boards, for operations affecting all of them. It also authorised the levying of a rate for defraying the expenses of sewer authorities, exempting the same properties as are exempted in the case of the general district rate levied by a Local Board. Under this Act Local Boards were constituted 'sewer authorities' within their respective districts in place of Vestries. 30 & 31 Vict. c. 113.

"To return to the Sanitary Acts, that of 1866 in its first part amended the Sewage Utilization Act, giving to 'sewer authorities' power to form committees, and to Vestries in that capacity to form special drainage districts, and extending their powers of making and using sewers and supplying water. Sanitary Acts, 29 & 30 Vict. c. 90, pt. i.

"In its second part it amended the Nuisance Removal Acts, and added to the definitions of nuisances, especially as regards crowded houses and workshops, and smoke, and to the duties and powers of 'nuisance authorities'; especially in the way of providing means for disinfection and places for the reception of dead bodies. Section 16 moreover empowers the chief officer of police, under the Pt. ii.

(1) 23 & 24 Vict. c. 77, 26 & 27 Vict. c. 117, 29 & 30 Vict. cc. 41 & 90.

direction of the Secretary of State, to take proceedings in default of the nuisance authority.

Pt. iii. "The third part enabled authorities, with the consent of the Secretary of State, to make regulations as to houses let in lodgings, hospitals, and baths; empowered the Privy Council to compel two or more Boards of Guardians to act together in executing the Diseases Prevention Act, and Burial Boards to transfer their powers to Local Boards, and Local Boards to adopt the Baths and Washhouses Act. The 46th section incorporated sanitary authorities.

"The 49th section of this Act was a great step in advance; it authorised the Secretary of State, in case of default, to proceed—first by calling on the defaulting authority to remedy its omission, and in the event of continuing default, to perform the neglected duty at the expense of the district.

31 & 32 Vict. c. 115. "The second Sanitary Act (1868), extended the provisions of the Public Health Act as to the removal of house refuse to all sanitary authorities. This gave Vestries, as sanitary authorities, many powers similar to those of guardians as nuisance authorities.

32 & 33 Vict. c. 100. "The Sanitary Loans Act of 1869 empowered the Public Works Loan Commissioners, on the certificate of the Secretary of State, to advance sums required for the execution of sanitary works done by him on the default of any local authorities, charging local rates with its repayment.

33 & 34 Vict. c. 53. "And lastly, the Sanitary Act, 1870, was passed to facilitate the removal of infected persons who were without proper accommodation, and to provide for service of notices in special drainage districts and of orders of the Secretary of State on sewer authorities."

To complete the history it is only necessary to add that in 1872 Mr. Stansfield (the first President of the Local Government Board) introduced a bill into Parliament, which was passed into law and became the Public Health Act, 1872, 35 & 36 Vict. c. 79. This Act contained many amendments of, but did not consolidate the law. Further miscellaneous amendments were made by the Sanitary Law Amendment Act, 1874, and finally Mr. Sclater-Booth, who became President of the Local Government Board in 1874, introduced a bill for the consolidation and simplification of the Sanitary Acts, which eventually became law as the Public Health Act, 1875.

35 & 36 Vict. c. 79.

37 & 38 Vict. c. 89.

38 & 39 Vict. c. 55.

The following circulars explanatory of the provisions of the Public Health Act, 1875, were issued by the Local Government Board on 30th September, 1875.

To Urban Sanitary Authorities.

Local Government Board, Whitehall, S.W.,
30th September, 1875.

Sir,

I am directed by the Local Government Board to bring under the notice of the Urban Sanitary Authority the provisions of the Public Health Act of the last session (38 & 39 Vict., c. 55).

The Act, for the sake of clearness and convenience of reference, is distributed under eight principal headings, and all the provisions relating to any particular subject will be found under the same title. It consolidates, so far as regards England, exclusive of the metropolis, the whole of the Sanitary Acts, with the following exceptions, viz., "The Bakehouse Regulation Act," "The Artizans' and Labourers' Dwellings Act, 1868," "The Baths and Washhouses Acts," and "The Labouring Classes' Lodging Houses Acts." The Acts thus consolidated are, of course, repealed; but the Acts which have been excepted, and the duties of sanitary authorities under them, are in no way affected.

Although the main object of the Act is consolidation, it is right to state that when the bill was prepared advantage was taken of the opportunity to introduce certain amendments of the law, the chief of which were explained to the House of Commons by the President of the Board, Mr. Sclater-Booth, in moving for leave to bring in the bill. After the bill was circulated numerous other amendments

were suggested by various sanitary authorities. These amendments were carefully considered by the Board, and a large number of them were subsequently adopted and inserted during the various stages of the measure in both Houses. The object of many of the amendments was to clear up doubtful points of construction, and to harmonise the provisions of the various Acts which were consolidated, whilst the effect of others is to extend the powers and obligations of urban authorities with respect to sewerage, water-supply, gas, the abatement of nuisances, and other matters connected with sanitary administration and town government.

Before noticing the amendments in detail, it should be observed that the Act does not alter the present constitution of any existing urban authority, or the tenure of office of any of their officers or servants; nor does it affect any existing rights and liabilities, all of which have been fully preserved by sections 326 and 343.

The following detailed statement shows the principal alterations of the law contained in the Act, so far as they relate to urban sanitary authorities:—

Sewerage and Drainage.

Under the Sanitary Acts it was open to doubt whether sewers constructed by a sanitary authority without their district vested in the authority constructing them, or in the authority of the district in which the sewers were situated. Section 13 removes this doubt by declaring that they shall vest in the authority who constructed them, or to whom they have been transferred.

By the Local Government Act Amendment Act, 1861, section 4, power was given to sanitary authorities to construct works of sewerage outside their districts, but it was provided that nothing in that Act should empower such authorities to discharge unpurified sewage into streams or water-courses. Section 17 has made this provision applicable to all works of sewerage, whether within or without the district of the authority, and has extended it to canals, ponds, and lakes.

Section 19 imposes on every local authority, which is the common term in the Act for urban and rural sanitary authorities, the duty of causing their sewers to be ventilated, so as not to be a nuisance or injurious to health.

In cases where, for the purpose of enforcing the drainage of a row of undrained houses, it would be less expensive to construct a new sewer than to compel such houses to drain into an existing sewer, the authority are empowered (section 23) to construct a new sewer and to apportion the expense among the owners of the houses.

It has happened that a local authority, after enforcing the communication of house drains with a particular system of sewers, have found it necessary to change their general scheme of sewerage, and to construct fresh sewers; but the Sanitary Acts contained no provision under which the local authority could compel fresh junctions, or defray their cost. Section 24 now empowers a local authority, under these circumstances, to close any such existing drains, on condition of providing others equally effectual and communicating with the new system.

Under the Sewage Utilization Act, 1867, a local authority were not empowered to let, for more than seven years, land held by them for purposes connected with sewage distribution; this period is extended by section 29 to twenty-one years.

Water Supply.

Section 51, in conformity with the recommendation of the Royal Sanitary Commission, requires that the sanction of the Local Government Board should be obtained before any waterworks or water-rights are purchased by a local authority.

By the Public Health Act, 1848, section 75, local authorities were placed under certain restrictions in the construction of waterworks within the limits of supply of any water company, and a question having arisen whether these restrictions were confined to cases where the company is empowered *by statute* to supply water, section 52 removes the doubt, by expressly limiting such restrictions to cases where the water company has acquired Parliamentary powers.

Before constructing any reservoir to hold more than 100,000 gallons, local authorities are required, by section 53, to give notice of their intention by advertisement; and in case of objection on the part of any person interested, the Local Government Board are empowered, after local inquiry, to allow the proposed work, with or without modifications, or to disallow it.

Section 54 confers on local authorities the same powers for carrying water mains without their district as they have for carrying sewers, and imposes on them the like restrictions.

Where the local authority have constructed or purchased waterworks, section 55 imposes upon them the obligation of keeping the supply of water pure and wholesome.

The provisions of the Sanitary Acts with reference to the supply of water by local authorities having been found in some respects inadequate, section 57 incorporates the provisions of the Waterworks Clauses Acts, with regard to communication pipes, the waste or misuse of water, the fouling of water, and the payment and recovery of water rates. The effect of this incorporation will be to give local authorities supplying water the benefit of such of the provisions of the general Acts relating to water companies as are applicable to their circumstances; and in consequence of such incorporation some of the provisions of the Public Health Act, 1848, have been omitted as unnecessary.

Sections 58, 59, and 60 enable local authorities to supply water by measure, and contain such provisions with respect to meters as are usually found in special Water Acts.

In cases where a local authority have more water than is required for the supply of their own district, and the authority of an adjoining district are willing to take the surplus, section 61 enables the necessary arrangements to be entered into for that purpose, subject to the sanction of the Local Government Board. It is believed that this provision will not infrequently be found useful in cases where a local authority obtain their supply from sources outside their district.

Complaints have often been made, that in attempting to enforce a compulsory supply of water to houses in districts where no local Act is in force, the limited charge, viz., 2*d.* a week, is insufficient to enable a proper supply to be furnished. The Local Government Board are now empowered by section 62, on the application of any local authority, to extend the limit of charge to such amount as the Board may, under all the circumstances of the case, deem reasonable. The same section, by expressly enabling the local authority to enter into contracts with a water company, removes certain difficulties which had arisen under the Sanitary Acts, where the authority enforced a supply of water in a district within the limits of a water company.

The Sanitary Acts required the consent of three-fifths of the shareholders of a water company to the transfer of their undertaking to a local authority. By section 63 the consent of three-fourths is required where the company is not registered under the Companies' Act, 1862, but in the case of companies so registered the consent must be expressed by a special resolution passed in the manner provided by that Act. The object of this amendment is to assimilate the law to the requirements of the standing orders of the House of Lords in similar cases.

The power of local authorities under the 50th section of the Sanitary Law Amendment Act, 1874, to institute proceedings for the closing of polluted wells, cisterns, and tanks, has been extended by section 70, so as to include the case where the water is used for the manufacture of aerated or other drinks for human consumption. The section further enables proceedings to be taken against the owner as well as the occupier, and empowers the authority, if an order of justices under the section is not complied with, themselves to carry it into execution, and to recover the expenses in a summary manner from the person on whom the order is made.

Common Lodging Houses.

In addition to the duties imposed on local authorities under the Sanitary Acts, in relation to these houses, they are required by section 80 (3) to make

bye-laws for the giving of notices and the taking precautions in case of any infectious disease.

Nuisances.

Previously to the decision of the Court of Queen's Bench in the case of *The Guardians of the Rye Union* v. *Paine*, 44 L. J. M. C. 148, which was decided after the introduction of the bill, doubts had been entertained whether, under the Nuisance Removal Acts, the overcrowding of a house by members of the same family constituted a nuisance within the meaning of those Acts. The Court decided that the fact of the overcrowding being caused by members of the same family was immaterial; and section 91 is in accordance with that decision.

Under the Nuisances Removal Acts, the justices were not enabled to impose a penalty on the person causing a nuisance until he had actually disobeyed an order to abate it. Section 96 now empowers the justices to impose, by their order for the abatement of any nuisance, a penalty not exceeding £5 on the person on whom the order is made.

It was generally considered that, under the Sanitary Acts, local authorities could not protect the inhabitants of their respective districts against nuisances existing therein, but originating in another district; and as it often happened that these nuisances were of a very serious character, frequent complaints were made to the Board of this defect in the law. Section 108 now enables local authorities to deal with nuisances of this kind, by conferring upon them the power of instituting legal proceedings in such cases, subject to the condition that summary proceedings are to be taken only before the justices having jurisdiction in the district where the act complained of arises.

Offensive Trades.

Proceedings under the Nuisances Removal Acts, with respect to offensive trades, could only be taken by a nuisance authority within the limits of a city, town, or populous district; and it was necessary to show that the person complained of was not using the best practicable means to abate the nuisance. Under section 114 the proceedings in question may be taken by the authority in any urban district, and the burden of proof that the best practicable means are used to abate the nuisance is thrown upon the defendant.

The provisions of the 28th section of the Nuisances Removal Act, 1855, by which the person complained of could compel the authority to abandon summary proceedings against him, and to proceed in a superior Court, has been omitted from the Act, having been found in practice sometimes to have the effect of depriving the authority of any remedy by reason of the cost and delay involved if the proceedings were taken to a superior Court.

By means of a provision corresponding to that contained in section 108, and to which attention has already been called, urban authorities are enabled by section 115 to protect the inhabitants of their districts from nuisances arising from offensive trades carried on in other districts.

It should be stated that the provisions contained in sections 108 and 115 extend to the metropolis.

Infectious Diseases and Hospitals.

Under the Sanitary Act, 1866, and the Sanitary Law Amendment Act, 1874, persons suffering from infectious disorders could, in certain cases, be compulsorily removed to any hospital provided by the local authority within the district; and for this purpose any hospital was to be deemed to be within the district if it was declared by the Local Government Board to be within a convenient distance of the district. By section 124, every hospital, to which persons may be compulsorily removed under the above provisions, is required to be a suitable one, and within a convenient distance of the district, and it will be for the justice now to determine whether or not the hospital fulfils these conditions, the Board having no longer any power to make orders for the purpose referred to.

In connection with hospitals, a new and important provision will be found in section 132, which enables a local authority to recover expenses incurred by them in maintaining in a hospital patients who are not paupers.

Mortuaries.

Under the Sanitary Acts the local authority were empowered to provide a mortuary, and section 141 of the present Act imposes on local authorities the obligation of making such provision, if required by the Local Government Board to do so.

The following section (142), under which a justice may order the removal to a mortuary of the body of a person who has died of any infectious disease, renders any person obstructing the execution of such order liable to a penalty not exceeding £5.

Removal of Toll Gates.

The power given by the Local Government Act, 1858, to urban authorities to agree with the trustees of a turnpike road to remove toll gates, related to gates situated "within two miles from the centre of any town or place" within their district; and as it was difficult to determine in many cases what was the centre referred to, section 148 enables an urban authority to exercise this power with regard to all toll gates within the district.

Regulation of Streets and Buildings.

A penalty, not exceeding £5, is imposed by section 149 upon any persons injuring trees in the public streets, and the Court may, in addition, order compensation to be paid for the damage actually done.

In cases where urban authorities propose to compel the sewering and paving of private streets, they were required to deposit plans and sections before giving notice to the owners to do the works. They are now required by section 150 to deposit also estimates of the probable cost of the works.

An amendment of some importance, in connection with the power to regulate the line of buildings, will be found in section 155, which provides that where the front only of a house in a street is taken down, the urban authority may prescribe the line of the new building. Under the previous law the authority could not interfere unless the entire house was taken down.

It will be observed that the next section (156), which prohibits the bringing forward of buildings beyond the line of the adjoining buildings without the consent of the authority, imposes a penalty not exceeding 40*s.* a day during the continuance of an offence against this enactment, and thus supplies a summary remedy in substitution for the proceeding by indictment, which alone was available under the previous law.

In addition to the other bye-laws which urban authorities might previously make with respect to new buildings, section 157 enables them to make bye-laws with respect to the structure of chimneys. The same section contains a provision, following the precedent in the metropolis, exempting the buildings of railway companies from the operation of any bye-laws made by the authority, relative to the construction of new buildings.

Section 158 requires, with respect to new buildings, that the authority shall signify, in writing, their approval or disapproval of the plans deposited with them in accordance with their bye-laws within one month from the date of deposit.

Lighting Streets.

An urban authority could only contract for lighting their district for a period not exceeding three years, and they had no power to provide gasworks. The consequence was, that whenever it became necessary for them to undertake such works, they were compelled to apply to Parliament for a special Act for the purpose. Section 161 removes the restriction with regard to contracts, and enables

the authority, in districts or parts of districts, where there is no company or person supplying gas under the authority of Parliament, to undertake such supply themselves, and for that purpose to obtain a provisional order, under the Gas and Water Works Facilities Act, 1870, authorising a gas undertaking. The effect of this latter provision is to place urban authorities on the same footing with respect to commencing and carrying on a gas undertaking as an ordinary gas company. The provisional order, however, must be obtained from the Local Government Board, instead of from the Board of Trade.

Urban authorities are further empowered (section 162), subject to the sanction of the Local Government Board, to purchase the undertaking of any gas company supplying the district. The powers of sale conferred by this section on the directors of the company correspond with those given by section 63 to the directors of a water company.

Public Pleasure Grounds.

Urban authorities are enabled for the first time, by section 164, to make bye-laws providing for the regulation of their public walks and pleasure grounds, and for the removal of offenders by a constable or an officer of the authority.

Markets.

The powers of sale conferred on the directors of a market company by the 53rd section of the Local Government Act, 1858, have been modified by section 168, so as to correspond with those given in the case of the sale of the undertakings of water and gas companies, by sections 63 and 162, which have been already explained.

Public Regulations.

The terms "superintendent constable" and "any constable or other officer appointed by virtue of this or the special Act," as used in the Town Police Clauses Act, 1847, are defined by section 171 to include any superintendent of police, and any constable acting in the district of the urban authority; and the expression "within the prescribed distance," when occurring in the incorporated provisions of the Town Police Clauses Act, is defined to mean "within any urban district;" and by the same section licenses granted to the drivers of hackney carriages by the urban authority are declared to be in force for one year only, or until the next general licensing meeting.

The powers of urban authorities under the twenty-fifth section of the Local Government Act Amendment Act, 1861, to make bye-laws for the licensing and regulating of horses and boats for hire are extended, by section 172, so as to include the qualification of drivers, conductors, and boatmen, and the names of boats, the number of persons to be carried in them, and their mooring places.

Contracts.

The 85th section of the Public Health Act, 1848, required that contracts by a Local Board, when not a Town Council, should not only be sealed, but also be signed by five or more members of the Local Board. Section 174 of the present Act dispenses with the formality of signing, and simply requires that the contract, if the value exceeds £50, should be in writing, and sealed with the common seal of the authority.

Purchase of Lands.

Any doubt which may have been felt as to the requirements of the Sanitary Acts with respect to the resale of surplus lands, not needed for the purposes for which they were purchased, has been removed by section 175, which expressly provides that local authorities shall resell any such surplus lands, unless the Local Government Board otherwise direct, and shall apply the proceeds of any such resale towards the discharge, either by means of a sinking fund or otherwise, of their existing mortgage debts.

The 127th section of the Lands Clauses Consolidation Act, 1845, which provides that surplus lands, if not resold within the prescribed period, shall vest in the owners of adjoining lands, is not incorporated with section 176 of the present Act, but the other provisions of the Lands Clauses Consolidation Act, with regard to the sale of superfluous lands, still apply, including the section which requires that superfluous lands shall be offered to the owner from whom they were originally taken or to the owner of the adjoining lands. It will be seen that the section contains a new provision with regard to the service of notices in the case of owners of rights of common, and enacts that such notices may be served on any three or more of such persons on behalf of all of them.

Arbitration.

Under the Public Health Act, 1848, where the arbitrators neglected or refused to appoint an umpire, the appointment had to be made by the Court of Quarter Sessions. Owing to the length of time that must sometimes elapse before an application can be made to Quarter Sessions, it was deemed expedient to provide that in future such appointment should rest with the Local Government Board. See section 180 (7). By the same section the award is required to be made within two months from the date of submission to arbitration, or the date of reference to the umpire, as the case may be.

Bye-laws.

Under the Sanitary Acts it was requisite that the bye-laws of an urban authority, when not a Town Council, should be under their seal, and signed by five members. In future they must be under seal, but need not be signed. (Section 182.)

Section 186 facilitates the proof of bye-laws in legal proceedings, by providing that, except where made by the Council of a borough, a copy of them, signed and certified by the clerk, shall be *primâ facie* evidence of their having been duly made and confirmed. The case of bye-laws made by the Council of a borough, it will be remembered, is provided for by the 36 & 37 Vict. c. 33.

Officers.

Although the Public Health Act, 1872, rendered it obligatory on every sanitary authority to appoint a medical officer of health, neither that Act, nor the previous statutes, prescribed his duties, and it was only in cases where part of his salary was repaid from the Parliamentary grant that the Local Government Board had any jurisdiction in the matter. Having regard, therefore, to the importance of securing uniformity in practice, and of adopting the necessary means for ensuring periodical reports and returns respecting the sanitary condition of each locality, the Legislature have now empowered the Board, by section 191, to prescribe the qualifications and duties of other medical officers of health appointed under the Act, although no portion of their salaries is repaid out of moneys voted by Parliament. Power is also expressly given to the Board by the same section to impose conditions in cases where the district medical officer of a union is appointed medical officer of health. The section further enables local authorities, in case of the illness or incapacity of their medical officer, to appoint a deputy medical officer, subject to the approval of the Local Government Board.

The appointment of assistant officers by urban authorities is also authorised by section 189.

Mode of conducting Business.

The Public Health Act, 1848, required the acts of committees to be submitted for approval to the urban authorities appointing them. The acts of committees, however, appointed under the Nuisances Removal Acts, required no such approval. In this respect the new statute follows the latter precedent, by authorising the appointment of an executive committee, whose acts will not necessarily require confirmation; at the same time it enables the authority to impose on a committee any restrictions they may think fit (section 200), and no committee is to be authorised to borrow money, make a rate, or enter into a contract.

Provision is made in section 203 for the filling up of casual vacancies in any committee.

Expenses.

The 9th section of the Sanitary Law Amendment Act, 1874, empowered the Board to alter, by provisional order, the incidence of rating in urban districts, in any way that seemed to them fair and equitable. This section was intended to meet cases where the system of rating prescribed by the Local Government Act was not in force, and section 208 now expressly restricts the power of the Board in this matter, so that in future they can only declare that the expenses of the authority shall be defrayed out of a general district rate, subject, however, to the provisions in section 216, relating to the mode of raising the sums required for the repair of the highways. The application for a provisional order to alter the incidence of rating must now be made by the authority, or by ten ratepayers.

General District Rate.

Express provision is made by section 209 for the continuance or establishment of a district fund, where the expenses of the authority are defrayed out of a general district rate.

Section 211 renders the valuation list under the Union Assessment Committee Act conclusive for the assessment of the general district rate, the power which previously existed of adopting another basis of assessment being taken away.

Highway Rate.

The provisions of the Local Government Act Amendment Act, 1861, with reference to the "excluded part" of a parish, the remainder of which has been constituted or included in an urban district, are modified by section 216, which provides that when the excluded part has been included in a highway district, it shall no longer, in any case, be considered as forming part of the urban district for highway purposes.

Provision is also made by the same section for the issuing of an order by the Court of Quarter Sessions directing the election of a waywarden for the excluded part.

Borrowing Powers.

Doubts have been expressed (1) as to whether loans under the Sanitary Acts could properly be repaid by equal annual instalments of principal and interest combined; (2) as to the precise amount required to be set aside and invested annually, when provision was made for repayment of the loan by means of a sinking fund; and (3) as to the mode in which the sinking fund was from time to time to be applied towards the discharge of part of the loan. Section 234 therefore expressly authorises loans under the Act to be repaid by equal annual instalments of principal or of principal and interest combined; it enacts that where the repayment is by means of a sinking fund, the annual amount to be set aside is to be such as will, with accumulations, be sufficient to repay the loan at the end of the term; and it provides that the whole, or any part of the fund, may at any time be applied towards the discharge of the loan; but until the loan is discharged, the interest which would have accrued on the amount withdrawn must be paid into the fund, in addition to the other payments.

Local authorities are exempted (section 238) from responsibility to the transferee of any of their mortgages, until an entry of the transfer has been made in the register kept by them; and by the same section a penalty, not exceeding £20, is imposed on the clerk of the authority, if he wilfully neglects or refuses to make any such entry in the register.

The powers of borrowing, conferred by the Act on local authorities, are extended by section 244 to Joint Boards, Port Sanitary Authorities, Local Boards of Health of main sewerage districts, and Joint Sewerage Boards; and the Public Works Loan Commissioners may make any loan to any of these authorities, in the same manner and upon the same terms as to urban or rural authorities under the Act.

The Public Works and Local Loans Acts.

In connection with the borrowing powers of local authorities, under the present statute, it is desirable that their attention should be called to two Acts passed during the last session, viz., (1) the Public Works Loans Act, 1875 (38 & 39 Vict. c. 89), and (2) the Local Loans Act, 1875 (38 & 39 Vict. c. 83).

(1.) The first Act consolidates, with amendments, the law relating to loans by the Public Works Loan Commissioners, and section 13 requires that every intending borrower shall send to the Commissioners, on or before the 31st of December in every year, a statement of the loans likely to be required during the ensuing financial year, commencing with the 1st of April following; and the Public Works Loan Commissioners are prohibited from granting any loan which has not been included in the statement above referred to, except with the consent of the Treasury, which can only be expected under very exceptional and pressing circumstances.

Although the Act does not come into operation until the 1st of April, 1876, section 54 provides that the first statement of the probable requirements of loans shall be sent to the Commissioners *on or before the 31st of December*, 1875. Local authorities, therefore, who are desirous of borrowing from the Public Works Loan Commissioners will see the necessity of sending in the requisite statements within the prescribed time.

It should be added that, when any loan is advanced by the Commissioners on the security of a rate, section 36 imposes on the Local Government Board the duty of satisfying themselves that the loan is applied to the purpose for which it has been advanced. The Board are empowered to make, with this object, such examination as they may think necessary, and to appoint an officer to conduct the examination.

(2.) The Local Loans Act enables local authorities to borrow sums which they are authorised to raise upon debentures, debenture stock, or annuity certificates; and section 26 empowers them, when they propose to raise a loan by the issue of securities under the Act, to apply to the Local Government Board to authorise the issue of such securities under official sanction, and this sanction will be conclusive evidence that the local authority had power to issue the securities, and that the same are in conformity with the Act. It should also be stated that the Act enables local authorities to re-borrow in the manner prescribed by it any sums required for the purpose of discharging existing loans. (See section 31.) This Act will not come into force until the 1st day of January, 1876, and, in the meantime, the Board will cause the necessary forms and instructions to be prepared for giving effect to the provisions referred to.

Audit.

Where the district auditor is a member of the urban authority (section 247), the audit is to be conducted by some other auditor appointed by the Local Government Board, and not, as hitherto, chosen by the Local Board from among the auditors of the adjoining unions.

It was recently decided by the Court of Queen's Bench, in the cases of *Gibson* v. *Bell*, and *The Queen* v. *The West Bromwich Improvement Commissioners*, that the accounts of Improvement Commissioners as an urban sanitary authority were by the Public Health Act, 1872, required to be audited in the same manner as the accounts of Local Boards. Section 247 accordingly directs these accounts to be audited in all respects in the same manner as those of Local Boards, although the provisions of the local Act with respect to audit may be inconsistent with those of the present statute.

In conformity with the precedent of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101, s. 32), the power of an auditor to surcharge is extended by the same section to sums lost by the negligence or misconduct of any accounting person, or any sums not brought into account by him.

Legal Proceedings.

Section 255 facilitates proceedings against persons who jointly contribute to a nuisance. Under the Nuisances Removal Acts much difficulty was experienced in enforcing any remedy, unless it could be clearly proved that the separate contribution of the person proceeded against would alone cause a substantial nuisance, such proof being often from the nature of the case almost impossible.

To save technical objections and expense in legal proceedings, section 260 dispenses with the necessity, on the part of the plaintiff, of proving the corporate name of the authority and the constitution or limit of the district.

Under the Sanitary Acts the jurisdiction of County Courts extended only to the recovery of debts not exceeding £20. This limit is enlarged by section 261 to £50.

Section 262, following the previous law, provides that no proceeding shall be removed by *certiorari* into a superior Court; but the judges having recently expressed a strong opinion that the power of stating a special case which can be removed into a superior Court ought not to be taken away, a proviso has been added reserving that power.

Appeal.

The time during which an appeal may be made to the Local Government Board, with respect to expenses summarily recoverable, and private improvement expenses, is extended, by section 268, from seven to twenty-one days. The appellant is required to deliver a copy of his memorial to the local authority, and the Board's decision on the appeal is expressly made conclusive on all parties.

The provisions with respect to appeals to Quarter Sessions, contained in the Public Health Act, 1848, and the Nuisances Removal Act, 1855, are, for the purposes of the Act, consolidated in section 269, with the following amendment:—(Sub-section 1) the appeal is not required to be made to the next Court of Quarter Sessions if the same is held within twenty-one days from the demand of the rate or the decision appealed against; (sub-section 4) the appellant, if in custody, may be released on entering into recognizances; and (sub-section 6) appeals, other than those against rates, may be adjourned.

Alteration of Areas.

In addition to the powers which were given to the Local Government Board in relation to the alteration of areas by the 22nd section of the Public Health Act, 1872, section 270 of the present Act enables the Board, by provisional order, to include the whole of any Local Government or rural district in any adjoining Local Government district, and any portion of a Local Government district in any rural district.

By the 25th section of the Sanitary Law Amendment Act, 1874, the Local Government Board were empowered, by order, to settle disputes as to the boundaries of adjoining districts, upon the application of the authorities interested therein. Section 278 enables such a settlement to be made on the application of any one of the authorities interested, and renders it clear that the enactment only applies to the districts of Local Boards or Improvement Commissioners.

Union of Districts.

The provisions of the 28th section of the Local Government Act, 1858, which enabled an urban authority to execute works in adjoining districts with the consent of the authorities of such districts, have been made expressly applicable by section 285 to all sanitary authorities and districts.

The 10th section of the Public Health Act, 1872, authorised the appointment of the same person as medical officer of health for two or more districts; and section 26 of that Act provided for the formation of a united district for all or any of the purposes of the Sanitary Acts, including, therefore, amongst such purposes, that of the appointment of a medical officer of health. This, however, could only be done by provisional order, upon the application of one or more of

the sanitary authorities interested, and it involved the necessity of setting up a Joint Board with its several officers and attendant expenses. Section 286 of the present Act enables the Local Government Board, on any representation that the appointment of a medical officer of health for two or more districts, situated wholly or partially in the same county, would diminish expense or otherwise be to the advantage of such districts, to issue an order uniting them for that purpose, and prescribing all necessary consequential regulations. In the event of the authority of any district proposed to be included objecting to the arrangement, that district can only be included in the combination by means of a provisional order. No urban district containing a population of more than 25,000, or borough having a separate Court of Quarter Sessions, can be included in any combination under this section without the consent of the local authority of such district or borough.

The section further provides that no medical officer of health shall be appointed for any urban or rural district within the united district, except as an assistant to the medical officer appointed under this provision; but the Board may assign to the district medical officer of any poor law union, comprising a constituent district, the duty of rendering local assistance to the medical officer so appointed.

Port Sanitary Authorities.

The following new power is given to the Local Government Board by section 287 —viz., to constitute, as the port sanitary authority for the whole or any part of a port, or for any two or more ports, a Joint Board, consisting of representatives from all or any of the riparian authorities of such port or ports. The section further removes a doubt which had been raised with respect to the power of the Local Government Board to renew temporary orders, by expressly authorising the renewal from time to time of such orders.

The new power of appointing a Joint Board as the port sanitary authority has rendered it unnecessary to continue the provision under which riparian authorities might be enabled to send representatives to the meetings of the port sanitary authority, and that provision has therefore not been re-enacted.

Provisional Orders.

Where a provisional order was made for the formation of a united district under the Public Health Act, 1872, the order was *primâ facie* evidence that all the requirements in respect of the previous proceedings had been complied with. This provision is now extended by section 297 (7) to all provisional orders made under the present Act.

Defaulting Authorities.

The provisions of the Sanitary Acts, with respect to defaulting authorities, are extended by section 299 so as to embrace those cases where a local authority make default in either fulfilling or enforcing any of the additional obligations imposed by this Act.

Powers of the Local Government Board in relation to local Acts.

The power of the Board to repeal or alter local Acts by provisional order is enlarged by section 303, so as to enable them to deal with the case of a local Act in force in more than one district, although the application for its repeal or amendment is made by the local authority of one of the districts interested only. The section also enables the Board, when amending a local Act by provisional order in such a way as to extend or diminish the area of its operation, to determine what local authority shall have jurisdiction in the area thus included or excluded.

Miscellaneous Provisions.

The right of entry possessed by local authorities and their officers, for the discharge of their duties, is extended by section 305 from the hours of ten and four

to nine and six; and it will be seen that the power to apply to a Court of Summary Jurisdiction for an order enforcing entry, in the event of refusal, now includes cases where such entry is required for the purpose of making works or keeping them in repair.

It has sometimes happened that a new borough is created, which consists of or includes an existing Local Government or Improvement Act district, in which case the Town Council supersede the previous urban authority. In order to remove any doubt as to the effect of this change, section 310 provides that all the powers, duties, liabilities, and property of the Local Board, or Improvement Commissioners, shall be transferred to the Town Council.

The same section also declares that the transfer to an urban authority of the powers, property, and liabilities of any Local Board or Improvement Commissioners, under the Public Health Act, 1872, is to be deemed to have included their property, powers, and liabilities as a Burial Board, for which case no provision had previously existed.

Changes in local circumstances sometimes render it desirable that a Local Board should have power to alter their name, and this power is accordingly given them by section 311, subject to the sanction of the Local Government Board.

To meet those cases where any of the provisions of the Sanitary Acts are referred to in any statutes, orders, or documents now in force, section 313 declares that the corresponding provisions of the present Act shall be considered as substituted for the analogous provisions of the repealed Acts. Thus, if by any Act of Parliament the consent of owners and ratepayers to any matter,—as, for instance, in the case of the Municipal Corporations (Borough Funds) Act,—is required to be expressed by resolution, in the manner provided by the Local Government Act, 1858, the resolution in future must be passed in conformity with the requirements of Schedule III. of the present Act.

Where a bye-law has been made under the Sanitary Acts by any local authority, and the same is inconsistent with the present Act, such bye-law is to that extent repealed by section 315; and section 326 declares that, subject to this provision, all bye-laws under the Sanitary Acts shall be deemed to have been made under this Act.

Temporary Provisions.

Section 323 enables the Local Government Board, by provisional order, to dissolve districts constituted for the purpose of main sewerage only, or subject to the jurisdiction of Joint Sewerage Boards, or to constitute such districts united districts, subject to the jurisdiction of a Joint Board.

Saving Clauses.

As the Sanitary Acts are now repealed, and sanitary authorities for the most part derived their powers from those Acts, special provision was necessary to preserve the authorities and arrangements in existence at the time of the passing of the new Act. Section 326 therefore declares that Local Government districts, constituted in pursuance of the Sanitary Acts, shall be deemed to be districts under the Act; that all sanitary authorities charged at the time of the passing of the Act with the execution of the Sanitary Acts shall be deemed to be authorities charged with the execution of the Act; and that their officers and servants shall continue in their offices and employments so long as they would have done if the Act had not passed.

Another important section is that which excepts mines and the manufacture of mineral produce from the operation of the Act. Under the Nuisances Removal Acts the exception extended, not only to mines and the smelting of ores and minerals, but also to the manufacturing of the produce of such ores and minerals generally. The exception in section 334 of the present Act is less extensive, and only applies to mines, to the smelting of ores and minerals, to the calcining, puddling, and rolling of metals, and to the conversion of pig-iron into wrought-iron, so as not to interfere with these processes.

Schedule I.

Rules as to Meetings and Proceedings.

1.—*Rules applicable to Local Boards.*

The Public Health Act, 1848, enabled Local Boards to make bye-laws for the summoning of their meetings and the transaction of their business. Under the present Act they may make regulations for those purposes, and such regulations do not, as in the case of bye-laws, require the confirmation of the Local Government Board.

The Public Health Act, 1848, prohibited the transaction of any business, unless one-third of the number of members were present at the meeting; but rule 2 of this schedule declares that a larger quorum than seven members is not to be required in any case.

The names of members voting on any question are to be recorded in such a way as to show whether each vote given is for or against the question (rule 6); and every question is to be decided by a majority of votes of the members present and voting on it (rule 7). The corresponding provisions of the Public Health Act, 1848, merely required the record of the voters' names, unaccompanied by any statement as to whether the respective votes were given for or against the question, and left it open to some doubt whether the majority required was a majority of those present or of those voting.

Minutes and copies of orders and resolutions made and passed at meetings, if purporting to be signed by the chairman either of the meeting at which the proceedings took place or of the following meeting, are to be received as evidence in legal proceedings. (Rule 10.)

Rule 11 provides that the annual meeting of every Local Board must be held as soon as conveniently may be after the 15th of April.

2.—*Rules applicable to Committees of Local Authorities other than Councils of Boroughs, and to Joint Boards.*

The whole of these rules are new. They authorise meetings and adjournments, prescribe a quorum in cases where none has been prescribed by the appointing authority, provide for the election of a chairman, and the manner in which a majority of votes is to be determined, render proceedings valid, notwithstanding vacancies or defective appointments, and declare that the minutes, orders, and resolutions of the Committee or Joint Board, if authenticated as in the case of those of Local Boards, shall be evidence in legal proceedings.

Schedule II.

I.—Rules for Election of Local Boards.

Number and Qualification of Members.

The Local Government Board were enabled by the 28th section of the Sanitary Law Amendment Act, 1874, to increase or diminish, by order, the number of members of a Local Board; but they were not empowered to effect any such increase or diminution before the next ordinary election. Rule 2 of this schedule confers upon them the necessary powers for this purpose.

Wards.

Under the Local Government Acts the number, boundaries, and proportionate representation of the wards in a Local Government district could be altered by order; but the wards, when once established, could not be wholly abolished, except by the dissolution of the district. Rule 6 enables them to be abolished by an order of the Local Government Board.

Qualification of Voters, Scale of Voting, and Register of Owners.

The Public Health Act, 1848, authorised only corporations and companies to vote by proxy in the election of Local Boards. Rule 14 extends this privilege to all owners entitled to a vote. Every instrument appointing such a proxy must be in writing, and attested by a witness. (Rule 15.)

It was doubtful whether, under the Public Health Act, 1848, members of a partnership could vote as individual owners in respect of partnership property. This doubt has been removed by rules 16 and 17, which enable partners in a firm of less than seven members to vote as if the qualifying property were equally divided between them, firms of seven members and upwards being treated as a company.

Rules 20 to 30, both inclusive, contain new regulations with respect to claims, and objections to claims of owners and proxies to be entered on the register required to be kept by the 23rd section of the Sanitary Law Amendment Act, 1874, and also with respect to the annual revision of such register by the chairman. If the chairman is unwilling or unable to act, and the Local Board fail to appoint another person for the purpose, then the clerk must conduct the revision. The most important of these regulations are that all such claims and objections must be made on one of the first six days of March in every year, notice to that effect being published by the chairman, both by advertisement and posting in the usual manner, in a form prescribed in Schedule IV.; and that the register shall be closed not later than the 16th of March, and remain in force for the next twelve months.

Election.

Hitherto no particular time has been specified for the publication by the returning officer of the notice required to be published previous to an election. Rule 36 requires him to publish this notice after the close of the revision of the register, but not less than fourteen days before the last day appointed for delivery to him of the nomination papers.

By the Public Health Act, 1848, section 22, persons having the custody of parochial books or papers were required to allow them to be inspected, and extracts taken by the returning officer; but no penalty was imposed in case of refusal. This omission is rectified by rule 38, which imposes in such a case a penalty not exceeding £5.

By rule 43 the names of the candidates are required to be inserted in the voting papers in alphabetical order, instead of, as hitherto, in the order in which the nomination papers have been received.

It will be seen by reference to the form of voting paper that the insertion of the name of one nominator will in future be sufficient.

Counting of Votes.

The returning officer is enabled, under rule 51, to attend for the purpose of examining and casting up the votes after any election at any place which may have been previously appointed by him for that purpose. Such place need not be, as heretofore, the office of the Local Board.

By the same rule candidates are for the first time afforded the right of themselves attending, or appointing agents to attend, the casting up of the votes; but any candidate or agent interfering with or obstructing the proceedings may be removed by order of the returning officer, and, when so removed, will not be permitted to return.

Rule 48 requires that the last day for collecting the voting papers shall be not later than the 7th of April, and rule 55 provides that the returning officer shall make all his arrangements for the conduct of the election, so as to ensure its completion, and the ascertainment of the result, on or before the 15th of April in every year; and on that day the candidates elected are to come into office, the members, in whose room they are elected, continuing in office until that day.

Retirement of Members.

If the number of persons elected for any ward is less than three, they are required by rule 61 to go out of office in such year or years as the Local Board, with the sanction of the Local Government Board, may determine.

Casual Vacancies.

It was not clear whether under the Local Government Act, 1858, a vacancy created by a failure duly to elect members was a casual vacancy; or how, in the event of such vacancy, or any other casual vacancy being left by the Local Board to be filled up at the next annual election, the member elected to fill such vacancy was to be distinguished from the other successful candidates. In order to leave no doubt on these points, rule 65 includes a failure duly to elect members among the causes creating a casual vacancy, and declares that in the event of a casual vacancy being filled up at an annual election, if there is a poll, the member who has been elected by the fewest votes is to be deemed to be elected to fill such vacancy; and if there is no poll the question is to be determined by lot. The rule also extends the period during which a casual vacancy may be filled up by the Local Board from a month to six weeks, or such further period as the Local Government Board may by order allow.

General Provisions.

Rule 66 adds the bank holidays to the days hitherto excluded under the Public Health Act, 1848, for the performance of any act in relation to any election.

In lieu of imprisonment, a penalty not exceeding £20 may be imposed under rule 69 upon any person tampering with voting papers, personating voters, or interfering with the delivery or collection of voting papers.

Temporary Provisions.

It should be specially noticed that rule 73 provides for the continuance in office until the 15th of April next of all members of existing Local Boards.

II.—Proceedings in case of Lapse of Local Boards.

The Sanitary Acts contained no provision for the vesting of the property of a lapsed Local Board in the succeeding authority; and in the event of no new Local Board being elected, the district remained a Local Government district, and was under the control of no local authority. Both these defects are cured by rule 2 of Part II. of this schedule, which enables the Local Government Board, in the event of no new election taking place within three months, to dissolve the district and declare it to be a rural district, or included in any adjoining rural district, the property of the lapsed Local Board passing to the new authority. The rule further enables the Board to determine any question as to the fact of a Local Board having lapsed, or the date of such lapse.

Schedule III.

Rules as to Resolutions of Owners and Ratepayers.

Under the Local Government Act, 1858, section 13 (1), a meeting for the purpose of passing a resolution for the adoption of that Act had to be called, on the requisition of twenty ratepayers or owners. A meeting for the purpose of passing the corresponding resolution under this Act may be called under rule 1 of this schedule on the requisition of twenty ratepayers or owners, or of twenty ratepayers and owners, but the requisitionists, in both cases, are required to be resident in the district or place with respect to which the resolution is to be passed.

Under the Local Government Act, 1858, section 13 (3), the meeting could only be adjourned from day to day, and the construction placed by the law officers of the Crown upon this provision was that the adjournment must be from one day to the next. The interpretation has been productive of inconvenience, and in some cases has led to the failure of the proceedings, when the adjournment has been improperly made over intervening days. An amendment has therefore been introduced (rule 5), enabling the meeting to be adjourned from time to time.

The foregoing statement does not profess to exhaust all the minor amendments which have been made in the law by the present Act; but the Board believe that they have sufficiently explained the nature and intention of all the principal changes effected by it, and they trust that their observations will be of service to urban authorities in administering its various and important provisions.

I am, &c.,

To the Clerk to the Urban Sanitary Authority. JOHN LAMBERT, *Secretary.*

(2.)

TO RURAL SANITARY AUTHORITIES.

Local Government Board, Whitehall, S.W.,
30th September, 1875.

[The introductory portion of the circular is the same as that of the circular to urban authorities, *ante*, p. 8.]

Constitution of Authorities.

In some cases where nearly the whole of the parishes of a poor-law union are included in one or more urban districts, the number of elective guardians qualified to act as members of the rural sanitary authority was too small to enable them to form a quorum; and in others, the members of the rural sanitary authority have been so few as to prevent the efficient discharge of their duties. Section 9 of the present Act, therefore, enables the Board to nominate as members of any rural sanitary authority a sufficient number of persons to make up the number to five, exclusive of *ex officio* members; such nominees to be selected from owners or occupiers of property in the district of a value sufficient to qualify them to act as elective guardians of the union.

Sewerage and Drainage.

Under the Sanitary Acts, sewers in an urban district, excepting those made for the purposes of profit, or under the authority of Commissioners of Sewers, or for the drainage or improvement of land under local or private Acts, vested in the urban authority; but no similar provision was made with respect to sewers in rural districts. For the future these will vest in the rural sanitary authority, subject to the above exceptions, and to the proviso that sewers constructed by or transferred to any authority empowered by statute to construct sewers, will vest in the authority who constructed them, or to whom they have been transferred. In order to prevent this and other provisions of the Act from extending to drains for surface water belonging to highway authorities, the definition of "sewer" contained in the Public Health Act, 1848, has been modified by section 4 of the present Act, so as to exclude drains vested in or under the control of any authority having the management of roads, and not being a local authority under the Act. It may be here observed that "local authority" is the term used in the Act when it is intended to include both urban and rural sanitary authorities.

The power possessed by Local Boards under the 44th section of the Public Health Act, 1848, of purchasing sewers, or rights in sewers, in their districts, has been extended by section 14 to rural authorities.

By the Local Government Act Amendment Act, 1861, section 4, power was given to sanitary authorities to construct works of sewerage outside their districts; but it was provided that nothing in that Act should empower such authorities to

discharge unpurified sewage into streams or water-courses. Section 17 has made this provision applicable to all works of sewerage, whether within or without the district of the authority, and has extended it to canals, ponds, and lakes.

Section 19 imposes on every local authority the duty of causing their sewers to be ventilated, so as not to be a nuisance or injurious to health.

In cases where, for the purpose of enforcing the drainage of a row of undrained houses, it would be less expensive to construct a new sewer than to compel such houses to drain into an existing sewer, the authority are empowered (section 23) to construct a new sewer and to apportion the expense among the owners of the houses.

It has happened that a local authority, after enforcing the communication of house drains with a particular system of sewers, have found it necessary to change their general scheme of sewerage, and to construct fresh sewers; but the Sanitary Acts contained no provision under which the local authority could compel fresh junctions or defray their cost. Section 24 now empowers a local authority, under these circumstances, to close any such existing drains, on condition of providing others equally effectual and communicating with the new system.

Under the Sewage Utilization Act, 1867, a local authority were not empowered to let, for more than seven years, land held by them for purposes connected with sewage distribution; this period is extended by section 29 to twenty-one years.

Privies, Waterclosets, &c.

The power given to Local Boards by the 52nd section of the Public Health Act, 1848, to enforce proper watercloset or privy accommodation in factories, has been extended by section 38 of the present Act to rural authorities. The previous provision only applied to factories in which persons of both sexes, and above twenty in number, were employed; but the restriction as to number has now been removed.

Scavenging and Cleansing.

By the 60th section of the Public Health Act, 1848, urban authorities were enabled to enforce the whitewashing, cleansing, or purifying of houses, on the certificate of the medical officer of health, or two medical practitioners, that they were in such a filthy or unwholesome state as to affect or endanger the health of any person, or that such whitewashing, cleansing, or purifying would tend to prevent or check infectious disease. Section 46 extends this power to rural authorities.

It will be observed from section 4 that "house" includes schools, also factories and other buildings in which more than twenty persons are employed at one time.

Offensive Ditches and Collections of Matter.

The power contained in the 31st section of the Local Government Act, 1858, enabling an urban authority to obtain an order of justices for the cleansing of any offensive ditch or water-course lying near or forming the boundary of their district, is conferred by section 48 on rural authorities.

Water Supply.

[Same as the circular to urban sanitary authorities under this head, *ante*, p. 9.]

Common Lodging Houses; Nuisances.

[Same as the circular to urban authorities under these headings, *ante*, p. 10.]

Offensive Trades.

Proceedings under the Nuisances Removal Acts, with respect to offensive trades, could only be taken by a nuisance authority within the limits of a city, town, or populous district. Section 114 provides that such proceedings shall, for the future, be taken only by authorities in urban districts; but this provision is subject to the general power contained in section 276, which enables the Board to confer on a rural authority any urban power which the circumstances of the district may require.

Infectious Diseases and Hospitals; Mortuaries.

[Same as the circular to urban authorities under these headings, *ante*, pp. 11 and 12.]

Lighting Streets.

In some cases application had been made to the Board to invest the rural authority with power to contract for the lighting of some of the populous portions of their district; but a difficulty existed in complying with such applications, in cases where the Lighting and Watching Act (3 & 4 Will. IV. c. 90) was in force. Section 163 enacts that if lighting powers are conferred on a rural authority in a place where the Lighting and Watching Act has been adopted, that Act shall be superseded by the present statute.

Purchase of Lands; Arbitration.

[Same as the circular to urban authorities under these headings, *ante*, pp. 13, 14.]

Bye-laws.

Section 186 facilitates the proof of bye-laws in legal proceedings, by providing that a copy of them, signed and certified by the clerk to the rural authority, shall be *primâ facie* evidence of their having been duly made and confirmed.

Officers.

Section 190 expressly authorises the appointment of assistant officers by a rural authority, and provides that the assistant clerk of the union shall be appointed clerk of the rural authority, when the clerk of the union is unable or unwilling to undertake the duty. Under the 6th section of the Sanitary Law Amendment Act, 1874, the assistant clerk might be appointed to the office; but his appointment was merely optional.

Although the Public Health Act, 1872, rendered it obligatory on every sanitary authority to appoint a medical officer of health, neither that Act nor the previous statutes prescribed his duties, and it was only in cases where part of his salary was repaid from the Parliamentary grant, that the Local Government Board had any jurisdiction in the matter. Having regard, therefore, to the importance of securing uniformity in practice, and of adopting the necessary means for insuring periodical reports and returns respecting the sanitary condition of each locality, the Legislature have now empowered the Board, by section 191, to prescribe the qualifications and duties of other medical officers of health appointed under the Act, although no portion of their salaries is repaid out of moneys voted by Parliament. Power is also expressly given to the Board by the same section to impose conditions in cases where the district medical officer of a union is appointed medical officer of health. The section further enables local authorities, in case of the illness or incapacity of their medical officer, to appoint a deputy medical officer, subject to the approval of the Local Government Board.

The provisions contained in sections 37 to 39 of the Public Health Act, 1848, both inclusive, which relate to the disabilities of officers of urban authorities, which require them to give security and account for receipts and disbursements, and which enable summary proceedings to be taken against them, when defaulting, are extended by sections 192 to 196 of the present statute to the officers of rural authorities.

Mode of conducting Business.

The Public Health Act, 1872, contained no express provision enabling a rural authority to fill up casual vacancies in any committee appointed by them. Section 203 now confers this power.

By the 76th section of the Local Government Act, 1858, urban authorities were required to make and publish an annual report of all works executed by them during the preceding year, and of their receipts and disbursements. This duty is imposed upon all local authorities by section 206; but the obligation of publishing the report in a local newspaper does not extend to rural authorities.

Expenses.

Section 229 differs from the corresponding provisions in the Sanitary Acts, by not including among special expenses the expenses of the cleansing and lighting of streets in any contributory place when the requisite urban powers have been conferred on the rural sanitary authority for that purpose. Such expenses will, therefore, for the future, be general expenses, unless otherwise determined by order of the Local Government Board. The section is, moreover, so worded as to show clearly that the water-rents or rates levied in a contributory place are to be applied in defraying the cost of providing the water supply for such place.

Section 11 of the Sanitary Law Amendment Act, 1874, prohibited the levying of a special rate in any contributory place where the amount required *in any one year* was less than £10, or so small that a rate of less than a penny in the pound would be required to raise it. This prohibition is extended by section 230 to every case where the amount required by any precept or precepts comes within either of the limits mentioned. It has also been made clear that the amount is to be paid as if forming part of the contribution required for general expenses.

Borrowing Powers.

Doubts had been expressed (1) as to whether loans under the Sanitary Acts could properly be repaid by equal annual instalments of principal and interest combined; (2) as to the precise amount required to be set aside and invested annually, when provision was made for repayment of the loan by means of a sinking fund; and (3) as to the mode in which the sinking fund was from time to time to be applied towards the discharge of part of the loan. Section 234, therefore, expressly authorises loans under the Act to be repaid by equal annual instalments of principal or of principal and interest combined; it enacts that where the repayment is by means of a sinking fund, the annual amount to be set aside is to be such as will, with accumulations, be sufficient to repay the loan at the end of the term; and it provides that the whole or any part of the fund may at any time be applied towards the discharge of the loan; but until the loan is discharged the interest which would have accrued on the amount withdrawn must be paid into the fund, in addition to the other payments.

Local authorities are exempted (section 238) from responsibility to the transferee of any of their mortgages, until an entry of the transfer has been made in the register kept by them; and by the same section a penalty not exceeding £20 is imposed on the clerk of the authority if he wilfully neglects or refuses to make any such entry in the register.

The Public Works and Local Loans Acts.

[Same as the circular to urban authorities under this heading, *ante*, p. 16.]

Legal Proceedings.

The 133rd and 134th sections of the Public Health Act, 1848, render the consent of the Attorney-General necessary to proceedings for the recovery of penalties under that Act, except by persons aggrieved or by the Local Board, and provide for the application of penalties. Sections 253 and 254 embody these provisions, and make them applicable to rural districts and authorities.

Section 255 facilitates proceedings against persons who jointly contribute to a nuisance. Under the Nuisances Removal Acts much difficulty was experienced in enforcing any remedy, unless it could be clearly proved that the separate contribution of the person proceeded against would alone cause a substantial nuisance, such proof being often from the nature of the case almost impossible.

To save technical objections and expense in legal proceedings, section 260 dispenses with the necessity on the part of the plaintiff of proving the corporate name of the authority, and the constitution or limits of the district.

Under the Sanitary Acts the jurisdiction of County Courts extended only to the recovery of debts not exceeding £20. This limit is enlarged by section 261 to £50.

Section 262, following the previous law, provides that no proceedings shall be emoved by *certiorari* into a superior Court; but the judges having recently xpressed a strong opinion that the power of stating a special case which can be emoved into a superior Court ought not to be taken away, a proviso has been dded reserving that power.

Appeal.

[Same as the circular to urban authorities under this heading, *ante*, p. 17.]

Alteration of Areas.

In addition to the powers which were given to the Local Government Board in elation to the alteration of areas by the 22nd section of the Public Health Act, 1872, section 270 of the present Act enables the Board, by provisional order, to nclude the whole of any rural district in any adjoining Local Government district, nd any portion of a Local Government district in any rural district.

With respect to the constitution of urban districts, in pursuance of resolutions passed by the owners and ratepayers in places situated in rural districts, the attention of the authority may be directed to sections 272 to 274, both inclusive. These sections set forth the proceedings which may now be taken by owners and ratepayers in order that a place may be constituted a Local Government district, and it will be found that such proceedings are analogous to those prescribed by the Local Government Act, 1858, with regard to the adoption of that Act; but in future the resolution to be passed by the owners and ratepayers, instead of being to the effect that the Local Government Act should be adopted, must affirm that it is expedient that the place should be constituted a Local Government district.

It should be observed that the resolution of owners and ratepayers must be passed in the manner provided by Schedule III. to the Act.

General provisions with respect to orders made by the Board under this part of the Act are contained in section 275. The most important of them are (1) that a newly constituted Local Government district is to remain under the jurisdiction of its former local authority until the first meeting of the Local Board; and (2) that any such order may provide for the settlement of differences, the adjustment of accounts, and the apportionment of liabilities.

It is important to observe that section 276 clears up any doubt which might have previously existed as to the right of the Board to apply urban provisions to a rural district where such provisions do not confer *powers* on the authority, by enacting in express terms that the Board may declare any urban provisions of the Act to be in force in rural districts. Any new powers conferred by the Act, and which may, under special circumstances, be needful to a rural authority, may, by order of the Board, be rendered applicable to them under this section.

Union of Districts.

[Same as the circular to urban authorities under this heading, *ante*, p. 17.]

Port Sanitary Authorities; Provisional Orders; Defaulting Authorities; Powers of the Local Government Board in relation to Local Acts.

[Same as the circulars to urban authorities under these headings, *ante*, p. 18.]

Miscellaneous Provisions.

The right of entry possessed by local authorities and their officers, for the discharge of their duties, is extended by section 305 from the hours of ten and four to nine and six, and it will be seen that the power to apply to a Court of Summary Jurisdiction for an order enforcing entry, in the event of refusal, now includes cases where such entry is required for the purpose of making works or keeping them in repair.

To meet those cases where any of the provisions of the Sanitary Acts are referred to in any statutes, orders, or documents now in force, section 313 declares that the corresponding provisions of the present Act shall be considered as substituted for the analogous provisions of the repealed Acts. Thus, in cases where rural sanitary authorities have been invested with urban powers contained in the Sanitary Acts, they will, by the operation of this section, be invested with the corresponding powers contained in the present Act.

Where a bye-law has been made under the Sanitary Acts by any local authority and the same is inconsistent with the present Act, such bye-law is to that extent repealed by section 315; and section 326 declares that, subject to this provision all bye-laws under the Sanitary Acts shall be deemed to have been made under this Act.

Temporary Provisions; Saving Clauses.

[Same as the circular to urban authority under these headings, *ante*, p. 19.]

Schedule I.

Rules applicable to Committees.

The whole of these rules are new, and apply to the committees appointed by the rural sanitary authority. They authorise meetings and adjournments; prescribe a quorum, in cases where none has been prescribed by the appointing authority; provide for the election of a chairman, and the manner in which a majority of votes is to be determined; render proceedings valid, notwithstanding vacancies or defective appointments; and declare that the minutes, orders, and resolutions of the committee, purporting to be signed by the chairman, either of the meeting at which the proceedings took place or of the following meeting, shall be evidence in legal proceedings.

Schedule II.

Proceedings in case of Lapse of Local Boards.

The Sanitary Acts contained no provision for the vesting of the property of a lapsed Local Board in the succeeding authority; and in the event of no new Local Board being elected, the district remained a Local Government district, and was under the control of no local authority. Both these defects are cured by rule 2 of Part II. of this schedule, which enables the Local Government Board, in the event of no new election taking place within three months, to dissolve the district and declare it to be a rural district, or included in any adjoining rural district, the property of the lapsed Local Board passing to the new authority. The rule further enables the Board to determine any question as to the fact of a Local Board having lapsed, or the date of such lapse.

Schedule III.

Rules as to Resolutions of Owners and Ratepayers.

Under the Local Government Act, 1858, section 13 (1), a meeting for the purpose of passing a resolution for the adoption of that Act had to be called, on the requisition of twenty ratepayers or owners. A meeting for the purpose of passing the corresponding resolution under this Act may be called under rule 1 of this schedule on the requisition of twenty ratepayers or owners, or of twenty ratepayers and owners, but the requisitionists, in both cases, are required to be resident in the district or place with respect to which the resolution is to be passed.

Under the Local Government Act, 1858, section 13 (3), the meeting could only be adjourned from day to day, and the construction placed by the law officers of

the Crown upon this provision was that the adjournment must be from one day to the next. This interpretation has been productive of inconvenience, and in some cases has led to the failure of the proceedings, when the adjournment has been improperly made over intervening days. An amendment has therefore been introduced (rule 5) enabling the meeting to be adjourned from time to time.

Hitherto the meeting has been required to elect its own chairman, but under rule 6 the summoning officer will be the chairman, unless he is unable or unwilling to preside, in which case only the chairman will be elected by the meeting.

The provisions of the same section of the Local Government Act have been held as constituting the churchwardens and overseers summoning officers only in cases where their jurisdiction has been co-extensive with the places in which it has been proposed to adopt the Act. An express enactment contained in rule 2 declares, in accordance with this interpretation, that the jurisdiction of these officers must be conterminous with the proposed district, so that in all other cases the summoning officer must be appointed by the Board.

The foregoing statement does not profess to exhaust all the minor amendments which have been made in the law by the present Act; but the Board believe that they have sufficiently explained the nature and intention of all the principal changes effected by it, and they trust that their observations will be of service to rural authorities in administering its various and important provisions.

I am, &c.
JOHN LAMBERT,
Secretary.

To the Clerk to the Rural Sanitary Authority.

PUBLIC HEALTH ACT, 1875.

38 & 39 VICT. c. 55.

ARRANGEMENT OF CLAUSES.

A.D. 1875.

PART I.

Preliminary.

Clause.
1. Short title.
2. Extent of Act.
3. Division of Act into parts.
4. Definitions.

PART II.

AUTHORITIES FOR EXECUTION OF ACT.

CONSTITUTION OF DISTRICTS AND AUTHORITIES.

5. Urban and rural sanitary districts.
6. Description of urban districts and urban authorities.
7. Incorporation of local boards and improvement commissioners.
8. Election of local boards.
9. Description of rural districts and rural authorities.
10. Powers and duties of urban authorities.
11. Powers and duties of rural authorities.
12. Vesting of property in local authorities.

PART III.

SANITARY PROVISIONS.

SEWERAGE AND DRAINAGE.

Regulations as to Sewers and Drains.

13. Sewers vested in local authority.
14. Power to purchase sewers.
15. Maintenance and making of sewers.
16. Powers for making sewers.
17. Sewage to be purified before being discharged into streams.
18. Alteration and discontinuance of sewers.
19. Cleansing sewers.
20. Map of system of sewerage.
21. Power of owners and occupiers within district to drain into sewers of local authority.

A.D. 1875.

Clause.

22. Use of sewers by owners and occupiers without district.
23. Power of local authority to enforce drainage of undrained houses.
24. Power of local authority to require houses to be drained into new sewers.
25. Penalty on building house without drains in urban district.
26. Penalty on unauthorised building over sewers and under streets in urban district.

Disposal of Sewage.

27. Powers for disposing of sewage.
28. Power to agree for communication of sewers with sewers of adjoining district.
29. Power to deal with land appropriated to sewage purposes.
30. Contribution to works under agreement for supply or distribution of sewage.
31. Application of 27 & 28 Vict. c. 114, to works for supply of sewage.

As to Sewage Works without District.

32. Notice to be given before commencing sewage works without district.
33. In case of objection, works not to be commenced without sanction of Local Government Board.
34. Inspector to hold inquiry and report to Local Government Board.

Privies, Waterclosets, &c.

35. Penalty on building houses without privy accommodation.
36. Power of local authority to enforce provision of privy accommodation for houses.
37. As to earthclosets.
38. Privy accommodation for factories.
39. Public necessaries.
40. Drains, privies, &c., to be properly kept.
41. Examination of drains, privies, &c., on complaint of nuisance.

Scavenging and Cleansing.

Regulations as to Streets and Houses.

42. Local authority to provide for cleansing of streets and removal of refuse.
43. Penalty on neglect of local authority to remove refuse, &c.
44. Power of local authority to make bye-laws imposing duty of cleansing, &c. on occupier.
45. Power to provide receptacles for deposit of rubbish.
46. Houses to be purified, on certificate of officer of health, or of two medical practitioners.
47. Penalty in respect of certain nuisances on premises.

Offensive Ditches and Collections of Matter.

48. Provision for obtaining order for cleansing offensive ditches lying near to or forming the boundaries of districts.
49. Removal of filth on certificate of inspector of nuisances.
50. Periodical removal of manure from mews and other premises.

Water Supply.

Powers of Local Authority in relation to Supply of Water.

51. General powers for supplying district with water.
52. Restriction on construction of waterworks by local authority.
53. As to construction of reservoirs.
54. Power of carrying mains.

Clause.
55. As to supply of water.
56. Power to charge water rates and rents.
57. Incorporation of certain provisions of Waterworks Clauses Acts.
58. Power to supply water by measure.
59. Register of meter to be evidence.
60. Penalty for injuring meters.
61. Power to supply water to authority of adjoining district.
62. Local authority may require houses to be supplied with water in certain cases.
63. Powers of water company for supplying water to local authority.
64. Vesting of public cisterns, &c., in local authority.
65. Water for public baths, or trading or manufacturing purposes.
66. Duty of urban authority to provide fire-plugs.
67. Agreements with universities.

Provisions for Protection of Water.

68. Penalty for causing water to be corrupted by gas washings.
69. Local authority may take proceedings to prevent pollution of streams.
70. Power to close polluted wells, &c.

REGULATION OF CELLAR DWELLINGS AND LODGING-HOUSES.

Occupation of Cellar Dwellings.

71. Prohibition of occupying cellar dwellings.
72. Existing cellar dwellings only to be let or occupied on certain conditions.
73. Penalty on persons offending against enactment.
74. Definition of occupying as a dwelling.
75. Power to close cellars in case of two convictions.

Common Lodging-houses.

76. Registers of common lodging-houses to be kept.
77. All common lodging-houses to be registered, and to be kept only by registered keepers.
78. Local authority may refuse to register houses.
79. Notice of registration to be affixed to houses.
80. Bye-laws to be made by local authority.
81. Power to local authority to require supply of water to houses.
82. Limewashing of houses.
83. Power to order reports from keepers of houses receiving vagrants.
84. Keepers to give notice of fever, &c., therein.
85. As to inspection.
86. Offences by keepers of houses.
87. Evidence as to family in proceedings.
88. Conviction for third offence to disqualify persons from keeping common lodging-house.
89. Interpretation of "common lodging-house."

Bye-laws as to Houses let in Lodgings.

90. Local Government Board may empower local authority to make bye-laws as to lodging-houses.

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91. Definition of nuisances.
92. Duty of local authority to inspect district for detection of nuisances.
93. Information of nuisances to local authority.
94. Local authority to serve notice requiring abatement of nuisance.

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Clause.
95. On non-compliance with notice complaint to be made to justice.
96. Power of court of summary jurisdiction to make order dealing with nuisance.
97. Order of prohibition in case of house unfit for human habitation.
98. Penalty for contravention of order of court.
99. Appeal against order.
100. In certain cases order may be addressed to local authority.
101. Power to sell manure, &c.
102. Power of entry of local authority.
103. Penalty for disobedience of order.
104. Costs and expenses of execution of provisions relating to nuisances.
105. Power of individual to complain to justice of nuisance.
106. Power of officer of police to proceed in certain cases against nuisances.
107. Local authority may take proceedings in superior court for abatement of nuisances.
108. Power to proceed where cause of nuisance arises without district.
109. Provision in case of two convictions for overcrowding.
110. Provision as to ships.
111. Provisions of Act relating to nuisances not to affect other remedies.

Offensive Trades.

112. Restriction on establishment of offensive trade in urban district.
113. Bye-laws as to offensive trades in urban district.
114. Duty of urban authority to complain to justice of nuisance arising from offensive trade.
115. Power to proceed where nuisance arises from offensive trade carried on without district.

Unsound Meat, &c.

116. Power of medical officer of health to inspect meat, &c.
117. Power of justice to order destruction of unsound meat, &c.
118. Penalty for hindering officer from inspecting meat, &c.
119. Search warrant may be granted by a justice.

Infectious Diseases and Hospitals.

Provisions against Infection.

120. Duty of local authority to cause premises to be cleansed and disinfected.
121. Destruction of infected bedding, &c.
122. Provision of means of disinfection.
123. Provision of conveyance for infected persons.
124. Removal of infected persons without proper lodging to hospital by order of justice.
125. Removal to hospital of infected persons brought by ships.
126. Penalty on exposure of infected persons and things.
127. Penalty on failing to provide for disinfection of public conveyance.
128. Penalty on letting houses in which infected persons have been lodging.
129. Penalty on persons letting houses making false statements as to infectious disease.
130. Power of Local Government Board to make regulations.

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131. Power of local authority to provide hospitals.
132. Recovery of costs of maintenance of patient in hospital.
133. Power to provide temporary supply of medicine.

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134. Power of Local Government Board to make regulations for prevention of diseases.
135. Publication of regulations and orders.
136. Local authority to see to the execution of regulations.
137. Power of entry.
138. Poor law medical officer entitled to costs of attendance on board vessels.
139. Local Government Board may combine local authorities.
140. Penalty for violating or obstructing the execution of regulations.

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141. Power of local authority to provide mortuaries.
142. Justice may in certain cases order removal of dead body to mortuary.
143. Power of local authority to provide places for post-mortem examinations.

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LOCAL GOVERNMENT PROVISIONS.

HIGHWAYS AND STREETS.

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144. Powers of surveyors of highways and of vestries under 5 & 6 Will. IV. c. 50, vested in urban authority.
145. Inhabitants of urban district not liable to rates for roads without district.
146. Power of urban authority to agree as to making of new public roads.
147. Power of urban authority to construct or adopt public bridges, &c., over or under canals, &c.
148. Power of urban authority to enter into agreements with turnpike trustees as to repair, &c., of roads.

Regulation of Streets and Buildings.

149. Vesting of streets, &c., in urban authority.
150. Power to compel paving, &c., of private streets.
151. Exemption from expenses under last section of incumbent of church, &c.
152. Power to declare private streets when sewered, &c , to be highways.
153. Power to require gas and water pipes to be moved.
154. Power to purchase premises for improvement of streets.
155. Power to regulate line of buildings.
156. Buildings not to be brought forward.
157. Power to make bye laws respecting new buildings, &c.
158. As to commencement of works and removal of works made contrary to bye-laws.
159. What to be deemed a new building.
160. Incorporation of certain provisions of 10 & 11 Vict. c. 34.

Lighting Streets, &c.

161. Powers of urban authority for lighting their district.
162. Power for sale of undertaking of gas company to urban authority.
163. Watching and Lighting Act (3 & 4 Will. IV. c. 90) to be superseded by this Act.

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164. Urban authority may provide places of public recreation.
165 Urban authority may provide public clocks.

MARKETS AND SLAUGHTER-HOUSES.

Clause.
166. Urban authority may provide markets.
167. Incorporation of provisions of 10 & 11 Vict. c. 14, as to markets.
168. Power for sale of undertaking of market company to urban authority.
169. Power to provide slaughter-houses.
170. Notice to be affixed on slaughter-houses.

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171. Incorporation of certain provisions of 10 & 11 Vict. c. 89.
172. Urban authority may make bye-laws for licensing horses, boats, &c., for hire.

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174. Provisions to contracts by urban authority.

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175. Power to purchase lands.
176. Regulations as to purchase of land.
177. Power to let lands.
178. Provision for lands belonging to the Duchy of Lancaster.

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179. Mode of reference to arbitration.
180. Regulations as to arbitration.
181. Claims under twenty pounds may be referred to court of summary jurisdiction.

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182. Authentication and alteration of bye-laws.
183. Power to impose penalties on breach of bye-laws.
184. Confirmation of bye-laws.
185. Bye-laws to be printed, &c.
186. Evidence of bye-laws.
187. Bye-laws made under s. 90 of 5 & 6 Will IV. c. 76, to be submitted to Local Government Board.
188. As to regulations of local authority.

OFFICERS AND CONDUCT OF BUSINESS OF LOCAL AUTHORITIES.

Officers of Local Authorities.

189. Appointment of officers of urban authority.
190. Appointment of officers of rural authority.
191. As to medical officer of health, &c.
192. Offices tenable by same persons.
193. Officers not to contract with local authority.
194. Officers intrusted with money to give security.
195. Officers to account.
196. Summary proceedings against defaulting officers.

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197. Urban authority to provide offices.
198. Proceedings, &c., of urban authority being the council of a borough.
199. Meetings, &c., of urban authority not being the council of a borough.
200. Power of urban authority to appoint committees.
201. Power of rural authority to delegate their powers and duties to a committee.
202. Power of rural authority to form parochial committees.
203. Casual vacancies in committees may be filled.
204. Meetings and proceedings of committees.
205. Inspectors may attend meetings of certain authorities.
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RATING AND BORROWING POWERS, &c.

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208. Power in certain cases by provisional order to alter mode.

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209. District fund account.
210. Making general district rate.
211. Assessment, &c., of general district rate.
212. Inspection of poor rate books for purposes of assessment.

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213. Power to make private improvement rates.
214. Proportion of private improvement rate may be deducted from rent.
215. Redemption of private improvement rates.

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216. Costs of repairs of highways.
217. Certain acts not required to be done in case of highway rate made by urban authority.

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219. Rates to be open to inspection.
220. Description of owner or occupier in rates.
221. Rates may be amended.
222. Publication and collection of rates.
223. Evidence of rates.
224. Power to make deduction from rate in certain cases.
225. Power to reduce or remit rates.
226. Saving for existing agreements.
227. Limit in local Act not to apply to rate for purposes of this Act.
228. Quota of rates to be paid by the universities, &c.

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229. Expenses of rural authority.
230. Mode of raising contributions in rural district.
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234. Regulations as to exercise of borrowing powers.
235. Power to borrow on credit of sewage land and plant.
236. Form of mortgage.
237. Register of mortgages.
238. Transfer of mortgages.
239. Receiver may be appointed in certain cases.
240. Rent-charge may be granted in respect of advances made for private improvements.
241. Rent-charges to be registered.
242. Power of Public Works Loan Commissioners to lend to local authority.
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244. Borrowing powers of joint boards and certain other authorities.

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Audit of Accounts of Local Authorities.

245. Accounts of local authorities.
246. Audit where urban authority are a town council.
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248. Audit of accounts of rural authority.
249. Taxation of bill of solicitor or attorney.
250. Auditor to audit accounts of officers.

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251. Summary proceedings for offences, penalties, &c.
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253. Restriction on recovery of penalties.
254. Application of penalties.
255. Proceedings in certain cases against nuisances.
256. Summary proceedings for recovery of rates.
257. Recovery of expenses by local authority from owners.
258. Justices may act though members of local authority or liable to contribute.
259. Appearance of local authorities in legal proceedings.
260. Name of local authority need not be proved.
261. Demands below £50 may be recovered in county courts.
262. Proceedings not to be quashed for want of form.
263. False evidence punishable as perjury.
264. Notice of action against local authority, &c.
265. Protection of local authority and their officers from personal liability.

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266. Notices, &c., may be printed or written.
267. Service of notices.

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268. Appeal in certain cases to Local Government Board.
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Alteration of Areas and Union of Districts.

Alteration of Areas.

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270. Powers of Local Government Board in relation to alteration of areas.
271. Local Government Board may by provisional order constitute local government district.
272. Local Government Board may by order constitute local government district in pursuance of a resolution of owners and ratepayers.
273. Objection to resolution.
274. Appeal to Local Government Board in case of alleged invalidity of vote.
275. General provisions as to orders.
276. Local Government Board may invest rural authority with powers of urban authority.
277. Power of rural authority to form special drainage districts.
278. Power to settle disputes as to boundaries of districts.

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279. Formation of united district.
280. Governing body of united district.
281. Contents of provisional order forming united district.
282. Meetings and proceedings of joint boards.
283. Expenses of joint board.
284. Payment of contributions to joint board.
285. Power to execute works in adjoining districts, and to combine for execution of works.
286. Districts may be united for appointing a medical officer of health.

Port Sanitary Authority.

287. Constitution of port sanitary authority.
288. Jurisdiction of port sanitary authority.
289. Delegation of powers by port sanitary authority.
290. Expenses of port sanitary authority.
291. Provision as to port of London.
292. Proceedings for raising a sum for payment of debt within district of a defaulting authority.

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295. Orders of Board under this Act.
296. Power of inspectors of Local Government Board.

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297. As to provisional orders made by Local Government Board.
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299. Proceedings on complaint to Board of default of local authority.
300. Further provision for recovery of expenses.

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301. Power of Board to borrow to defray expenses of performing duty of defaulting authority.
302. Recovery of principal and interest.

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303. Power to repeal and alter local Acts.
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Miscellaneous.

305. Entry on lands for purposes of Act.
306. Penalty on obstructing execution of Act.
307. Penalty on damaging works, &c., of local authority.
308. Compensation in case of damage by local authority.
309. Compensation in certain cases to officers.
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311. Power of local boards to change name.
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313. Substitution in other Acts of provisions of this Act for provisions of repealed Acts.
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315. As to bye-laws inconsistent with this Act.
316. As to construction of incorporated Acts.
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318. As to clerk and treasurer of certain authorities.
319. As to special district rates.
320. Division of expenses between landlord and tenant in certain cases.
321. Validity of certain securities.
322. As to certain turnpike trustees.
323. As to main sewerage districts and joint sewerage boards.
324. As to audit of certain accounts.
325. As to certain orders under section 20 of 35 & 36 Vict. c. 79.

PART XI.

Saving Clauses and Repeal of Acts.

Saving Clauses.

326. Provision as to the sanitary authorities existing at the passing of this Act and their officers, &c.
327. Saving for works and property of certain authorities, and for navigation and water rights, &c.
328. Reference to arbitration in case of works not within preceding section.
329. Effect of arbitration.
330. Provision as to transfer of powers, &c.
331. Provision as to alteration of sewers.
332. Saving for water rights generally.
333. Arbitration as to alteration of sewers injuriously affecting supply of water, &c.

Clause.
334. Saving for mines, &c.
335. Saving for collegiate bodies and Government departments.
336. Saving for Metropolitan Board of Works.
337. Saving for payment in certain cases to local authority.
338. Saving for acts of authorities under certain local Acts
339. Saving for certain local boards.
340. Saving for proceedings under local Acts.
341. Powers of Act to be cumulative.

Oxford.

342. Constitution of local board of the Oxford district.

Repeal of Acts.

343. Repeal of Acts in Schedule V.

SCHEDULES.

THE PUBLIC HEALTH ACT, 1875.

38 & 39 VICT. c. 55.

An Act for consolidating and amending the Acts relating to Public Health in England (1). [11*th August*, 1875.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Part I.

Preliminary.

Secs. 1—4.

Short title.

1. This Act may be cited as the Public Health Act, 1875.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland, nor (save as by this Act is expressly provided) to the metropolis (2).

Division of Act into parts.

3. This Act is divided into parts, as follows :—

Part I.—Preliminary.
Part II.—Authorities for Execution of Act.
Part III.—Sanitary Provisions.
Part IV.—Local Government Provisions.
Part V.—General Provisions.
Part VI.—Rating and Borrowing Powers, &c.
Part VII.—Legal Proceedings.
Part VIII.—Alteration of Areas and Union of Districts.
Part IX.—Local Government Board.
Part X.—Miscellaneous and Temporary Provisions.
Part XI.—Saving Clauses and Repeal of Acts.

Definitions.

4. In this Act, if not inconsistent with the context, the following words and expressions have the meanings hereinafter respectively assigned to them ; that is to say,

"Borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same (3) :

"The metropolis" means the City of London, and all parishes and places mentioned in schedules A, B, and C to the Metropolis Management Act, 1855 (4) :

(1) Where a privilege or benefit has been granted by a local Act, it is not taken away by any general words in this Act, or unless the intention so to do clearly appears. *Overseers of Walsall* v. *London & N. W. Ry.*, L. R. 4 App. Cas. 467, 48 L. J. M. C. 166.

(2) As to the meaning of "the metropolis," see *infra*.

(3) The Act 5 & 6 Will. IV. c. 76, is repealed by the Municipal Corporations Act, 1882, *post*, p. 269. For a table of the places to which the Act applies, see *post*. Provision is made by s. 310, *post*, p. 214, for the case of an Improvement Act district, or Local Government Act district, becoming a borough.

(4) The following are the parishes and places mentioned :—

SCHEDULE (A)—Part I.

Parishes.

St. Marylebone.
St. Pancras.
Lambeth.
St. George, Hanover Square.
Islington, St. Mary.
Shoreditch, St. Leonard.

"Local Government district" means any area subject to the jurisdiction of a Local Board constituted in pursuance of the Local Government

Sec. 4.

PART II.

Parishes.

Paddington.	St. George the Martyr, Southwark.
St. Matthew, Bethnal Green.	Bermondsey.
St. Mary, Newington, Surrey.	St. George-in-the-East.
Camberwell.	St. Martin-in-the-Fields.
St. James, Westminster.	Hamlet of Mile End Old Town.
St. James and St. John, Clerkenwell.	Woolwich.
Chelsea.	Rotherhithe.
Kensington, St. Mary Abbot.	St. John, Hampstead.
St. Luke, Middlesex.	

SCHEDULE (B)—PART I.

Name of District.	*Parishes.*
Whitechapel District.	St. Mary, Whitechapel. Christchurch, Spitalfields. St. Botolph, Without Aldgate, in the county of Middlesex. Holy Trinity, Minories. St. Katherine, Precinct of. Mile End New Town, Hamlet of. Liberty of Norton Folgate. Old Artillery Ground. Tower, District of.
Westminster District.	St. Margaret. St. John the Evangelist.
Greenwich District.	St. Paul, Deptford, including Hatcham. St. Nicholas, Deptford, Greenwich.
Wandsworth District.	Clapham. Tooting Graveney. Streatham. St. Mary, Battersea, excluding Penge. Wandsworth. Putney, including Roehampton.
Hackney District.	Hackney. St. Mary, Stoke Newington.
St. Giles' District.	St. Giles-in-the-Fields. St. George, Bloomsbury.
Holborn District.	St. Andrew, Holborn above Bars. St. George the Martyr. St. Sepulchre, in the county of Middlesex. Saffron Hill, Hatton Garden, Ely Rents, and Ely Place. The Liberty of Glasshouse Yard.
Strand District.	St. Anne, Soho. St. Paul, Covent Garden. St. John the Baptist, Savoy or Precinct of the Savoy. St. Mary-le-Strand. St. Clement Danes. Liberty of the Rolls.
Fulham District.	St. Peter and St. Paul, Hammersmith. Fulham.
Limehouse District.	St. Anne, Limehouse. St. John, Wapping. St. Paul, Shadwell. Ratcliff, Hamlet of.
Poplar District.	All Saints, Poplar. St. Mary, Stratford-le-Bow. St. Leonard, Bromley.
St. Saviour's District.	Christ Church. St. Saviour (including the Liberty of the Clink).

Sec. 4.

Acts (1) before the passing of this Act, or in pursuance of this Act, an
"Local Board" means any board so constituted (2):
"Improvement Act district" means any area for the time being subject to th
jurisdiction of any improvement commissioners as hereinafter defined (2):
"Improvement Commissioners" means any commissioners, trustees, or other person
invested by any local Act with powers of town government and rating:
"Parish" means a place for which a separate poor rate is or can be made, or fo
which a separate overseer is or can be appointed (3):
"Union" means a union of parishes incorporated or united for the relie
or maintenance of the poor under any public or local Act of Parliamen
and includes any parish subject to the jurisdiction of a separate Board o
Guardians (4):
"Guardians" means any persons or body of persons by whom the relief of th
poor is administered in any union:
"Person" includes any body of persons, whether corporate or unincorporate:
"Local authority" means urban sanitary authority and rural sanitary authority (5
"Surveyor" includes any person appointed by a rural authority to perform any
the duties of surveyor under this Act:
"Lands" and "premises" include messuages, buildings, lands, casements an
hereditaments of any tenure (6):

PART II.

Name of District.	*Parishes.*
Plumstead District, united with Lewisham District.	Charlton next Woolwich. Plumstead. Eltham. Lee. Kidbrook. Lewisham, including Sydenham. Chapelry. Hamlet of Penge.

PART III.

The Parish of Rotherhithe, united with St. Olave District.	St. Olave. St. Thomas, Southwark. St. John, Horsleydown.

SCHEDULE (C).

The Close of the Collegiate Church of St. Peter. The Charter House. Inner Temple. Middle Temple.	Lincoln's Inn. Gray's Inn. Staple Inn. Furnival's Inn.

(1) See schedule 5, part 1, *sub. fin. post*, p. 255. They are repealed by this Act. See s. 343, *post*, p. 224.

(2) As to powers of Local Government Board to constitute Local Government distr, see ss. 271, 272, *post*.

As to vesting of powers, rights, &c., where Local Government district or Improvement Act district becomes a borough, see s. 310, *post*, p. 214.

(3) As to certain extra-parochial places, see 31 & 32 Vict. c. 122, s. 27, *post*.

And as to parishes abutting on the sea-shore and navigable rivers, see *Bridgwater Trustees* v. *Surveyors of Bootle-cum-Linacre*, L. R. 2 Q. B. 4, 7 B. & S. 348; *McCanne* v. *Sinclair*, 28 L. J. M. C. 247.

(4) The public Acts are the Poor Law Amendment Act, 1834, 4 & 5 Will. IV. c. 76, and Acts amending the same. The Poor Law Board was abolished and its powers and duties transferred to the Local Government Board by 34 & 35 Vict. c. 70, *post*.

(5) See ss. 5, 6 and 9, *post*, pp. 48, 50.

(6) This is the same as the definition of "lands and premises" under the Public Health Act of 1848, with the addition of the word "easements," which removes some of

"Owner" means the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent (1):

"Rackrent" means rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes, and tithe commutation rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent (2):

"Street" includes any highway (not being a turnpike road), and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not (3):

the difficulties which were felt with regard to the earlier definition. It was held under the earlier definition that a right of fishing was within the term "land": *Oldaker* v. *Hunt*, 6 De G. M. & G. 376, 1 Jur. N. S. 785. As to whether a right of abstracting water from a stream can be compulsorily obtained under s. 176, *post*, see note (1), *post*, p. 69.

(1) There is a special definition of "owner" given by schedule 2, r. 10, *post*, p. 229.

The definition is the same as that given in the Public Health Act, 1848. A notice under s. 69 of that Act (which corresponds with s. 150 of the present Act), served upon the person *de facto* receiving the rents, though not as agent, and without any rightful authority to do so, was held good; "owner" being the person *de facto* receiving the rent rightfully or wrongfully: *Peek* v. *Waterloo and Seaforth Local Board*, 2 H. & C. 709, 33 L. J. M. C. 11, 9 L. T. N. S. 338, 12 W. R. 252, 9 Jur. N. S. 1344. Under the same section the trustee of a school to whom premises were, under 4 & 5 Vict. c. 38, conveyed upon trust to allow them to be used only as a school for the education of the poor, was held liable to contribute to the expenses of paving, &c., as "owner," although he had no power to let the premises, and therefore neither received, nor could receive, any rent in respect of them: *Bowditch* v. *Wakefield Local Board*, L. R. 6 Q. B. 567, 40 L. J. M. C. 214, 25 L. T. N. S. 88. Where Lord Holland, being the owner in fee of certain land, entered into a building agreement with one Hall, whereby the latter agreed to build houses on part of the land and to lay out the remainder as a garden, for the exclusive use of the tenants of the houses, and Lord Holland agreed to grant to Hall a lease of each house as it was built, and to grant a lease of the garden with the last house, but it was expressly agreed that Hall should have no interest in any house or land until a lease of it was granted; Hall having built some of the houses, but not all, and Lord Holland having subsequently sold the reversions of the houses which were built, it was held that Lord Holland was the "owner" of the garden within the definition of the Metropolis Local Management Act, 1855, s. 250 (which is identical with the definition above): *Holland* v. *Kensington Vestry*, L. R. 2 C. P. 565, 36 L. J. M. C. 105, 17 L. T. N. S. 73, 15 W. R. 1045. Under this same definition a land company who had laid out certain lands, of which they were the owners, for building purposes, and made roads across them, which roads they had dedicated to the public so far as any act of theirs could do so, but no proceedings had been taken to make the roads repairable by the parish, were held not to be the "owners" of the land so far as regards the soil of the roads irrevocably dedicated to the public: *Plumstead Board* v. *British Land Co.*, L. R. 10 Q. B. 203, 44 L. J. Q. B. 38, 32 L. T. N. S. 94, 23 W. R. 634.

See further the notes to s. 150, *post*, p. 119, and *Cook* v. *Montagu*, *post*, p. 92.

As to whether a receiver appointed by the Court of Chancery is an "owner" as above defined, see *Eddleston* v. *Francis*, 7 C. B. N. S. 568.

(2) This is the definition of net annual value given by the Parochial Assessment Act, 1836, 6 & 7 Will. IV. c. 96, s. 1.

(3) "Includes" is used in this clause by way of *extension* of the meaning of the word "street." See *Nutter* v. *Accrington Local Board*, *post*, p. 46. And as to the difference between the expressions "means" and "includes" in the interpretation clauses of an Act of Parliament, see *R.* v. *JJ. Cambridgeshire*, 6 E. & B., *per* Erle, J., at p. 1007.

Sec. 4. "House" includes schools, also factories and other buildings in which [*more th twenty*] persons are employed [*at one time*] (1):

"Drain" means any drain of and used for the drainage of one building only, premises within the same curtilage, and made merely for the purpose of co municating therefrom with a cesspool or other like receptacle for drainage, with a sewer into which the drainage of two or more buildings or premi occupied by different persons is conveyed (2):

"Sewer" includes sewers and drains of every description, except drains to wh the word "drain" interpreted as aforesaid applies, and except drains ves in or under the control of any authority having the management of roads not being a local authority under this Act (3):

Whether or not a road is a street is a question of fact: *Maude* v. *Baildon Bo* *post*, p. 120.

The *primâ facie* meaning of "street" is confined to the roadway and footways, bu may include the houses abutting thereon: *London, Chatham and Dover Ry.* v. *Corpora of London*, 19 L. T. N. S. 250; *Baker* v. *Mayor of Portsmouth*, L. R. 3 Ex. D. 4, 47 L Ex. 289, 37 L. T. N. S. 381; and see *Galloway* v. *Corporation of London*, L. R. 1 H. L. 35 L. J. Ch. 477, and *Robinson* v. *Barton-Eccles Board*, *post*, p. 128.

A turnpike road, if it is *in fact* a street, is not prevented by the above interpreta clause from being a street; and, therefore, a street which is also a turnpike road is excluded from the operation of ss. 68 and 144, *post*, p. 113: *Nutter* v. *Accrington L Board*, L. R. 4 Q. B. D. 375, 48 L. J. Q. B. 487, 40 L. T. N. S. 802, *per* Brett and Co L.JJ., Bramwell, L.J., *diss.*, reversing the judgment of the Queen's Bench Divis The word "streets" in this Act extends to places which are in all respects private, over which the public have no right: *Taylor* v. *Corporation of Oldham*, L. R. 4 Ch 395, 46 L. J. Ch. 105, 35 L. T. N. S. 636, 25 W. R. 178, Jessel, M.R., who cites definition of the word from the Imperial Dictionary, *viz.*, "A street is properly a pa way or road; but in usage, any way or road in a city having houses on one or both si

See further, *Le Neve* v. *Vestry Mile End Old Town*, 8 E. & B. 1054, 27 L. J. Q. B. and the notes to ss. 149, 150, 157 (1), *post*.

As to "turnpike road," and as to "county bridge," see the Highway Acts, *post*.

(1) This clause is by way of extension of the meaning of the word "house." See *N* v. *Accrington Local Board*, and *R.* v. *JJ. Cambridgeshire*, *ante*, p. 45. A small piece of gro immediately in front of a house, and occupied with it, was held to be "a part of the h within the meaning of s. 92 of the Lands Clauses Consolidation Act, 1845: *Mars* *London, Chatham & Dover Ry.*, L. R. 6 Eq. 101, 37 L. J. Ch. 483. And it has been down that the word house in the same section includes all that would pass by a de of the house; but that it does not include land which is not necessary for the convenie use and occupation of the house, but only for the personal use and occupation of owner and occupier: *Steele* v. *Midland Ry.*, L. R. 1 Ch. App. 275, 13 L. T. N. S. 14 *ib.* 3, 14 W. R. 367. See the section of the Act *post*. Under the Folkestone L Improvement Act, 1855 (which incorporated the Towns Improvement Act, 1847, giving power to prescribe the line of any "house" to be built in streets, and to houses to be set back, so as to allow a certain width of street, compensation being ma the "owner," it was held that a church was a house and the vicar an owner within Act: *Corporation of Folkestone* v. *Woodward*, L. R. 15 Eq. 159, 42 L. J. Ch. 782. church and the land appurtenant to it is not rateable, either as a house or land, t expenses of paving a new street under the Metropolitan Improvement Acts, 18 & 19 c. 120, s. 105, and 25 & 26 Vict. c. 102, s. 77: *Angell* v. *Paddington Vestry*, L. R. 3 714, 37 L. J. M. C. 171, 9 B. & S. 496, 16 W. R. 1167.

The words in italics and between brackets are repealed by the Factory and Work Act, 1878, 41 & 42 Vict. c. 16, s. 107, *post*.

(2) See the note to the word "sewer," *infra*.

"Curtilage" is "a court yard, backside or piece of ground lying near or belonging dwelling house."—*Wharton's Law Lexicon*.

(3) "The word 'drain,' as used in the Act (The Public Health Act, 1848, the c sponding interpretation clauses of which are similar to the above), means a passag

"Slaughter-house" includes the buildings and places commonly called slaughter-houses and knackers yards, and any building or place used for slaughtering cattle, horses or animals of any description for sale:

"Water company" means any person or body of persons corporate or unincorporate supplying, or who may hereafter suppiy, water for his or their own profit:

"Waterworks" includes streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock in trade of any water company:

"Bakehouse Regulation Act" means 26 & 27 Vict. c. 40 (Bakehouse Regulation Act, 1863) (1):

"Artizans and Labourers Dwellings Act" means 31 & 32 Vict. c. 130 (Artizans and Labourers Dwellings Act, 1868):

"Baths and Wash-houses Acts" means 9 & 10 Vict. c. 74 (An Act to encourage the establishment of Public Baths and Wash-houses); 10 & 11 Vict. c. 61 (An Act to amend the Act for the establishment of Public Baths and Wash-houses):

"Labouring Classes Lodging Houses Act" means 14 & 15 Vict. c. 34 (Labouring Classes Lodging Houses Act, 1851); 29 & 30 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1866); 30 & 31 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1867):

"Sanitary Acts" means all the above-mentioned Acts and the Acts mentioned in Part I. of Schedule V. to this Act (2):

"Sanitary purposes" means any object or purposes of the Sanitary Acts:

"Court of Quarter Sessions" means the court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place in which the matter requiring the cognizance of general or quarter sessions arises:

"Court of Summary Jurisdiction" means any justice or justices of the peace, stipendiary or other magistrate or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to:

"Summary Jurisdiction Acts" means the Act of the session of the eleventh and

sewage from a single house only, irrespective of the consideration whether it then falls into a cesspool or larger sewer. The word 'sewer' comes from the word to 'sew,' *i.e.*, to drain, and has a much more extended signification, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, &c. In the common sense of the term it means a large and generally, though not always, underground passage for fluid and feculent matter from a house or houses to some other locality, but it does not comprise a cesspool for the purpose of retaining the sewage, whether as a simple deposit or to be converted into manure or other useful purpose." *Sutton* v. *Mayor of Norwich*, 27 L. J. Ch. 739, 31 L. T. 389, Kindersley, V.-C. A stream or watercourse, about a mile and a half in length, from 15 to 14 feet in breadth, and from 5 to 3 feet in depth, supplied by the drainage, natural and artificial, of cultivated land, and receiving at one point the drainage of two or three houses in its passage to the river into which it flowed, was held not to be a sewer within the meaning of the Public Health Act, 1848: *R.* v. *Local Board of Health of Godmanchester*, L. R. 1 Q. B. 328, 35 L. J. Q. B. 125, 14 L. T. N. S. 104, 14 W. R. 375. A marsh wall or embankment that keeps back the river Thames at high water from inundating the Isle of Dogs, and through which sewers pass which drain the isle at low water, is a sewer within the Metropolitan Local Management Act, 18 & 19 Vict. c. 120, s. 204: *Poplar District Board* v. *Knight*, E. B. & E. 408, 28 L. J. M. C. 37, 5 Jur. N. S. 196.

(1) Repealed by the Factories and Workshops Act, 1878, 41 & 42 Vict. c. 16, s. 107. The provisions of this Act, so far as it concerns local authorities, are set out *post*.

(2) *Post*, p. 255. As to the meaning of "Sanitary Act" and "sanitary work," in the Public Health Act, 1875, (Support of Sewers) Amendment Act, 1883, 46 & 47 Vict. c. 37, see that Act, *post*.

Secs. 4–6.

twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same (1).

PART II.

AUTHORITIES FOR EXECUTION OF ACT (2).

Constitution of Districts and Authorities.

Urban and rural sanitary districts.

5 (3). For the purposes of this Act England, except the metropolis (4), shall consist of districts to be called respectively—

(1.) Urban sanitary districts, and

(2.) Rural sanitary districts,

(in this Act referred to as urban and rural districts); and such urban and rural districts shall respectively be subject to the jurisdiction of local authorities, called urban sanitary authorities and rural sanitary authorities (in this Act referred to as urban and rural authorities), invested with the powers in this Act mentioned.

Description of urban districts and urban authorities.

6 (5). Urban districts shall consist of the places in that behalf mentioned in the first column of the table in this section contained, and urban authorities shall be the several bodies of persons specified in the second column of the said table in relation to the said places respectively,

Urban district.	Urban authority.
Borough[6] constituted such either before or after the passing of this Act (9).	The Mayor, Aldermen, and Burgesses acting by the Council.
Improvement Act district (7) constituted such before the passing of this Act, and having no part of its area situated within a borough or Local Government district.	The Improvement Commissioners.
Local Government district (8) constituted such either before or after the passing of this Act, having no part of its area situated within a borough, and not coincident in area with a borough or Improvement Act district (9).	The Local Board.

Provided that—

(1.) Any borough (6), the whole of which is included in and forms part of a Local Government district (8) or Improvement Act district (6), and any

(1) *Post*, p. .

(2) The headings of different portions of a statute are to be referred to, to determine the sense of any doubtful expression in a section ranged under any particular heading. *Hammersmith Ry.* v. *Brand*, L. R. 4 H. L. 171, 38 L. J. Q. B. 265, 21 L. T. N. S. 238, 18 W. R. 12, and *R.* v. *Local Government Board*, 52 L. J. M. C. at p. 10, *per* Brett, L.J.

(3) This is a re-enactment of 35 & 36 Vict. c. 79, s. 3. As to the authorities existing at the time of this Act, see s. 326, *post*, p. 218.

(4) "Metropolis" is defined *ante*, p. 42.

(5) This practically a re-enactment of 35 & 36 Vict. c. 79, s. 4. As to contracts by urban authorities, see *Andrews* v. *Mayor, &c., of Ryde*, *post*, p. 140.

(6) Defined *ante*, p. 42. (7) Defined *ante*, p. 44. (8) Defined *ante*, p. 43.

(9) Provision is made by s. 310, *post*, p. 214, for the case of an Improvement Act or Local Government district becoming a borough. As to power of Local Government Board to alter areas and authorities already existing, and to transfer their powers, see s. 270, *post*, p. 195.

Improvement Act district which is included in and forms part of a Local Government district, and any Local Government district which is included in and forms part of an Improvement Act district, shall for the purposes of this Act be deemed to be absorbed in the larger district in which it is included, or of which it forms part; and the Improvement Commissioners or Local Board, as the case may be, of such larger district, shall be the urban authority therein; and

(2.) Where an Improvement Act district is coincident in area with a Local Government district, the Improvement Commissioners, and not a Local Board, shall be the urban authority therein; and

(3.) Where any part of an Improvement Act district is situated within a borough or Local Government district, or where any part of a Local Government district is situated within a borough, the remaining part of such Improvement Act district or of such Local Government district so partly situated within a borough shall for the purposes of this Act continue subject to the like jurisdiction as it would have been subject to if this Act had not been passed, unless and until the Local Government Board by provisional order otherwise directs (1).

For the purposes of this Act, the boroughs of Oxford, Cambridge, Blandford, Calne, Wenlock, Folkestone, and Newport Isle of Wight, shall not be deemed to be boroughs, and the borough of Cambridge shall be deemed to be an Improvement Act district, and the borough of Oxford to be included in the Local Government district of Oxford (2). So much of the borough of Folkestone as is not included within the Local Government district of Sandgate shall be an urban district, and shall be under the jurisdiction, for the purposes of this Act, of the authority for executing "The Folkestone Improvement Act, 1855."

Incorporation of Local Boards and Improvement Commissioners.

7 (3). Every Local Board, and any Improvement Commissioners being an urban authority and not otherwise incorporated, shall continue to be or be a body corporate, designated (in the case of Local Boards and Improvement Commissioners being urban sanitary authorities at the time of the passing of this Act) by such name as they then bear, and (in the case of Local Boards constituted after the passing of this Act) by such name as they may with the sanction of the Local Government Board adopt (4); with a perpetual succession and a common seal, and with power to sue and be sued in such name, and to hold lands without any license in mortmain for the purposes of this Act (5).

Election of Local Boards.

8 (6). The members of Local Boards shall be elective; and the number and qualification of members of Local Boards, the qualification of electors, the mode and expenses of election, and the proceedings incident thereto, the retirement and disqualification of members, the proceedings in case of lapse of a Local Board, and

(1) As to case of Local Boards established before the passing of the Local Government Act, 1858, 21 & 22 Vict. c. 98, comprising the whole or part of a borough, see schedule 2, r. 71, *post*, p. 241.

(2) See s. 342, *post*, p. 223.

(3) This is a re-enactment of the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 46. Previously there was a difference between the authentification of documents given by corporate and non-corporate Boards. See Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 35. As to the constitution, name, &c., of Joint Boards, see s. 280, *post*, p. 199.

(4) As to change of name, see s. 311, *post*, p. 214.

(5) As to personal liability of individual members of Board for breach of injunction, see *Sutton* v. *Barnet Local Board*, W. Notes, 1877, p. 167. As to the purchase of lands by local authority, see ss. 175, 176, *post*, pp. 141, 142.

(6) The previous rules as to the election, qualification, &c., of members were contained in Public Health Act, 1848, 11 & 12 Vict. c. 63, ss. 13, &c., and the Local Government Act, 1858, 21 & 22 Vict. c. 98, ss. 24, &c.

As to the election, qualification, &c., of members of town commissioners under local Act heretofore regulated by the Local Government Acts, see section 312, *post*. And for saving clause as to the composition of, and qualification for Local Boards constituted by Order in Council under the Public Health Act, 1848, see section 339, *post*, p. 222.

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all other matters relating to the election of members of Local Boards, shall be governed by the rules contained in Schedule II. to this Act.

Description of rural districts and rural authorities.

9 (1). The area of any union (2) which is not coincident in area with an urban district (3), nor wholly included in an urban district (in this section called a rural union), with the exception of those portions (if any) of the area which are included in any urban district, shall be a rural district, and the guardians of the union shall form the rural authority of such district: Provided that—

(1.) An *ex officio* guardian resident in any parish or part of a parish belonging to such union, which parish or part of a parish forms or is situated in an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority, unless he is the owner (4) or occupier of property situated in the rural district of a value sufficient to qualify him as an elective guardian for the union (5):

(2.) An elective guardian of any parish belonging to such union, and forming or being wholly included within an urban district, shall not act or vote in any case in which guardians of such union act or vote as members of the rural authority:

(3.) Where part of a parish belonging to a rural union forms or is situated in an urban district, the Local Government Board may by order divide such parish into separate wards, and determine the number of guardians to be elected by such wards respectively, in such manner as to provide for the due representation of the part of the parish situated within the rural district; but until such order has been made the guardian or guardians of such parish may act and vote as members of the rural authority in the same manner as if no part of such parish formed part of or was situated in an urban district.

Where the number of elective guardians who are not by this section disqualified from acting and voting as members of the rural authority is less than five, the Local Government Board may from time to time by order nominate such number of persons as may be necessary to make up that number from owners (4) or occupiers of property situated in the rural district of a value sufficient to qualify them as elective guardians for the union, and the persons so nominated shall be entitled to act and vote as members of the rural authority, but not further or otherwise.

Subject to the provisions of this Act, all statutes, orders and legal provisions applicable to any Board of Guardians shall apply to them in their capacity of rural authority under this Act for purposes of this Act; and it is hereby declared that the rural authority are the same body as the guardians of the union or parish for or within which such authority act.

Powers and duties of urban authorities.

10. In addition to the powers, rights, duties, capacities, liabilities and obligations exercisable by or attaching to an urban authority under this Act, every urban authority shall within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same) have, exercise, and be subject to all the powers, rights, duties, capacities, liabilities and obligations within such district exercisable or attaching by and to the local authority under the Bakehouse Regulation Act (6), and the Artizans and Labourers Dwellings Act, or any Acts amending the same.

Where the Baths and Wash-houses Acts and the Labouring Classes Lodging Houses Acts, or any of them, are in force within the district of any urban authority, such authority shall have all powers, rights, duties, capacities, liabilities

(1) This is a re-enactment of the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 5, and Public Health Act, 1874, 37 & 38 Vict. c. 89, s. 1, with the addition of the power given to the Local Government Board to nominate members so as to make up the number of members to five. The Board possessed a similar power as respects members of Boards of Guardians in the metropolis by 30 Vict. c. 6, s. 79.

(2) Defined *ante*, p. 44. (3) See s. 6, *ante*, p. 48.

(4) Defined *ante*, p. 45.

(5) As to who are *ex officio* guardians, see 4 & 5 Will. IV. c. 76, s. 38, and 7 & 8 Vict. c. 101, s. 24.

(6) Repealed, see note (1), *ante*, p. 47.

and obligations in relation to such Acts exercisable by or attaching to the Council, Incorporated Commissioners, Local Board Improvement Commissioners and other commissioners or persons acting in the execution of the said Acts, or any of them.

Where the Baths and Wash-houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts; and where the Labouring Classes Lodging Houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts.

Where any local Act other than an Act for the conservancy of any river is in force within the district of an urban authority, conferring on any commissioners, trustees or other persons powers for purposes the same as or similar to those of this Act (but not for their own pecuniary benefit), all the powers, rights, duties, capacities, liabilities and obligations of such commissioners, trustees or other persons in relation to such purposes shall be transferred and attach to the said urban authority (1).

Powers and duties of rural authorities

11. In addition to the powers, rights, duties, capacities, liabilities and obligations exercisable by or attaching to a rural authority under this Act (2), every rural authority shall, within their district (to the exclusion of any other authority which may have previously exercised or been subject to the same), have, exercise, and be subject to all the powers, rights, duties, capacities, liabilities and obligations within such district exercisable by or attaching to the local authority under the Bakehouse Regulation Act, or any Acts amending the same (3).

Vesting of property in local authorities.

12. From and after the passing of this Act all such property, real and personal, including all interests, rights and easements in to and out of property real and personal (including things in action), as belongs to or is vested in, or would but for this Act have belonged to or been vested in the Council of any borough, or any Improvement Commissioners or Local Board as the urban sanitary authority of any district under the Sanitary Acts, or any Board of Guardians as the rural sanitary authority of any district under those Acts, shall continue vested or vest in such Council, Improvement Commissioners, or Local Board, or Board of Guardians as the local authority of their district under this Act, subject to all debts, liabilities and obligations affecting the same property.

All debts, liabilities and obligations incurred by any authority whose powers, rights, duties, liabilities, capacities and obligations are under this Act exerciseable by or attached to a local authority, may be enforced against the local authority to the same extent and in the same manner as they might have been enforced against the authority which incurred the same (4).

(1) See *Overseers of Walsall* v. *London & N. W. Ry.*, *ante*, p. 42.

(2) As to general power of Local Government Board to invest rural authority with powers of urban authority, see section 276, *post*, p. 198.

(3) Repealed, see note (1), *ante*, p. 47.

(4) See the saving clause, section 326, *post*, p. 218.

In 1875 a decree was made against the Corporation of Birmingham as the sanitary authority thereof, granting a perpetual injunction to restrain them from allowing sewage to flow into a river, the injunction being suspended for five years to give the borough an opportunity to execute certain works. At the expiration of that time it was desired to enforce the injunction, but in the meantime the Birmingham, Tame and Rea District Drainage Board, by a provisional order under section 279, *post*, p. 199, had succeeded to the rights and liabilities of the Corporation of Birmingham in respect of the sewage:—*Held* by Court of Appeal (discharging the order of Bacon, V.-C.) that liberty could not be given to amend the original bill by making the Birmingham, Tame and Rea District Drainage Board parties, and that the decree could only be enforced against them by an action. *A.-G.* v. *Corporation of Birmingham*, L. R. 15 Ch. D. 423, 43 L. T. N. S. 77, 29 W. R. 127, followed *A.-G.* v. *Dorking Union*, L. R. 20 Ch. D. 595, at p. 600.

Where the sewers, &c., of a district become vested in a local authority upon their becoming the sanitary authority of the district, and they do no act to create or increase a nuisance, they are not liable to an action or injunction in respect of a nuisance existing before they became the sanitary authority and allowed by them to continue. The remedy is that given by section 299, *post*, or by prerogative writ of mandamus: *Glossop* v. *Heston Local Board*, *post*, p. 53.

PART III.

SANITARY PROVISIONS (1).

Sewerage and Drainage (1).

Regulations as to Sewers and Drains (1).

Sewers vested in local authority.

13 (2). All existing and future sewers (3) within the district of a local authority, together with all buildings, works, materials, and things belonging thereto,

Except

(1.) Sewers made by any person (4) for his own profit, or by any company for the profit of the shareholders; and

(2.) Sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land; and

(3.) Sewers under the authority of any commissioners of sewers appointed by the Crown (5),

shall vest in and be under the control of such local authority (6).

Provided that sewers within the district of a local authority which have been or which may hereafter be constructed by or transferred to some other local authority, or by or to a sewage board or other authority empowered under any Act of Parliament to construct sewers, shall (subject to any agreement to the contrary) vest in and be under the control of the authority who constructed the same or to whom the same have been transferred.

Power to purchase sewers.

14 (7). Any local authority may purchase or otherwise acquire from any person (8) any sewer (9), or any right of making or of user or other right in or respecting a sewer (with or without any buildings, works, materials, or things belonging thereto), within their district, and any person may sell or grant to such authority any such

(1) As to use of headings in determining the sense of sections ranged under them, see *Hammersmith Ry.* v. *Brand*, *ante*, p. 48.

(2) This section is the same as the Public Health, 1848, 11 & 12 Vict. c. 63, s. 43, but the proviso at the end is new. This and the following section extend to rural authorities.

(3) See the definition of "sewer" *ante*, p. 46, from which it follows that drains vested in or under the control of any authority having the management of roads, not being a local authority under this Act, do not vest in the local authority under this section.

(4) Defined *ante*, p. 44.

(5) See the additional saving clause, s. 327, *post*, p. 218.

(6) "That is to say, that instead of allowing the subsoil to remain in the owner of the soil, subject to an easement or right of sewage or drainage, the absolute property in the sewer (which means not merely the brick barrel or whatever it may be forming the sewer, but the whole interior of the sewer, that is, the whole of the space occupied by it) is now vested in the sewer authorities. And if the sewer is a large one, it amounts in substance for all useful purposes to the whole of the subsoil, and that is absolutely vested in the corporation." *Per* Jessel, M. R., *Taylor* v. *Corporation, Oldham*, L. R. 4 Ch. D. 395, at p. 411, 35 L. T. N. S. 700. But the sewer does not vest in them so as to give them a right to stop it up, and thereby cause a nuisance to the inhabitants; their ownership is a modified one, limited to the purposes of carrying out their duties imposed by Parliament. See *A.-G.* v. *Dorking Union*, L. R. 20 Ch. Div. 595, *per* Jessel, M. R., at p. 600; and see section 18, *post*, p. 56. Compare section 149, *post*, p. 117, which "vests" streets in the urban authority, and see note (2), p. 118.

(7) This is in effect the same as the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 44, except that in the second clause of the section the words were "acquired a *perpetual* right to use," &c., the word "perpetual" being now omitted.

(8) Defined *ante*, p. 44.

(9) See note (2) to the previous section.

sewer right or property belonging to him; and any purchase money paid by such authority in pursuance of this section shall be subject to the same trusts (if any) as the sewer right or property sold was subject to. Secs. 14–15.

But any person who, previously to the purchase of a sewer by such authority, has acquired a right (1) to use such sewer shall be entitled to use the same, or any sewer substituted in lieu thereof, to the same extent as he would or might have done if the purchase had not been made (2).

15. Every local authority shall keep in repair all sewers belonging to them, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act (3).

(1) See note (7), p. 52.

(2) As to power of local authority in certain cases to close drains communicating with their sewers upon providing others as effectual for the purpose of drainage, see section 24, *post*, p. 59.

(3) This and the three following sections, 16, 17, and 18, are founded upon the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 45; the Local Government Amendment Act, 1858, 24 & 25 Vict. c. 61, s. 4; and the Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75, s. 4, and should be read together. The 19th section should also be read with them.

As to the power of local authorities to acquire lands for the purposes of this Act, and the incorporation of the Lands Clauses Consolidation Acts, see sections 175, &c., *post*.

Enforcing performance by local authority.

By section 299, *post*, p. 207, special provision is made for enforcing the duties created by the Act, if the local authority fails to perform them. These provisions do not oust the jurisdiction of the Courts in the case of any legal wrong done by the local authority. But where the local authority merely neglects to perform their duty (*e.g.*, under the present section in providing a satisfactory and healthy system of drainage), it is no ground of action by an individual for damages or an injunction, though on proper evidence of a refusal by the authority a *prerogative writ of mandamus* might be obtained in the Queen's Bench Division of the High Court: *Glossop* v. *Heston Local Board*, L. R. 12 Ch. Div. 102, 49 L. J. Ch. 89, 40 L. T. N. S. 736, 28 W. R. 111; *A.-G.* v. *Dorking Union*, *post*, p. 56. So, in the absence of negligence on their part, a local authority is not responsible for any injury resulting to an individual from the disrepair of a sewer: *Hammond* v. *Vestry of St. Pancras*, L. R. 9 C. P. 316, 43 L. J. C. P. 157, 30 L. T. N. S. 296, 22 W. R. 826; *Whitehouse* v. *Birmingham Canal Co.*, 27 L. J. Ex. 25. But where Commissioners, acting under powers conferred by Act of Parliament, ordered new sewers to be constructed under a contract and plans which did not provide for a "penstock" or flap necessary to prevent the plaintiff's premises from being flooded, and the consequence was that the premises were flooded with sewage, the Commissioners were held liable to be sued for negligence: *Ruck* v. *Williams*, 3 H. & N. 308, 27 L. J. Ex. 357. And for an action against a Local Board under the Metropolis Local Management Act, 1855, for neglecting to keep a sewer clean, whereby the plaintiff's premises were flooded, see *Meek* v. *Whitechapel Board*, 2 F. & F. 144, and *Brown* v. *Sargent*, 1 F. & F. 112. But where a water company have observed the directions of the Act of Parliament in laying down their pipes, they are not responsible for an escape of water from them not caused by their own negligence, and the fact that their precautions proved insufficient against the effect of a winter of extreme coldness such as no man could have foreseen is not sufficient to render them liable for negligence: *Blyth* v. *Birmingham Waterworks*, 11 Exch. Rep. 781, 25 L. J. Ex. 212, 2 Jur. N. S. 333, 4 W. R. 294.

Liability for negligence.

Where damage was caused to a plaintiff by reason of his horse stepping upon a grid or grating put upon a highway under which was a sewer to drain the surface-water off the road into the sewer, through the defective state of the grid, a local authority, who were the surveyors of highways, and in whom also the sewers were vested, were held liable as owners of the sewer, for not keeping the grid in a proper state, though they might not be liable as surveyors of the highway: *White* v. *Hindley*, L. R. 10 Q. B. 219, 44 L. J. Q. B. 114, 32 L. T. N. S. 460, 23 W. R. 651, followed by Court of Appeal in *Blackmore* v. *Vestry of Mile End Old Town*, L. R. 9 Q. B. D. 451, 51 L. J. Q. B. 496, 46 L. T. N. S. 869, 30 W. R. 740. See also *Smith* v. *West Derby Local Board*, L. R. 3 C. P. D. 423,

Sec. 16.

Powers for making sewers.

16 (1). Any local authority may carry any sewer through, across, or under any turnpike road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriageway of any street, and, after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary), into, through, or under any lands whatsoever within their district (2).

47 L. J. C. P. 607; and further as to remedy by action for breach of statutory duty, see *Atkinson* v. *Newcastle and Gateshead Waterworks Co.*, L. R. 2 Ex. D. 441, 36 L. T. N. S. 761, 25 W. R. 794.

Remedy for injury done by local authority in pursuing the powers conferred by the Act.

Where an injury is done to an individual by a local authority in performing their duties or exercising their powers under an Act of Parliament, the question arises whether the remedy, if any, is that specially given by the Act, or whether an action may be brought in respect of the injury. It seems that if the injury be the necessary and inevitable result of the carrying out by the local authority of the Act, no action will lie, and the only remedy is that given by the Act; but if the authority be not necessarily obliged to commit the injury, an action will lie: *Cator* v. *Lewisham District Board*, 34 L. J. Q. B. 74 (Exch. Cham.); *A.-G.* v. *Colney Hatch Asylum*, *post*, p. 55; *A.-G.* v. *Metrop. Board of Works*, 9 L. T. N. S. 139, 27 J. P. Ch. 597, V.-C. Wood; *Boulton* v. *Crowther*, 2 B. & C. 703; *Blantyre* v. *Clyde Navigation Trustees*, W. Notes, 1871, p. 69; and see *Metrop. Asylum District* v. *Hill*, *post*, p. 89. The authority over sewers and the drainage powers given by Parliament do not authorise the committal of a nuisance by the local authority in the exercise of those powers, and they may be restrained by injunction: *A.-G.* v. *Hackney Board of Works*, L. R. 20 Eq. 626, 44 L. J. Ch. 545, 33 L. T. N. S. 244; *A.-G.* v. *Bradford Canal Co.*, L. R. 2 Eq. 71, 35 L. J. Ch. 619, 14 L. T. N. S. 248, 15 L. T. N. S. 9. Notwithstanding the obligation imposed by the Act upon a Local Board to drain their district, their right to send sewage into the sewers of an adjoining district is no higher than the right of a landowner to send sewage from his land on to the land or into the drains of a neighbouring landowner: *A.-G.* v. *Acton Board*, L. R. 22 Ch. D. 221, 52 L. J. Ch. 108, 47 L. J. N. S. 510, 31 W. R. 153. But where a Local Board have once authorised drains to be connected with their sewers, the Court will not grant an injunction to *stop up* these drains: *Ibid.* And a public body may be liable to an indictment for causing a public nuisance by the exercise of powers conferred on them by Act of Parliament: *R.* v. *Bradford Navigation*, 34 L. J. Q. B. 191, 11 Jur. N. S. 766, 29 J. P. 404. An action will lie against a local authority for negligently carrying out works so as to cause a nuisance: *Southampton Floating Bridge Co.* v. *Southampton Local Board*, 28 L. J. Q. B. 41; and see the notes to section 17, *post*.

Compensation for injury.

By section 308, *post*, p. 211, it is provided that where any person sustains any damage by reason of the exercise of any of the powers of this Act, full compensation shall be made to him.

As to the power of the local authority to compel the paving, &c., of private streets, see section 150, *post*, p. 119.

The Court has power, under the Settled Estates Act, 1877, 40 & 41 Vict. c. 18, by sub-sections 20 and 21, to direct part of settled estates to be laid out for streets, &c., either to be dedicated to the public or not, and to direct that such streets, &c., shall be made and executed, and to give directions as to the payment of the costs of making, &c., and of repair, &c.

As to use of patent by local authority for purpose of purifying and deodorizing sewage, see *Higgs* v. *Godwin*, *post*, p. 60.

(1) See note (1) to section 15, *ante*, p. 53.

(2) It is not necessary that the local authority should purchase the lands for the purpose of exercising these powers. It is only necessary to make compensation for the damage done: *N. London Ry.* v. *Metrop. Board of Works*, 1 Johns. 405, 28 L. J. Ch. 909; and see *Roderick* v. *Aston Local Board*, L. R. 5 Ch. Div. 328, 46 L. J. Ch. 802, 36 L. T. N. S. 328, 25 W. R. 403. Entrances or man-holes, made for the purpose of entering the sewer, are part of the sewer, and may be made without purchasing the land for the purpose: *Swanston* v. *Twickenham Local Board*, L. R. 11 Ch. Div. 838, 48 L. J. Ch. 623, 40 L. T. N. S. 734, 27 W. R. 924.

They may also (subject to the provisions of this Act relating to sewage works without the district of the local authority) exercise all or any of the powers given by this section without their district for the purpose of outfall or distribution of sewage (1).

Sewage to be purified before being discharged into streams.

17 (2). Nothing in this Act shall authorise any local authority to make or use any sewer, drain, or outfall for the purpose of conveying sewage or filthy water into any natural stream or watercourse, or into any canal, pond, or lake, until such sewage or filthy water is freed from all excrementitious or other foul or noxious matter, such as would affect or deteriorate the purity and quality of the water in such stream or watercourse, or in such canal, pond, or lake.

The local authority are not confined to carrying the sewer underground; they may carry it partly under and partly over the ground, or wholly over the ground: *Roderick* v. *Aston Local Board, supra.*

In the case of *Re Corporation of Dudley*, L. R. 8 Q. B. D. 86 (C. A.), 51 L. J. Q. B. 121, 45 L. T. N. S. 733, it was decided that a landowner is bound to preserve to the sewer subjacent support, and is entitled to be compensated immediately for such obligation. But now by the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, 46 & 47 Vict. c. 37, s. 4, it is provided that a local authority shall not, by reason only of anything contained in the Sanitary Act, under which a sanitary work is constructed, be deemed entitled to or bound to acquire or to make compensation for any right to support against any person owning or interested in any mine. See the Act, *post.* In *Metrop. Board of Works* v. *Metrop. Ry.*, L. R. 4 C. P. 192, 38 L. J. C. P. 172, 19 L. T. N. S. 744, 17 W. R. 416, it was held that a local authority acquired no right to *lateral* support. But see *Re Corporation of Dudley, supra.*

Section 305, *post*, p. 210, does not apply to proceedings under this section, and a local authority is not justified in attempting to carry out a project for sewerage which, by the description contained in their notice, would cause a nuisance, and they may be restrained by injunction from so doing: *Lamacroft* v. *St. Thomas's Rural Sanitary Authority*, 42 L. T. N. S. 365, 44 J. P. 441.

A notice is reasonable when it specifies the object of an entry to be the construction of a sewer of certain dimensions, and shows that the entry will be made at a particular point, and that the sewers will go from that point in an oblique direction. It is not necessary that the notice should be accompanied by a map: *Cleckheaton Society* v. *Jackson*, 14 W. R. 950. As to the giving of notices under this Act, see sub-section 266, &c., *post*, p. 191.

As to compensation for the damage done by the local authority, see section 308, *post.* The landowner is entitled to immediate compensation in respect of the obligation to preserve subjacent support, and for being deprived of free power to work subjacent mines, but not for the risk of percolation of sewage into the subjacent mines: *Re Corporation of Dudley, supra.*

(1) See the provisions as to sewage works without the district, sections 32, 33, and 34, *post*, pp. 61, 62. And as to construction of the earlier Acts, see *Haywood* v. *Lowndes*, 4 Drew. 454, 28 L. J. Ch. 400, 5 Jur. N. S. 185, 7 W. R. 279.

(2) See note (3) to section 15, *ante*, p. 53. This section is in the nature of a proviso to the two former sections. It was, in fact, so expressed to be in the earlier Act, the Local Government Amendment Act, 1858, 24 & 25 Vict. c. 61, s. 4, "That is to say, although they (*i.e.*, the local authority) have power to make all such sewers as they think necessary for the district, they must not, under that power, make or use any sewer they acquire for the purpose of so conveying sewage water." *Per* James L.J., *Glossop* v. *Heston Local Board, ante*, p. 53.

Generally, if a public body, which has powers given it by statute for the performance of a particular object, exercises its powers so as to injure the property of others, it is responsible for the injury, unless the act done was absolutely necessary for the performance of the object of the statute: *A.-G.* v. *Colney Hatch Asylum*, L. R. 4 Ch. App. 146, 38 L. J. Ch. 265; *Metropolitan Asylum District* v. *Hill, post*, p. 89; and see the cases cited *ante*, p. 53. And if a public body transgress the powers conferred on them by statute, an injunction will be granted, in which case it is immaterial that no damage has been caused to anyone thereby. And the rule is the same, whether the information

Sec. 18.

Alteration and discontinuance of sewers.

18. Any local authority may from time to time enlarge, lessen, alter the course of, cover in, or otherwise improve any sewer belonging to them, and may discontinue, close up, or destroy any such sewer that has in their opinion become

be laid *ex officio* by the Attorney-General, or at the relation of a private individual: *A.-G.* v. *Cockermouth*, L. R. 18 Eq. 172, 44 L. J. Ch. 118, 30 L. T. N. S. 590, 22 W. R. 619. See further, *Manchester Ry.* v. *Worksop*, 23 Beav. 198, 26 L. J. Ch. 345; *A.-G.* v. *Hackney*, L. R. 20 Eq. 626, 44 L. J. Ch. 545, 33 L. T. N. S. 244.

Where the right to an injunction against a nuisance or other injury is shown, it is no part of the duty of the Court to inquire in what way the defendants can best remove it: *A.-G.* v. *Colney Hatch Asylum*, *supra*. But when the difficulty of removing the injury is great, the Court will suspend the operation of the injunction for a time, with liberty to apply for an extension of time: *Ibid.* Where, however, an injunction was granted on 1st March, restraining a Local Board of Health from causing or permitting sewage or water polluted therewith to pass through drains or channels under their control into a river, to the injury of the plaintiff, a miller, residing about three miles below the outfall, an execution was stayed till the 1st of July, and the Board did not subsequently to that date stop the flow of sewage into the river, but alleged that they had not discovered a mode of deodorizing the sewage; that compliance with the order was practically impossible without stopping the drainage of the town; that there had been no wilful default; and that sequestration would be ineffectual, as the property of the Board was public property, and futile, as the members of the Board would all resign,—it was held that there had been a gross and wilful contempt, and sequestration was ordered to issue: *Spokes* v. *Banbury Board*, L. R. 1 Eq. 42, 35 L. J. Ch. 105, 13 L. T. N. S. 426, 11 Jur. N. S. 1010.

But where a sanitary authority have not themselves constructed sewers which are a nuisance, but only permit them to be used as formerly by the inhabitants, they are not doing an act which can be restrained. If they are neglecting their duty in providing a sufficient sanitary scheme for the neighbourhood, the remedy is by mandamus: *A.-G.* v. *Dorking Union*, L. R. 20 Ch. Div. 595 (C. A.), 51 L. J. Ch. 585, 46 L. J. N. S. 573, 30 W. R. 579; *Glossop* v. *Heston Board*, *ante*, p. 53. And the Court will not make an order against a public body or against individuals to do an act, unless it is satisfied that it is within their power to do it: *A.-G.* v. *Dorking Union*, *supra*, *per* Jessel, M.R. In dealing with the question of restraining a public body from continuing a state of things which existed before the commencement of their powers, the Court must take into consideration the balance of convenience: *Ibid.*

For further cases dealing with injunctions to restrain nuisances by pollutions of streams, &c., see *A.-G.* v. *Luton*, 2 Jur. N. S. 180; *A.-G.* v. *Birmingham*, 4 K. & J. 528, 6 W. R. 811, 22 J. P. 561; *R.* v. *Darlington*, 6 B. & S. 562, 35 L. J. Q. B. 45, 13 W. R. 789; *A.-G.* v. *Kingston*, 34 L. J. Ch. 481, 12 L. T. N. S. 665, 11 Jur. N. S. 596; *A.-G.* v. *Leeds*, L. R. 5 Ch. 583, 39 L. J. Ch. 254; *Oldacre* v. *Hunt*, 1 Jur. N. S. 785; *N. Staffordshire Ry.* v. *Tunstall*, 39 L. J. Ch. 131; *Holt* v. *Rochdale*, 39 L. J. Ch. 761; *A.-G.* v. *Basingstoke*, 45 L. J. Ch. 726; *A.-G.* v. *Richmond*, 35 L. J. Ch. 597; *A.-G.* v. *Halifax*, L. R. 5 Ch. App. 116, 39 L. J. Ch. 129; *Bidder* v. *Croydon Local Board*, 6 L. T. N. S. 778; *Goldsmid* v. *Tunbridge Wells Commissioners*, L. R. 1 Eq. 166, 1 Ch. App. 349, 35 L. J. Ch. 88, 382, 14 Jur. N. S. 308, 13 L. T. N. S. 154.

Interfering with flow of water.

Where a local authority are interfering with a watercourse by drawing off the water flowing in a defined surface channel through adjoining land in a manner not authorised by Act of Parliament, they will be restrained from so doing: *Grand Junction Canal* v. *Shugar*, L. R. 6 Ch. App. 483, 24 L. T. N. S. 402, 19 W. R. 569. But where they direct underground waters not known to be formed into a stream flowing in a defined channel, no action lies against them: *Chasemore* v. *Richards*, 7 H. L. C. 349, 29 L. J. Ex. 81. See further *New River Co.* v. *Johnson*, 2 E. & E. 435, 29 L. J. M. C. 93; *R.* v. *Metrop. Board of Works*, 3 B. & S. 710, 32 L. J. Q. B. 105. As to compensation for injury so done, see section 308, *post*.

"Making or using."

"Making or using" means that they must not *make* a sewer which brings down the sewage into the river, or must not *use existing* sewers for bringing into a stream, &c., sewage which they *by other means bring into the old sewer*: *Glossop* v. *Heston Board*, *ante*, p. 53, *per* Cotton, L.J.

unnecessary, on condition of providing a sewer as effectual for the use of any person who may be deprived in pursuance of this section of the lawful use of any sewer: Provided that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance (1).

Cleansing sewers.

19 (2). Every local authority shall cause the sewers (3) belonging to them to be constructed, covered, ventilated and kept so as not to be a nuisance or injurious to health, and to be properly cleansed and emptied.

Map of system of sewerage.

20. An urban authority may, if they think fit, provide a map exhibiting a system of sewerage for effectually draining their district, and any such map shall be kept at their office, and shall at all reasonable times be open to the inspection of the ratepayers of their district (4).

Power of owners and occupiers within district to drain into sewers of local authority.

21 (5). The owner (6) or occupier of any premises within the district of a local authority shall be entitled to cause his drains (7) to empty into the sewers (8) of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by that authority to superintend the making of such communications (9).

Any person causing a drain to empty into a sewer of a local authority without complying with the provisions of this section shall be liable to a penalty not exceeding £20, and the local authority may close any communication between a drain and sewer made in contravention of this section, and may recover in a summary manner from the person so offending any expenses incurred by them under this section (10).

Use of sewers by owners and occupiers without district.

22 (11). The owner (12) or occupier of any premises without the district of a local authority may cause any sewer (13) or drain (14) from such premises to communicate with any sewer of the local authority on such terms and conditions as may be agreed on between such owner or occupier and such local authority, or as in case

(1) See note (3) to section 15, *ante*, p. 53.

As to power of persons having statutory authority to navigate rivers or canals, &c., to take up, direct or alter sewers constructed by local authority, or interfering with such rivers, canals, &c., see section 331, *post*.

(2) This is similar to the first portion of section 46 of the Public Health Act, 1848, 11 & 12 Vict. c. 63. The word "ventilated" is new.

As to enforcing performance of their duty by the local authority, and as to their liability for negligence, see the notes to section 15, *ante*, p. 53, &c.

(3) Defined *ante*, p. 46.

(4) Similar to the 41st section of the Public Health Act, 1848, 11 & 12 Vict. c. 63. The section does not apply to a rural authority.

(5) This section is a re-enactment of section 8 of the Sanitary Act, 1866, 29 & 30 Vict. c. 90. See section 47 of the Public Health Act, 1848, 11 & 12 Vict. c. 63.

(6) Defined *ante*, p. 45. (7) Defined *ante*, p. 46. (8) Defined *ante*, p. 46.

(9) As to the right of user of drains by prescription, see *Cawkwell* v. *Russell*, 26 L. J. Ex. 34; *A.-G.* v. *Dorking Union*, *ante*, p. 56, and the second clause of section 14, *ante*, p. 53.

As to negligence on the part of a Local Board in constructing drains under an agreement with an owner, &c., of premises, see *Hall* v. *Battley*, *post*, p. 58.

Where a person, contrary to his agreement, is using the sewers so as to cause a nuisance to a third party, the latter may obtain an injunction against the Local Board: *Charles* v. *Finchley Local Board*, L. R. 23 Ch. D. 767, 52 L. J. Ch. 554, 48 L. T. N. S. 569, 31 W. R. 717. But the Local Board cannot be compelled to bring an action against the person causing the nuisance: *Ibid.*

(10) As to the recovery of penalty and expenses, see section 251, *post*, p. 181.

(11) Founded on the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 9, and the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 49. The section applies to both urban and rural authorities.

(12) Defined *ante*, p. 45. (13) Defined *ante*, p. 46. (14) Defined *ante*, p. 46.

Secs. 22, 23. of dispute may be settled, at the option of the owner or occupier, by a Court of Summary Jurisdiction (1) or by arbitration in manner provided by this Act (2).

Power of local authority to enforce drainage of undrained houses.

23 (3). Where any house (4) within the district of a local authority is without a drain (5) sufficient for effectual drainage, the local authority shall by written notice require the owner (6) or occupier of such house, within a reasonable time therein specified, to make a covered drain or drains emptying into any sewer which the local authority are entitled to use, and which is not more than one hundred feet from the site of such house; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place not being under any house as the local authority direct; and the local authority may require any such drain or drains to be of such materials and size (7), and to be laid at such level, and with such fall as on the report of their surveyor may appear to them to be necessary.

If such notice is not complied with, the local authority may, after the expiration of the time specified in the notice, do the work required, and may recover in a summary manner the expenses incurred by them in so doing from the owner, or may by order declare the same to be private improvement expenses (8).

Provided that where, in the opinion of the local authority, greater expense would be incurred in causing the drains of two or more houses to empty into an existing sewer pursuant to this section, than in constructing a new sewer and causing such drains to empty therein, the local authority may construct such new sewer, and require the owners or occupiers of such houses to cause their drains to empty therein, and may apportion as they deem just the expenses of the construction of such sewer among the owners of the several houses, and recover in a summary manner the sums apportioned from such owners, or may by order declare the same to be private improvement expenses.

(1) Defined *ante*, p. 47.

(2) See the saving clause in respect of the payment or recovery of yearly sums payable to the local authority, section 337, *post*, p. 222. And see the second clause of section 14, *ante*, p. 53, as to saving in favour of persons who have acquired rights to the use of sewers. See *Newington Board* v. *Cottingham Board*, *post*, p. 139.

By section 181 claims under £20 referable to arbitration under this Act may be determined by a Court of Summary Jurisdiction at the option of *either* party.

As to arbitration under this Act, see sections 179 *et seq.*, *post*, p. 144.

(3) Founded on the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 10, and the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 49. The proviso at the end is new.

(4) Defined *ante*, p. 46. (5) Defined *ante*, p. 46. (6) Defined *ante*, p. 45.

(7) Upon similar words in section 76 of the Metropolis Management Act, 1855, where a vestry gave notice that pipes of stoneware of the best quality were to be used, and it was proposed to use pipes of Aylesford manufacture, but the vestry required pipes of Lambeth manufacture or similar thereto, and scientific evidence as to the comparative merits of the two kinds was conflicting, the Courts held that the vestry had the right to determine which of the two materials should be used: *Austin* v. *Vestry of Lambeth*, 27 L. J. Ch. 677, 4 Jur. N. S. 274, 1032, 30 L. T. 300.

(8) Where a local authority, by agreement with the owner of premises, constructs so as to communicate with their sewer a drain from his premises which they could have required him to make under this section, such agreement is not *ultra vires*, and they are responsible to him for any damage caused to his premises by the negligent construction of the drain: *Hall* v. *Batley Corporation*, 47 L. J. Q. B. 148, 37 L. T. N. S. 710.

As to right of persons using drain in common to alter the drain and adapt it to the new sewer, where a local authority has altered the level of the sewer into which the drain was discharged, see *Finlinson* v. *Porter*, L. R. 10 Q. B. 188, 44 L. J. Q. B. 56.

As to power to make bye-laws with respect to the drainage of buildings, see section 157, *post*, p. 128.

As to notices and service thereof, see sections 266 and 267, *post*.

As to recovery of expenses, see sections 251 *et seq.*, *post*.

As to private improvement rates, see sections 213—215, *post*.

Power of local authority to require houses to be drained into new sewers.

24. Where any house within the district of a local authority has a drain communicating with any sewer, which drain though sufficient for the effectual drainage of the house is not adapted to the general sewerage system of the district, or is in the opinion of the local authority otherwise objectionable, the local authority may, on condition of providing a drain or drains as effectual for the drainage of the house, and communicating with such other sewer as they think fit, close such first-mentioned drain, and may do any works necessary for that purpose, and the expenses of those works, and of the construction of any drain or drains provided by them under this section, shall be deemed to be expenses properly incurred by them in the execution of this Act (1).

Penalty on building house without drains in urban district.

25 (2). It shall not be lawful in any urban district newly to erect any house or to rebuild any house which has been pulled down to or below the ground floor, or to occupy any house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials (3), and at such level, and with such fall as on the report of the surveyor may appear to the urban authority to be necessary for the effectual drainage of such house; and the drain or drains so to be constructed shall empty into any sewer which the urban authority are entitled to use, and which is within one hundred feet of some part of the site of the house to be built or rebuilt; but if no such means of drainage are within that distance, then shall empty into such covered cesspool or other place, not being under any house, as the urban authority direct (4).

Any person who causes any house to be erected or rebuilt or any drain to be constructed in contravention of this section shall be liable to a penalty not exceeding fifty pounds (5).

Penalty on unauthorised building over sewers and under streets in urban district.

26 (6). Any person who in any urban district, without the written consent of the urban authority,—

(1.) Causes any building (7) to be newly erected over any sewer (8) of the urban authority; or,

(2.) Causes any vault, arch, or cellar to be newly built or constructed under the carriageway of any street (9),

shall forfeit to the urban authority the sum of five pounds, and a further sum of forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority; and the urban authority may cause any building, vault, arch, or cellar, erected or constructed in contravention of this section, to be altered, pulled down, or otherwise dealt with as they may think fit, and may recover in a summary manner any expenses incurred by them in so doing from the offender (9).

(1) This section is new. See the reference to it in the circular of the Local Government Board, *ante*, p. 9. See *Hall* v. *Batley Corporation*, *ante*, p. 58.

(2) This is similar to section 49 of the Public Health Act, 1848, 11 & 12 Vict. c. 63. The reference to the sea is omitted. It will be observed that it only applies to *urban* authorities.

(3) See *Austin* v. *Vestry of Lambeth*, *ante*, p. 58.

Discretion as to materials, &c.

(4) As to power of urban authority to make bye-laws with respect to drainage, see section 157, *post*, p. 128.

(5) As to what is to be deemed a new building, see section 159, *post*, p. 131.

As to recovery of penalties, see section 251, *post*, p. 181.

(6) This is similar to section 47 of the Public Health Act, 1848, 11 & 12 Vict. c. 63. It will be observed that the section is limited to *urban* districts.

(7) As to what is a building, see the notes to section 157, *post*, p. 128. Bay windows are buildings within covenant not to erect "buildings," except in a certain line of frontage: *Manners* v. *Johnson*, L. R. 1 Ch. D. 673, 45 L. J. Ch. 404, 24 W. R. 481.

(8) Defined *ante*, p. 46.

(9) Defined *ante*, p. 45.

As to notices and service thereof, see sections 266 and 267, *post*.

As to recovery of penalties and expenses, see sections 251 *et seq.*, *post*.

Sec. 27.

Disposal of Sewage (1).

Powers for disposing of sewage.

27 (2). For the purpose of receiving, storing, disinfecting, distributing, or otherwise disposing of sewage, any local authority may—

(1.) Construct any works within their district, or (subject to the provisions of this Act as to sewage works without the district of the local authority (3)) without their district; and

(2.) Contract for the use of, purchase, or take on lease any land, buildings, engines, materials, or apparatus, either within or without their district; and

(3.) Contract to supply for any period not exceeding twenty-five years any person with sewage, and as to the execution and costs of works either within or without their district for the purposes of such supply:

Provided that no nuisance be created in the exercise of any of the powers given by this section (4).

(1) As to use of headings in determining the sense of sections ranged under them, see *Hammersmith Ry.* v. *Brand*, *ante*, p. 48.

(2) The former provisions on this subject will be found in the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 46; the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 30; the Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75, s. 14; and the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113, ss. 3 and 4.

(3) Sections 32—34, *post*.

(4) As to power to execute works in adjoining districts and to combine for execution of works, see section 285, *post*.

As to purchase of lands by local authority, see sections 175 *et seq.*, *post*.

As to contracts by local authorities, see sections 173, 174, *post*.

As to contribution by local authority to expenses of carrying into execution agreement for supply of sewage and of works for the purpose, see section 30, *post*.

If works be carried on so as to cause a nuisance to or invade the rights of an individual, an injunction will be granted: *A.-G.* v. *Mayor, &c., of Birmingham*, 4 K. & J. 528, 22 J. P. 561, 6 W. R. 811; and see the notes to sections 15 and 17, *ante*.

As to restraining nuisance by percolation of sewage, &c., see *Womersley* v. *Church*, 17 L. T. N. S. 190; *Hodgkinson* v. *Ennor*, 4 B. & S. 229; *W. Cumberland Iron Co.* v. *Kenyon*, L. R. 10 Ch. D. 782; and sections 68—70, *post*, pp. 79, 80.

As to delay on the part of persons injured in coming for redress, see *A.-G.* v. *Mayor of Birmingham, supra*; *A.-G.* v. *Bradford Canal Co.*, *ante*, p. 54; *A.-G.* v. *Corporation of Leeds*, L. R. 5 Ch. App. 583, 39 L. J. Ch. 711, 19 W. R. 19, reported in Court below, 22 L. T. N. S. 330.

It was held under the corresponding section of the Public Health Act, 1848, that a Local Board had no power to enter upon land without the consent of the owner for the purpose of making reservoirs and deposit beds for retaining sewage, and they were restrained by injunction from so doing: *Sutton* v. *Mayor of Norwich*, 27 L. J. Ch. 739, 31 L. T. 389.

Where a patented process for precipitating animal and vegetable matter from sewage for agricultural purposes is made use of by a local authority solely for the purpose of deodorizing and purifying sewage water, and not with a view to obtaining a product for commercial purposes, it is no infringement of the patent: *Higgs* v. *Godwin*, E. B. & E. 529, 27 L. J. Q. B. 421.

Where a Local Board, in pursuance of an agreement, granted a lease of the sewage works of a town to a company, and of a plot of land, the company covenanting to keep the outfall of the works, with the engines, &c., in proper working order, so as to admit the free flow of sewage through the sewers, and so that the same might not at any time be stopped; and the Board filed a bill against the company complaining that the company's works were insufficient; that they were pumping only a portion of the sewage and were heading back the residue in the sewers so as to cause a nuisance to the inhabitants of the town, and praying for an injunction; a demurrer by the company, on the ground that the Court could not superintend the proper performance of the work

Secs. 28–32.

Power to agree for communication of sewers with sewers of adjoining district.

28. The local authority of any district may, by agreement with the local authority of any adjoining district, and with the sanction of the Local Government Board, cause their sewers (1) to communicate with the sewers of such last mentioned authority, in such manner and on such terms and subject to such conditions as may be agreed on between the local authorities, or, in case of dispute, may be settled by the Local Government Board: provided that so far as practicable storm waters shall be prevented from flowing from the sewers of the first-mentioned authority into the sewers of the last-mentioned authority, and that the sewage of other districts or places shall not be permitted by the first-mentioned authority to pass into their sewers so as to be discharged into the sewers of the last-mentioned authority without the consent of such last-mentioned authority (2).

Power to deal with land appropriated to sewage purposes.

29. Any local authority may deal with any lands (3) held by them for the purpose of receiving, storing, disinfecting or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding twenty-one years for agricultural purposes, or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in dealing with land for any of the above purposes, provision shall be made for effectually disposing of all the sewage brought to such land without creating a nuisance (4).

Contribution to works under agreement for supply or powers for disposing of sewage.

30 (5). Where any local authority agree with any person (6) as to the supply of sewage and as to works to be made for the purpose of such supply (7), they may contribute to the expense of carrying into execution by such person all or any of the purposes of such agreement, and may become shareholders in any company with which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such local authority, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested.

Application of 27 & 28 Vict. c. 114 to works for supply of sewage.

31. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "improvement of land" authorised by "The Improvement of Land Act, 1864," and the provisions of that Act shall apply accordingly (8).

As to Sewage Works without District (9).

Notice to be

32 (10). A local authority shall, three months (11) at least before commencing the

that the Board had alleged no special damage, and that it was not the practice of the Court to restrain the infringement of a public right at the suit of a corporation, except at the instance or in the presence of the Attorney-General, was overruled, and an injunction granted: *Nuneaton Local Board* v. *General Sewage Co.*, L. R. 20 Eq. 127, 44 L. J. Ch. 561.

(1) Defined *ante*, p. 46.

(2) This corresponds with section 32 of the Public Health Act, 1872, 35 & 36 Vict. c. 79.

As to power of two or more local authorities to combine for the execution of works, see section 285, *post*.

As to contracts by local authorities, see sections 173, 174, and notes thereto, *post*.

(3) Defined *ante*, p. 44.

(4) This section corresponds with section 5 of the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113. The period for leasing is extended from seven to twenty-one years.

As to power of local authority to *take* lands on lease, see section 27, *ante*, p. 60.

(5) This section corresponds with section 15 of the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113.

(6) Defined *ante*, p. 44. (7) See section 27 sub-section 3, *ante*, p. 60.

(8) This is a re-enactment of section 15 of the Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75, s. 15.

(9) As to the use of headings in determining the sense of sections ranged under them, ee *Hammersmith Ry.* v. *Brand*, *ante*, p. 48.

(10) This corresponds to section 5 of the Local Government Amendment Act, 1861, 24 & 25 Vict. c. 61, and section 3 of the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113. See two following sections.

(11) *I.e.*, calendar months. See 13 & 14 Vict. c. 21, s. 4.

Secs. 32–36.

given before commencing sewage works without district.

construction or extension of any sewer (1) or other work for sewage purposes without their district, give notice of the intended work by advertisement in one or more of the local newspapers circulated within the district where the work is to be made.

Such notice shall describe the nature of the intended work, and shall state the intended termini thereof, and the names of the parishes, and the turnpike roads and streets, and other lands (if any) through, across, under or on which the work is to be made, and shall name a place where a plan of the intended work is open for inspection at all reasonable hours; and a copy of such notice shall be served on the owners (2) or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, and on the trustees, surveyors of highways, or other persons having the care of such roads or streets (3).

In case of objection, works not to be commenced without sanction of Local Government Board.

33 (4). If any such owner, lessee, or occupier, or any such overseer, trustee, surveyor, or other person as aforesaid, or any other owner, lessee, or occupier who would be affected by the intended work, objects to such work, and serves notice in writing of such objection on the local authority at any time within the said three months, the intended work shall not be commenced without the sanction of the Local Government Board after such inquiry as hereinafter mentioned, unless such objection is withdrawn.

Inspector to hold inquiry and report to Local Government Board.

34 (4). The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed, and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing, with such modifications (if any) as they may deem necessary, the intended work (5).

Privies, Waterclosets, &c. (6)

Penalty on building houses without privy accommodation.

35 (7). It shall not be lawful newly to erect any house (8), or to rebuild any house pulled down to or below the ground floor, without a sufficient watercloset, earthcloset (9), or privy, and an ashpit furnished with proper doors and coverings.

Any person (10) who causes any house to be erected or rebuilt in contravention of this enactment shall be liable to a penalty not exceeding twenty pounds (11).

Power of local authority

36 (12). If a house within the district of a local authority appears to such authority by the report of their surveyor or inspector of nuisances to be without

(1) Defined *ante*, p. 46. (2) Defined *ante*, p. 45.

(3) As to notices and service of notices, see sections 266, 267, *post*.

(4) These two sections correspond to sections 6 and 7 of the Local Government Amendment Act, 1858, 24 & 25 Vict. c. 61. See the preceding section.

(5) As to inquiries by the Local Government Board, see sections 293—296, *post*.

(6) As to use of headings in determining the sense of sections ranged under them, see *Hammersmith Ry.* v. *Brand*, *ante*, p. 48.

(7) This section corresponds with section 51 of the Public Health Act, 1848, 11 & 12 Vict. c. 63, and sections 4 and 7 of the Sanitary Act, 1868, 31 & 32 Vict. c. 115. It applies only to houses to be built. The next section deals with all houses.

(8) See the interpretation clause, *ante*, p. 46.

(9) See section 37, *post*, p. 63.

(10) Defined *ante*, p. 44.

(11) The section does not require a separate watercloset, earthcloset, or privy for each house; and, therefore, where two cottages were built with one privy sufficient for the use of the occupiers of both cottages, it was held that the requirements of the section had been complied with: *Clutton Union* v. *Pointing*, L. R. 4 Q. B. D. 340, 48 L. J. M. C. 135, 40 L. T. N. S. 844, 27 W. R. 658; Cf. *ex parte Whitchurch*, *post*, p. 94.

As to power to make bye-laws, see section 157, *post*, p. 128.

As to the recovery of penalties, see sections 251 *et seq.*, *post*.

(12) The corresponding sections of the earlier Acts are section 51 of the Public Health Act, 1848, 11 & 12 Vict. c. 63, and section 4 of the Sanitary Act, 1868, 31 & 32 Vict. c. 115.

Secs. 36–38.

a sufficient watercloset, earthcloset (1), or privy, and an ashpit furnished with proper doors and coverings, the local authority shall, by written notice, require the owner (2) or occupier of the house, within a reasonable time therein specified, to provide a sufficient watercloset, earthcloset, or privy, and an ashpit furnished as aforesaid, or either of them, as the case may require.

to enforce provision of privy accommodation for houses.

If such notice is not complied with, the local authority may, at the expiration of the time specified in the notice, do the work thereby required to be done, and may recover in a summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses. Provided that where a watercloset, earthcloset, or privy has been, and is used in common by the inmates of two or more houses, or if in the opinion of the local authority a watercloset, earthcloset, or privy may be so used, they need not require the a me to be provided for each house (3).

As to earthclosets.

37 (4). Any enactment in force within the district of any local authority requiring the construction of a watercloset shall be deemed to be satisfied by the construction, with the approval of the local authority, of an earthcloset.

Any local authority may, as respects any house in which any earthcloset is in use with their approval, dispense with the supply of water required by any contract or enactment to be furnished to any watercloset in such house, on such terms as may be agreed on between such authority and the person providing or required to provide such supply of water.

Any local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorizing substance to any house within their district for the purpose of any earthcloset.

In this Act the term "earthcloset" includes any place for the reception and deodorization of fœcal matter constructed to the satisfaction of the local authority.

38 (5). Where it appears to any local authority by the report of their surveyor

(1) See the next section. (2) Defined *ante*, p. 45.

(3) The powers given by this section must be exercised with regard to the circumstances of each particular case, and the local authority cannot lay down a *general* regulation requiring all privies, &c., throughout their district to be converted into waterclosets. See *Tinkler* v. *Wandsworth Board of Works*, 2 De G. & J. 261, 27 L. J. Ch. 342, 4 Jur. 293. But in any *particular* case, if the circumstances justify them, they may require a watercloset to be substituted for a privy. See *St. Luke's Vestry* v. *Lewis*, 1 B. & S. 865, 31 L. J. M. C. 73, 5 L. T. N. S. 608, 8 Jur. N. S. 432.

A discretion as to the nature and extent of the works required to be done is vested in the local authority, and the justices at petty sessions cannot review their determination as to the matter: *Hargreaves* v. *Taylor*, 3 B. & S. 613, 32 L. J. M. C. 111, 8 L. T. N. S. 149, 11 W. R. 562, 9 Jur. N. S. 1053; and see *Austin* v. *Vestry of Lambeth*, *ante*, p. 58.

As to nuisances arising from waterclosets, privies, &c., and as to penalties in such cases, see section 40, *post*, p. 64; section 47 (3), *post*, p. 67, and section 91, sub-section 2, *post*.

As to power to make bye-laws as to privies, &c., see section 157, *post*, p. 128, and as to bye-laws in respect of the drainage and privy accommodation of lodgings, see section 90, *post*, p. 86.

As to entry upon lands or premises by local authority, or their officer, for the purposes of the Act, see section 305.

As to obstructing the execution of the Act, see section 306, *post*.

As to notices under the Act and service thereof, see sections 266, 267, *post*.

As to private improvement expenses, see sections 213—215, *post*.

As to recovery of expenses and penalties, see sections 251 *et seq.*, *post*.

As to appeal against decision of local authority as to expenses recoverable in a summary manner, or declared to be private improvement expenses, see sections 268 *et seq.*, *post*.

(4) Corresponds with section 7 of the Sanitary Act, 1868, 31 & 32 Vict. c. 115.

As to contracts by local authority, see sections 173 *et seq.*, *post*.

(5) Corresponds with section 52 of the Public Health Act, 1848, 11 & 12 Vict. c. 63. The earlier section was expressly limited to cases where the numbers employed were above twenty. Now, as to "house," see the interpretation clause, *ante*, p. 46, as amended by the Factory and Workshop Act, 1878, s. 107.

Secs. 38–41.

Privy accommodation for factories.

that any house is used or intended to be used as a factory or building in which persons of both sexes are employed or intended to be employed at one time in any manufacture, trade, or business, the local authority may, if they think fit, by written notice require the owner or occupier of such house, within the time therein specified, to construct a sufficient number of waterclosets, earthclosets, or privies, and ashpits for the separate use of each sex (1).

Any person (2) who neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and to a further penalty not exceeding forty shillings for every day during which the default is continued (3).

Public necessaries.

39 (4). Any urban authority may, if they think fit, provide and maintain, in proper and convenient situations, urinals, waterclosets, earthclosets, privies and ashpits, and other similar conveniences for public accommodation.

Drains, privies, &c., to be properly kept.

40. Every local authority shall provide that all drains, waterclosets, earthclosets, privies, ashpits, and cesspools within their district, be constructed and kept so as not to be a nuisance or injurious to health (5).

Examination of drains, privies, &c., on complaint of nuisance.

41 (6). On the written application of any person to a local authority, stating that any drain, watercloset, earthcloset, privy, ashpit, or cesspool on or belonging to any premises within their district is a nuisance or injurious to health (but not otherwise), the local authority may, by writing, empower their surveyor or inspector of nuisances, after twenty-four hours' written notice to the occupier of such premises, or in case of emergency without notice, to enter such premises, with or without assistants, and cause the ground to be opened, and examine such drain, watercloset, earthcloset, privy, ashpit, or cesspool. If the drain, watercloset, earthcloset, privy, ashpit, or cesspool on examination is found to be in proper condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the local authority. If the drain, watercloset, earthcloset, privy, ashpit, or cesspool on examination appear to be in bad condition, or to require alteration or amendment, the local authority shall forthwith cause notice in writing to be given to the owner or occupier of the premises, requiring him forthwith or within a reasonable time therein specified to do the necessary works; and if such notice is not complied with, the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the local authority may, if they think fit, execute such works, and may recover in a

(1) See *Hargreaves* v. *Taylor*, *ante*, p. 63.

As to notices and service thereof, see sections 266, 267, *post*.

As to recovery of penalty, see sections 251 *et seq.*, *post*.

(2) See the interpretation clause, *ante*, p. 44, (3) See note (4), *post*, p. 105.

(4) This is a re-enactment of section 57 of the Public Health Act, 1848, 11 & 12 Vict. c. 63.

The question as to whether one place or another is more fit for the erection of a urinal, &c., is for the decision of the local authority, but they have no power to erect one where it would be a nuisance to the owners of adjoining property; they may be restrained by injunction from so doing. See *Vernon* v. *Vestry of St. James*, L. R. 16 Ch. Div. 449 (C. A.), 50 L. J. Ch. 81, 44 L. T. N. S. 229, 29 W. R. 222. But it must be shown to be certain or probable that the matters intended to be provided will be or will create in point of law a nuisance before the injunction will be granted. See *Biddulph* v. *Vestry of St. George's*, 3 De G. J. & S. 493, 33 L. J. Ch. 411.

As to the purchase of land for the purposes of the Act, see sections 175 *et seq.*, *post*.

As to expenses incurred by local authority, see sections 207 *et seq.*, *post*.

(5) This corresponds to the first clause of section 54 of the Public Health Act, 1848, 11 & 12 Vict. c. 63.

See sections 15, 17, 19, and 36, and the notes thereto, *ante*, and see section 299, *post*.

(6) The earlier enactments are section 54 of the Public Health Act, 1848, 11 & 12 Vict. c. 63, section 33 of the Local Government Act, 1858, 21 & 22 Vict. c. 98, and section 4 of the Sanitary Act, 1868, 31 & 32 Vict. c. 115.

See the notes to section 36, *ante*, p. 62, and see *Hall* v. *Batley*, *ante*, p. 58.

summary manner from the owner the expenses incurred by them in so doing, or may by order declare the same to be private improvement expenses.

Secs. 41–43.

SCAVENGING AND CLEANSING (1).

Regulations as to Streets and Houses (1).

Local authority to provide for cleansing of streets and removal of refuse.

42 (2). Every local authority may, and when required by order of the Local Government Board shall, themselves undertake or contract for (3)—

The removal of house refuse from premises;

The cleansing of earth-closets (4), privies, ashpits, and cesspools;

either for the whole or any part of their district: Moreover, every urban authority and any rural authority invested by the Local Government Board with the requisite powers may, and when required by order of the said Board shall, themselves undertake or contract for the proper cleansing of streets (5), and may also themselves undertake or contract for the proper watering of streets for the whole or any part of their district (6).

All matters collected by the local authority or contractor in pursuance of this section may be sold or otherwise disposed of, and any profits thus made by an urban authority shall be carried to the account of the fund or rate applicable by them for the general purposes of this Act; and any profits thus made by a rural authority in respect of any contributory place shall be carried to the account of the fund or rate out of which expenses incurred under this section by that authority in such contributory place are defrayed (7).

If any person removes or obstructs the local authority or contractor in removing any matters by this section authorised to be removed by the local authority, he shall for each offence be liable to a penalty not exceeding five pounds: Provided that the occupier of a house within the district shall not be liable to such penalty in respect of any such matters which are produced on his own premises and are intended to be removed for sale or for his own use, and are in the meantime kept so as not to be a nuisance (8).

Penalty on neglect of local authority to remove refuse, &c.

43 (9). If a local authority who have themselves undertaken or contracted for the removal of house-refuse from premises, or the cleansing of earth-closets (10), privies, ashpits, and cesspools, fail, without reasonable excuse, after notice in writing from the occupier of any house within their district, requiring them to remove any house-refuse, or to cleanse any earth-closet, privy, ashpit or cesspool belonging to such house, or used by the occupiers thereof, to cause the same to be removed or cleansed, as the case may be, within seven days, the local authority shall be liable to pay to the occupier of such house a penalty not exceeding five shillings for

(1) As to the use of headings in determining the sense of sections ranged under them, see *Hammersmith Ry.* v. *Brand*, *ante*, p. 48.

(2) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 32; the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89. s. 21; the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 5.

(3) As to contracts by a local authority, see sections 173, 174, *post*.

(4) As to "earth-closet," see the last clause of section 37, *ante*, p. 63.

(5) See the interpretation clause, *ante*, p. 45.

(6) As to compelling performance by the local authority of their duties, see sections 299 *et seq.*, *post*.

As to indictment for disobedience to an order made by certain Commissioners in pursuance of a power for that purpose given by statute, see *R.* v. *Walker*, L. R. 10 Q. B. 355.

(7) As to the district fund and general district rate, in the case of urban authorities, see sections 209 *et seq.*, *post*, pp. 158 *et seq.*; and as to the expenses of rural authorities, see sections 229 *et seq.*, *post*, pp. 169 *et seq.*

(8) As to recovery of penalty, see sections 251 *et seq.*, *post*.

(9) The previous enactment was the Sanitary Law Amendment Act, 1874, s. 21.

(10) See the last clause of section 37, *ante*, p. 63.

Secs. 43–46.

every day during which such default continues after the expiration of the said period (1).

Power of local authority to make bye-laws imposing duty of cleansing, &c., on occupier.

44 (2). Where the local authority do not themselves undertake or contract for (3)—

The cleansing of footways and pavements adjoining any premises,

The removal of house-refuse (4) from any premises,

The cleansing of earth-closets, privies, ashpits, and cesspools belonging to any premises,

they may make bye-laws, imposing the duty of such cleansing or removal, at such intervals as they think fit, on the occupier of any such premises (5).

An urban authority may also make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes and rubbish, and for the prevention of the keeping of animals on any premises so as to be injurious to health (5).

Power to provide receptacles for deposit of rubbish.

45. Any urban authority may, if they see fit, provide in proper and convenient situations receptacles for the temporary deposit and collection of dust, ashes, and rubbish; they may also provide fit buildings and places for the deposit of any matters collected by them in pursuance of this part of this Act (6).

Houses to be purified, on certificate of officer of health, or of

46 (7). Where, on the certificate of the medical officer of health, or of any two medical practitioners, it appears to any local authority that any house, or part thereof, is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing or purifying

(1) Under similar provisions in the Metropolis Management Act, 1855, the guardians of a union possessed of a workhouse were held entitled to bring an action against a vestry upon which the duty of removing dirt, ashes, &c., was cast, for refusing to perform this duty in respect of the workhouse: *Holborn Union* v. *Vestry of St. Leonard*, L. R. 2 Q. B. D. 145, 46 L. J. Q. B. 36, 35 L. T. N. S. 400, 41 J. P. 38.

As to notices and service thereof, see sections 266, 267, *post*.

As to recovery of penalty, see sections 251 *et seq.*, *post*.

(2) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 32 (3) and (4), and the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 5.

(3) See sections 42 and 43, and notes, *ante*.

(4) "Refuse" means articles for which the owner has no use, except as rubbish. See *Filbey* v. *Combe*, 2 M. & W. 677, 1 Jur. 721; *Law* v. *Dodd*, 1 Exch. R. 845, 17 L. J. M. C. 65; *Lyndon* v. *Standbridge*, 2 H. & N. 45, 26 L. J. Ex. 386; and *Gay* v. *Cadby*, L. R. 2 C. P. D. 391, 46 L. J. M. C. 260, 36 L. T. N. S. 410.

(5) Further as to keeping animals or allowing accumulation so as to be a nuisance, see section 91 (3) and (4), *post*, p. 89. And as to penalty for keeping swine in a dwelling-house, or so as to be a nuisance, see section 47 (1), *post*, p. 67.

A bye-law requiring all occupiers to remove all *snow* and other obstructions opposite their premises, and which had been duly allowed by a Secretary of State, was held bad, as not being warranted by a statute which authorised the making of bye-laws with respect to the removal of "dust, ashes, rubbish, filth, manure, and soil," which bye-laws were required to be allowed by a Secretary of State. The mere allowance by the Secretary of State does not give the bye-law validity: *R.* v. *Wood*, 5 El. & Bl. 49, 3 C. L. R. 1134, S. C. *sub. nom. R.* v. *Rose*, 24 L. J. M. C. 130, 1 Jur. N. S. 802.

A bye-law prohibiting the keeping of swine generally within a borough was held bad: *Everett* v. *Grapes*, 3 L. T. N. S. 669; but a bye-law prohibiting the keeping of pigs within 100 feet of any dwelling-house, and a bye-law requiring certain drainage for premises where pigs were kept, were held not unreasonable: *Wanstead Board* v. *Wooster*, 35 L. T. 81, 37 J. P. 403.

Further as to the making of bye-laws by a local authority and generally, see sections 182 *et seq.*, and notes, *post*.

(6) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 56.

See the notes to section 39, *ante*, p. 64.

(7) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 60. The words "or contagious" which followed the word "infectious" in the earlier enactment are here omitted.

of any house or part thereof would tend to prevent or check infectious disease, the local authority shall give notice in writing to the owner (1) or occupier of such house, or part thereof, to whitewash, cleanse or purify the same, as the case may require (2).

two medical practitioners.

If the person to whom notice is so given fails to comply therewith within the time therein specified, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the local authority may, if they think fit, cause such house, or part thereof, to be whitewashed, cleansed or purified, and may recover in a summary manner the expenses incurred by them in so doing from the person in default (3).

Penalty in respect of certain nuisances on premises.

47 (4). Any person who in any urban district—

(1.) Keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person; or (5)

(2.) Suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice to him from the urban authority to remove the same; or

(3.) Allows the contents of any water-closet, privy, or cesspool to overflow or soak therefrom,

shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which the offence is continued, and the urban authority shall abate or cause to be abated every such nuisance, and may recover in a summary manner the expenses incurred by them in so doing from the occupier of the premises on which the nuisance exists.

Offensive Ditches and Collections of Matter.

Provision for obtaining order for cleansing offensive ditches lying near to or forming the boundaries of districts.

48 (6). Where any watercourse or open ditch lying near to or forming the boundary between the district of any local authority and any adjoining district is foul and offensive, so as injuriously to affect the district of such local authority, any justice having jurisdiction in such adjoining district may, on the application of such local authority, summon the local authority of such adjoining district to appear before a Court of Summary Jurisdiction to show cause why an order should not be made by such Court for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such Court to be necessary; and such Court, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the

(1) Defined *ante*, p. 45.

(2) Further as to the duties of local authorities to cause premises to be cleansed and disinfected, see section 120, *post*, p. 104; and generally as to infectious diseases and hospitals, see sections 120—140, *post*, pp. 104—12. As to periodical limewashing of common lodging-houses, see section 82, *post*, p. 84. As to factories and bakehouses, see note (1), *post*, p. 90.

As to notices and service thereof, see sections 266, 267.

(3) As to recovery of penalties and expenses, see sections 251 *et seq.*, *post*.

As to entry upon premises, see section 305, *post*, p. 210; and as to obstructing person in execution of the Act, see section 306, *post*, p. 211.

(4) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 59; and see the Towns Police Clauses Act, 1847, s. 28, *post*.

(5) The sub-section applies not merely to the place, but also to the manner of keeping. See *Digby* v. *W. Ham Board*, 6 W. R. 468, 22 J. P. 304. It is not necessary that the nuisance should be injurious to health in order to constitute an offence under this section: *Banbury Urban Sanitary Authority* v. *Page*, L. R. 8 Q. B. D. 97, 51 L. J. M. C. 21, 45 L. T. N. S. 759, 30 W. R. 415, 46 J. P. 184.

As to dealing with the above matters where they are nuisances, see sections 91 *et seq.*, *post*.

As to recovery of penalty and expenses, see sections 251 *et seq.*, *post*.

(6) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 31.

Secs. 48–50. execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such Court may seem reasonable (1).

Removal of filth on certificate of inspector of nuisances.

49 (2). Where in any urban district it appears to the inspector of nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if such notice is not complied with within twenty-four hours from the service thereof, the manure, dung, soil, or filth, or matter referred to shall be vested in and be sold or disposed of by the urban authority, and the proceeds thereof shall be applied in payment of the expenses incurred by them in the execution of this section; and the surplus (if any) shall be paid on demand to the owner of the matter removed.

The expenses of removal by the urban authority of any such accumulation, if and so far as they are not covered by the sale thereof, may be recovered by the urban authority in a summary manner from the person to whom the accumulation belongs, or from the occupier of the premises, or (where there is no occupier) from the owner.

Periodical removal of manure from mews and other premises.

50 (3). Notice may be given by any urban authority (by public announcement in the district or otherwise) for the periodical removal of manure or other refuse matter from mews, stables, or other premises; and where any such notice has been given any person to whom the manure or other refuse matter belongs who fails so to remove the same, or permits a further accumulation, and does not continue such periodical removal at such intervals as the urban authority direct, shall be liable without further notice to a penalty not exceeding twenty shillings for each day during which such manure or other refuse matter is permitted to accumulate (4).

(1) As to the further power of the local authority to take proceedings where the cause of nuisance arises without their district, see section 108, *post*, p. 99, and sections 91 (2) and 111, *post*.

As to the appearance by local authorities in legal proceedings, see section 259, *post*, p. 186.

As to appeal from the order of the Court of Summary Jurisdiction, see section 269, *post*. The time for the service of the notice of appeal runs from the date of the decision, and not from the service of the order: *R.* v. *Barnet Sanitary Authority*, L. R. 1 Q. B. D. 558, 45 L. J. M. C. 105, 35 L. T. N. S. 362.

As to cleansing, &c., of ditches at the sides of highways, see *post*.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 59, the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 32 (5). See the further powers given by sections 91 *et seq.*, *post*, pp. 87 *et seq.*, and see sections 101 and 111.

As to notices and service thereof, see sections 266, 267, *post*.

As to recovery of expenses, see sections 251 *et seq.*, *post*, pp. 181 *et seq.* The local authority must show that the notice mentioned has been given, and has not been complied with. See *R.* v. *Godmanchester Board*, L. R. 1 Q. B. 328, 35 L. J. Q. B. 125, 14 L. T. N. S. 104, 5 B. & S. 936.

(3) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 53.

(4) See *Bishop Auckland Board* v. *Bishop Auckland Iron Co.*, *post*, p. 88.

As to the recovery of penalties, see sections 251 *et seq.*, *post*.

Water Supply (1).

Powers of Local Authority in relation to Supply of Water.

General powers for supplying district with water.

51 (2). Any urban authority may provide their district or any part thereof, and any rural authority may provide their district or any contributory place (3) therein, or any part of any such contributory place, with a supply of water proper and sufficient for public and private purposes, and for those purposes, or any of them, may—

(1.) Construct and maintain waterworks (4), dig wells, and do any other necessary acts; and

(2.) Take on lease or hire any waterworks, and (with the sanction of the Local Government Board) purchase any waterworks, or any water or right to take or convey water, either within or without their district, and any rights, powers, and privileges of any water company; and

(3.) Contract with any person for a supply of water (5).

The Public Health (Water) Act, 1878, 41 & 42 Vict. c. 25.

(1) The provisions of this Act as to water supply have been now supplemented by the Public Health (Water) Act, 1878, *post*. It provides that it *shall* be the duty of every *rural* authority to provide, or require the owner to make provision, for a supply of wholesome water for consumption and domestic purposes within a reasonable distance of every occupied dwelling-house within their district, and that no house shall be built or rebuilt without a certificate from the sanitary authority of the district that there is such a supply. Provision is also made as to *rating* in *rural* districts, where stand-pipes are provided, and as to compulsory rating by *urban* authorities. And it is provided that the Local Government Board may invest any *urban* authority with the powers or duties given to a rural authority.

Right to abstract water cannot be compulsorily purchased.

A Committee of the House of Lords in 1877, when considering a provisional order for the compulsory purchase of water rights under section 176, *post*, p. 142, decided that the order was *ultra vires*, and the law officers have advised "that in issuing a provisional order under the 176th section of the Public Health Act, 1875, the Local Government Board cannot confer upon a local authority power to purchase for the purposes of the Act, otherwise than by agreement, any right to abstract water from any stream." See Report of Select Committee of House of Commons on Public Health Act, 1875, Amendment Bill; Parl. Papers, 1878, No. 134, p. iii.; and see section 332, *post*.

As to the use of headings in determining the sense of sections ranged under them, see *Hammersmith Ry.* v. *Brand*, *ante*, p. 48.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 75; the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 11; and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 33.

(3) As to "contributory place," see the provisions of section 229, *post*.

(4) See the interpretation clause, *ante*, p. 47.

(5) As to contracts by local authority, see sections 173, 174, and notes thereto, *post*, pp. 137—141.

Contracts with limited owners.

The Limited Owners and Water Supply Further Facilities Act, 1877, 40 & 41 Vict. c. 31, provides, by section 6, that any landowner charging, or proposing to charge, his estate with the cost of the construction of reservoirs or other works for the supply of water under the Act, may enter into any agreement for the supply of water to any sanitary or other local authority for any term not exceeding the number of years during which the cost of the improvement or any part of it is made a charge upon the estate, provided that every such agreement be approved by the commissioners, and that no premium or benefit in the nature of a premium be reserved to the landowner.

Purchase of lands.

As to purchase of lands for the purposes of the Act, see sections 175 *et seq.*, *post*; and see the second paragraph of note (1), *supra*.

Execution of works in adjoining districts.

As to power to execute works in adjoining districts and to combine for execution of works, see section 285, *post*.

Act does not

By section 332, *post*, p. 221, it is expressly provided that nothing in the Act shall be construed to authorise any local authority to injuriously affect any reservoir, canal,

Sec. 51.

river, or stream, or the supply, quality, or fall of water, without the consent, in writing, of the persons entitled to prevent such interference.

authorise interference with stream, &c.

As to compensation in case of damage by reason of the exercise of the powers of the Act, see section 308, and the notes thereto, *post*, pp. 211.

Compensation for damage done.

Where a local authority are interfering with a water-course in a manner not authorised by Parliament, they will be restrained from so doing, and the person injured will not be left to his remedy under the compensation clause: *Grand Junction Canal Co.* v. *Shugar*, *ante*, p. 56, *post*, p. 212.

Injunction against unauthorised interference.

A local authority are not bound to give compensation under the compensation clause for any damage they may cause, which would not have been actionable, if they had not been acting under the authority of the Act: *Hall* v. *Mayor of Bristol*, *post*, p. 212.

For what damage.

Having regard to this decision and section 332, *post*, it will be useful to state shortly the general law relating to water rights and easements.

The rights with regard to running water are either (1) NATURAL RIGHTS, or (2) EASEMENTS.

(1) NATURAL RIGHTS.

The right to receive a flow of water flowing in a natural stream upon the surface of the earth, and to a reasonable use of it, is an ordinary right of property—a natural right—belonging to the riparian proprietors, *i.e.*, the proprietors of adjoining land, and is not enjoyed by virtue of acquiescense or a presumed grant: *Chasemore* v. *Richards*, *ante*, p. 56; *Wood* v. *Waud*, 3 Exch. R. 748, 775, 18 L. J. Ex. 305; *Rameshur Pershad Narain Singh* v. *Koonj Behari Pattuk*, *post*, p. 73; Gale on Easements, 5th edition, p. 218. "*Primâ facie*, every proprietor upon each bank of a river is entitled to the land covered with water in front of his bank to the middle thread of the stream; or, as it is commonly expressed, *ad medium filum aquæ*. In virtue of this ownership, he has a right to the use of the water flowing over it in its natural current, without diminution or obstruction. But, strictly speaking, he has no property in the water itself, but a simple use of it while it passes along. The consequence of this principle is, that no proprietor has a right to use the water to the prejudice of another. . . . There may be and there must be allowed to all, of that which is common, a reasonable use": *Tyler* v. *Wilkinson*, 4 Mason U. S. R. 397, *per* Story, J., cited Gale on Easements, 5th edition, p. 219. A riparian proprietor has a right to a reasonable use of the water for his domestic purposes and for his cattle, without regard, in case of deficiency, to the interests of proprietors lower down the stream: *Miner* v. *Gilmour*, 12 Moore P. C. 156: and see *Edleston* v. *Crossley*, 18 L. T. N. S. 15. And a company which purchases the land of a riparian owner stands in the same situation as he did with respect to the water rights connected with that land: *Swindon Waterworks Co.* v. *Wilts & Berks Canal Co.*, L. R. 9 Ch. 451, 7 H. L. 697, 33 L. T. N. S. 513. Accordingly, where a railway company, whose line crossed a stream in the immediate neighbourhood of one of their stations, took water for supplying their engines and for the general purposes of the station, and upon a bill being filed by a millowner lower down the stream, it appeared that the abstraction of water did no damage in wet weather, and never shortened the working of the mill for more than a few minutes a day, it was held that the company, as riparian proprietors, were entitled to take a reasonable quantity of water for their purposes, and that in this case the quantity was reasonable: *Earl of Sandwich* v. *Great Northern Ry.*, L. R. 10 Ch. D. 707, 27 W. R. 616. But see, as to evidence on this point, *A.-G.* v. *Great Eastern Ry.*, L. R. 6 Ch. App. 572, 19 W. R. 788. So the owner of the banks of a non-navigable river may build a mill-dam across the stream within his own property, and divert the water into a mill-lade, without asking the leave of the proprietors *above* him, provided he does not obstruct the water from flowing as freely as it was wont, and without asking the leave of the proprietors *below* him, if he takes care to restore the water to its natural course before it enters their land: *Orr-Ewing* v. *Colquhoun*, L. R. 2 Ap. Cas. 839, *per* Lord Blackburn. But as to navigable rivers, see *Ibid.*, and as to rights of conterminous proprietors, *Ibid.*, *per* Lord Gordon, and *Bickett* v. *Morris*, *infra*. But where a canal company established by certain Acts of Parliament, which gave them rights as to taking water from streams within the distance of 2000 yards for the purpose of making and maintaining the canal, purchased a mill on a stream from which they had the right to take water, and thus became riparian proprietors entitled to the flow of water from brooks and streams running into that stream, subject to the rights which other riparian owners might lawfully exercise, and the directors of a waterworks com-

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pany purchased a mill on the upper part of the same stream and so became riparian owners, but they not only used the water for the purposes and in the manner allowed by law, but collected it into a reservoir for the supply of an adjacent town, and claimed as their legal right such a user of it, it was held this use of the water by the waterworks company was not a reasonable use of the stream such as could be made by an upper riparian proprietor, and that the canal company, who were also riparian owners, whose flow of water was thereby affected, were entitled to come into Equity and obtain an injunction to restrain this use of the water: *Swindon Waterworks Co.* v. *Wilts & Berks Canal Co.*, *ante*, p. 70. And it was no excuse that the canal proprietors had previously sold some of the water to the inhabitants of the town and others: *per* Lord Hatherley, *Ibid.* In *Owen* v. *Davies*, Weekly Notes, 1874, p. 175, it was held that a Board of Health only had the ordinary right of a riparian proprietor, and were not entitled to divert water to their reservoir.

It is actionable to heat the water of a natural stream: *Mason* v. *Hill*, 3 B. & Ad. 304, 5 B. & Ad. 1.

No one but a riparian proprietor has a right to the water of a stream as against other riparian proprietors: *Ormerod* v. *Todmorden Mill Co.*, L. R. 11 Q. B. D. 155, but see *Kensit* v. *Great Eastern Ry.*, L. R. 23 Ch. D. 566. The Stockport Waterworks Co. sued one Potter for fouling the water of the Mersey, which came to their works through a tunnel which they had made under permission from a riparian proprietor. It was held that they were not entitled to sue, as they were not themselves riparian proprietors: *Stockport Waterworks Co.* v. *Potter*, 3 H. & C. 300, 10 L. T. N. S. 748, 10 Jur. N. S. 1005.

Thus it appears that any interference with the natural flow of running water, either by throwing it back, diverting it, polluting it, or abstracting an unreasonable quantity, unless the person so acting has acquired a right to do so by contract, prescription or other adequate authority, may be the subject of an action at the suit of any of the other riparian proprietors affected thereby.

What interference actionable.

An action will lie for an unreasonable and unauthorised use of running water, even though there be *no actual damage* to the plaintiff; and it matters not how much the plaintiff has used the water, or *whether he has used it at all*: *Embrey* v. *Owen*, 6 Ex. R. 369, 20 L. J. Ex. 212; *Sampson* v. *Hoddinott*, 1 C. B. N. S. 611; *Harrop* v. *Hirst*, L. R. 4 Ex. 43, 38 L. J. Ex. 1, 19 L. T. N. S. 426; and see *Miner* v. *Gilmour*, *ante*, p. 70, and *Wilts & Berks Canal Co.* v. *Swindon Waterworks Co.*, *supra*. But see *Kensit* v. *Great Eastern Ry.*, *supra*. So the owner of land on the banks of a river can maintain an action to restrain the fouling of the river without showing that the fouling is actually injurious to him: *Crossley* v. *Lightowler*, L. R. 3 Eq. 279, 2 Ch. App. 478, 36 L. J. Ch. 584, 16 L. T. N. S. 438, 15 W. R. 801. If the defendant has caused the water to be foul, there is a damage in law, although the existence of other causes of foulness occasioned by other riparian landowners, may make the damage done by the defendant undistinguishable.

If a riparian owner encroach on the *alveus* or channel of the stream, as by erecting a permanent building in the channel, this is not a reasonable use of the stream, and the owner on the opposite side of the stream may maintain an action without showing special damage: *Bickett* v. *Morris*, L. R. 1 H. L. Sc. App. 47; see *Orr-Ewing* v. *Colquhoun*, *ante*, p. 70. And so an encroachment made on a tidal river may be restrained at the suit of the Crown without showing damage: *A.-G.* v. *Earl of Lonsdale*, L. R. 7 Eq. 377, 38 L. J. Ch. 335, 20 L. T. N. S. 64, 17 W. R. 219; *A.-G.* v. *Terry*, L. R. 9 Ch. 423, 30 L. T. N. S. 215, 22 W. R. 395.

(2) Easements.

But if an easement have been acquired with respect to water, those against whom it has been acquired cannot complain of its exercise; and on the other hand, the person entitled to such easement may maintain an action for any interference with its exercise.

The right to interfere with the accustomed course of water, either by penning it back or transmitting it altered in quantity or quality to an extent not justified by natural right, is an easement: Gale on Easements, 5th ed., p. 218. Such right to use water to the prejudice of any riparian proprietor above or below by throwing back, diverting, or polluting it, is a right for which the claimant must show a title by contract, prescription or other adequate authority: *Mason* v. *Hill*, *supra*; *Embrey* v. *Owen*, *supra*; *Wright* v. *Howard*, 1 Sim. & Stuart, 190.

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As to implied grants and reservations of easements, see *Nicholas* v. *Chamberlain*, Cro. Jac. 121; *Pyer* v. *Carter*, 1 H. & N. 916, 26 L. J. Ex. 258; *Wardle* v. *Brocklehurst*, 1 E. & E. 1058, 29 L. J. Q. B. 145; *Watts* v. *Kelson*, L. R. 6 Ch. App. 166, 40 L. J. Ch. 126, 24 L. T. N. S. 209, 19 W. R. 338, questioning certain dicta in *Suffield* v. *Brown*, 33 L. J. Ch. 249, 9 L. T. N. S. 627, 10 Jur. N. S. 111, 12 W. R. 356.

Prescription Act, 2 & 3 Will. IV. c. 71, section 2.

By the Prescription Act, 2 & 3 Will. IV. c. 71, s. 2, "no claim which may be lawfully made at the common law by custom, prescription or grant to any way or other easement or to any watercourse or the use of any water to be enjoyed or derived upon, over, or from any land when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of *twenty* years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter shall have been so enjoyed as aforesaid for the full period of *forty* years, the right thereto shall be deemed absolute and indefeasible unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing."

Section 4.

By section 4, "Each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action, wherein the claim or matter to which such period may relate shall have been or shall be brought in question, and no act or other matter shall be deemed to be an interruption within the meaning of this statute unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorising the same to be made."

Section 6

By section 6 no presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or employment of the right or matter claimed for any less period or number of years than the period or number mentioned in the Act as applicable to the case.

Section 7.

By section 7 the time during which a person otherwise capable of resisting a claim shall have been an infant, idiot, *non compos*, feme covert or tenant for life, or during which any action or suit shall have been pending, and shall have been diligently prosecuted until abatement by death, shall be excluded in the computation of the above periods, except where the right is declared to be absolute and indefeasible.

Section 8.

Section 8 provides that when land or water, upon, over, or from which any way or other convenient watercourse or use of water shall have been enjoyed or derived, has been held under any term of life or years exceeding three years, the time of enjoyment during such term shall be excluded in the computation of the period of forty years, in case the claim shall within three years next after the end or determination of the term be resisted by any person entitled to any reversion expectant on it.

Abandonment of easement.

The mere suspension of the exercise of a prescriptive right is not sufficient to destroy the right. But where dye-works had not been used for more than twenty years, and had been allowed to go to ruin, it was held that any right of fouling a stream attached to them was lost: *Crossley* v. *Lightowler*, *ante*, p. 71.

Artificial watercourses, &c.

With regard to watercourses altogether artificial, there seems no reason to doubt that the long-continued submission of the servient owner (*i.e.*, the owner of the land on which the *burthen* of the easement is imposed) to the discharge of water upon his tenement or to the conducting of it through his land by the owner of the dominant tenement (*i.e.*, the tenement to which the *right* given by the easement is attached) will confer the right to continue the discharge of the water upon or to receive the supply *through* the land of the servient owner: Gale on Easements, 5th ed., p. 296.

But the right to receive a supply of water through an artificial channel from the land of another is a more difficult question, depending on the circumstances of the creation of the channel. "The right to artificial watercourses, as against the party creating them, depends upon the character of the watercourse, whether it be of a permanent or a temporary character, and upon the circumstances under which it was created": *Broadbent* v. *Ramsbotham*, 11 Exch. R. 611, *per* Parke, B.

No action for obstructing

No action lies for the *diversion* of an artificial watercourse where from the nature of

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artificial watercourse of temporary character as against the makers.

the case it is obvious that the enjoyment of it depends upon temporary circumstances, and is not of a permanent character, and where the interruption is by the party who stands in the situation of the grantor. In other words, long enjoyment does not give a right to the *unobstructed* use of a sough or stream obviously made for temporary purposes, as to drain a mine, at least as against any one claiming under the makers: *Arkwright* v. *Gell*, 5 M. & W. 203; *Wood* v. *Wand*, *ante*, p. 70; and see *Mason* v. *Shrewsbury, &c., Ry.*, L. R. 6 Q. B. 578, 40 L. J Q. B. 293, 25 L. T. N. S. 239. So where neighbouring land is benefited by water flowing through artificial drains made by a farmer for draining his own land, it was held that the farmer, for the purposes of cultivation, might deepen the drain, and thereby draw off the water, though the plaintiff had enjoyed it for the full period of fifty years: *Greatrex* v. *Hayward*, 8 Exch. R. 291, 22 L. J. Ex. 137; and see *Gaved* v. *Martyn*, 19 C. B. N. S. 732, 34 L. J. C. P. 353. But on the other hand, an artificial watercourse may have been originally made under such circumstances, and have been so used, as to give all the rights that the riparian proprietors would have had had it been a natural stream: *Sutcliffe* v. *Booth*, 32 L. J. Q. B. 136, at p. 139. See also *Ivimey* v. *Stocker*, L. R. 1 Ch. App. 396, 35 L. J. Ch. 467, 14 L. J. N. S. 427, 12 Jur. N. S. 419, 14 W. R. 743; and *Rameshur Pershad Narain Singh* v. *Koonj Behari Pattuk*, L. R. 4 App. Cas. 121.

But there is a difference between *diverting or obstructing* an artificial stream and *polluting* it. See the judgment in *Wood* v. *Wand*, *ante*, p. 70. Therefore, where the owners of a brewery had enjoyed for twenty years the use of water issuing out of the mouth of a disused adit made to drain mines, it was held that the mine-owners could not afterwards resume the working of the mines so as to *foul* the water: *Magor* v. *Chadwick*, 11 A. & E. 571; see also *Hodgkinson* v. *Ennor*, 4 B. & S. 229, 32 L. J. Q. B. 231, 8 L. T. N. S. 451.

Where, however, the artificial stream is a cut made for the purpose of diverting the water of a natural stream, and returning it to the stream, and this flow of the natural stream through the artificial cut has been enjoyed for twenty years, all the rights of a riparian proprietor are acquired in the artificial stream: *Nuttall* v. *Bracewell*, L. R. 2 Ex. 1, 36 L. J. Ex. 1, 15 L. T. N. S. 313; *Holker* v. *Porritt*, L. R. 8 Ex. 107, 10 *ib.* 59, 42 L. J. Ex. 85, 44 *ib.* 52, 21 W. R. 414, 23 *ib.* 400, 33 L. T. N. S. 125; *Beeston* v. *Weate*, 5 E. & B. 986.

Subterraneous water.

Riparian rights are given where a stream runs underground in a known and defined channel. If the channel or course under ground is known, it cannot be interfered with. Thus, where a stream flows in a defined channel from a spring head, a diversion or detention of the water by pipes and tanks at the head is actionable: *Dudden* v. *Clutton Union*, 1 H. & N. 627, 26 L. J. Ex. 146; *Holker* v. *Porritt*, *supra*. But it is otherwise if the water drawn off do not run in a known and defined channel. Hence no action lies against a man, who, by digging wells or cutting drains in his own land, thereby drains his neighbour's land by intercepting the flow of the water percolating through the pores of the soil: *Chasemore* v. *Richards*, *ante*, p. 56; *New River Co.* v. *Johnson*, 2 E. & E. 435; 29 L. J. M. C. 93, 8 W. R. 179; *R.* v. *Metropolitan Board of Works*, 3 B. & S. 710, 32 L. J. Q. B. 105, 11 W. R. 492, 9 Jur. N. S. 1009; *Popplewell* v. *Hodkinson*, L. R. 4 Ex. 248. But where in drawing off subterranean water, the defendant also draws off water flowing in a defined surface channel, he is liable to an action: *Grand Junction Canal Co.* v. *Shugar*, L. R. 6 Ch. 483, 24 L. T. N. S. 402, 19 W. R. 569; and to discharge muddy water through underground passages into the plaintiff's pond is a good cause of action.

As to causing the flow of subterraneous water into neighbouring land, see *Smith* v. *Kenrick*, 7 C. B. 515; and as to casting upon neighbouring land subterraneous water, which had been intercepted, but if unintercepted would naturally flow on to the neighbouring land, see *W. Cumberland Iron Co.* v. *Kenyon*, L. R. 11 Ch. D. 782, 48 L. J. Ch. 793, 40 L. T. N. S. 703, 28 W. R. 24 (C. A.)

See further upon this subject Angel on Watercourses; Coulson & Forbes on Waters; Gale on Easements; Goddard on Easements.

As to liability of local authority for *negligence* in pursuing the powers given them by statute, see the notes to sections 15 and 17, *ante*.

As to incorporation of certain provisions of the Waterworks Clauses Acts, for the purpose of enabling the local authority to carry out these powers, see section 57, *post*.

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Restriction on construction of waterworks by local authority.

52 (1). Before commencing to construct waterworks within the limits of supply of any water company empowered by Act of Parliament or any order confirmed by Parliament to supply water, the local authority shall give written notice (2) to every water company within whose limits of supply the local authority are desirous of supplying water, stating the purposes for which and (as far as may be practicable) the extent to which water is required by the local authority.

It shall not be lawful for the local authority to construct any waterworks within such limits, if and so long as any such company are able and willing to supply (3) water proper and sufficient for all reasonable purposes for which it is required by the local authority; and any difference as to whether the water which any such company are able and willing to lay on is proper and sufficient for the purposes for which it is required, or whether the purposes for which it is required are reasonable, or (if and so far as the charges of the company are not regulated by Parliament) as to the terms of supply, shall be settled by arbitration in manner provided by this Act (4).

As to construction of reservoirs.

53 (5). At least two months (6) before commencing to construct under the provisions of this Act any reservoir (other than a service reservoir or tank which will hold not more than one hundred thousand gallons) the local authority shall give notice (7) of the intended work by advertisement in one or more of the local newspapers circulated within the district where the reservoir is to be constructed.

If any person who would be affected by the intended work objects to such work, and serves notice (7) in writing of such objection on the local authority at any time within the said two months, the intended work shall not be commenced without the sanction of the Local Government Board, after such inquiry as hereinafter mentioned, unless such objection is withdrawn.

The Local Government Board may, on application of the local authority, appoint an inspector to make inquiry on the spot into the propriety of the intended work and into the objections thereto, and to report to the Local Government Board on the matters with respect to which such inquiry was directed; and on receiving the report of such inspector, the Local Government Board may make an order disallowing or allowing with such modifications (if any) as they may deem necessary the intended work (8).

Power of carrying mains.

54. Where a local authority supply water within their district, they shall have the same powers and be subject to the same restrictions for carrying water mains within or without their district as they have and are subject to for carrying

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 75; see the Circular of 30th Sept., 1875, *ante*, p. 9, as to this section. In *Richmond Waterworks Co.* v. *Richmond Vestry*, L. R. 3 Ch. D. 82, 45 L. J. Ch. 441, 34 L. T. N. S. 480, it was held that the earlier section was not materially extended by the present section, and therefore where a local authority, before the passing of the present Act, had given the notices as required by the earlier section, they were not in consequence of the passing of this Act required to give the notices required by the present section.

Notices.

(2) As to notices and service thereof, see sections 266, 267, *post*.

"Able and willing to supply water."

(3) A company is not "able and willing to supply water, &c.," unless it has both the necessary powers and the requisite supply of water. Where Company R had the necessary powers but no water, and Company S had the requisite water but no powers within the district, and Company R sold its plant to Company S, and certain members of Company S bought all the shares in Company R, with the intention of allowing Company S to exercise the powers of Company R, it was held that the powers could not be so delegated, and that neither company was "able and willing" within the meaning of the Act: *Richmond Waterworks Co.* v. *Richmond Vestry, supra*.

Arbitration.

(4) As to arbitrations under the Act, see sections 179 *et seq.*, *post*.

(5) This section is new.

(6) "Months" mean calendar months: 13 & 14 Vict. c. 27.

(7) As to notices and service thereof, see sections 266, 267, *post*.

(8 As to inquiries by the Local Government Board, see sections 293 *et seq.*, *post*.

sewers within or without their district respectively by the law for the time being in force (1).

As to supply of water.

55. A local authority shall provide and keep in any waterworks (2) constructed or purchased by them a supply of pure and wholesome water; and where a local authority lay any pipes for the supply of any of the inhabitants of their district, the water may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the district or part of the district supplied (3).

Power to charge water rates and rents.

56 (4). Where a local authority supply water to any premises they may charge in respect of such supply a water rate to be assessed on the net annual value of the premises ascertained in the manner by this Act prescribed with respect to general district rates (5); moreover they may enter into agreements for supplying water on such terms as may be agreed on between them and the persons receiving the supply, and shall have the same powers for recovering water rents or other payments accruing under such agreements as they have for recovering water rates (6).

Incorporation of certain provisions of Waterworks Clauses Acts.

57 (7). For the purpose of enabling any local authority to supply water there shall be incorporated with this Act the Waterworks Clauses Act, 1863 (8), and the following provisions of the Waterworks Clauses Act, 1847 (9); (namely,)

"With respect" (where the local authority have not the control of the streets) "to the breaking up of streets for the purpose of laying pipes;" and

"With respect to the communication pipes to be laid by the undertakers;" and

"With respect to the communication pipes to be laid by the inhabitants;" and

"With respect to waste or misuse of the water supplied by the undertakers;" and

"With respect to the provision for guarding against fouling the water of the undertakers;" and

"With respect to the payment and recovery of the water rates."

Provided,—

That the provisions with respect to the communication pipes to be laid by the undertakers and the inhabitants respectively shall apply only in districts or parts of districts where the local authority lay any pipes for the supply of any of the inhabitants thereof; and

That any dispute authorised or directed by any of the said incorporated provisions to be settled by an inspector or two justices shall be settled by a Court of Summary Jurisdiction (10); and

(1) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 52. The power of carrying mains "without their district" is new.

See the provisions as to sewers *ante*, sections 13—34, especially sections 16, 32, 33 and 34.

(2) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 75. But the word "shall" is now substituted for the word "may" in the previous enactment.

As to enforcing performance of their duties by a local authority, see sections 299 *et seq.*, *post*.

(3) As to liability for injury sustained by reason of the non-performance of a statutory duty, see *Atkinson* v. *Newcastle Waterworks Co. ante*, p. 54, in which the Court of Appeal questioned the doctrines laid down in *Couch* v. *Steel*, 3 E. & B. 402, 23 L. J. Q. B. 121; and see *Campbell* v. *East London Co.*, 26 L. T. N. S. 475.

(4) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 93, the Local Government Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 20.

See the Public Health Water Act, 1878, 41 & 42 Vict. c. 25, s. 10, *post*.

As to assessing a local authority to the poor rate upon the *actual* profit made by them from water rates, see *Corporation of Worcester* v. *Droitwich Assessment Committee*, L. R. 2 Ex. D. 49, 45 L. J. M. C. 81, 46 *ib.* 241, 36 L. T. N. S. 186, 24 W. R. 490.

(5) As to the assessment and levying of general district rates, see section 211, *post*.

(6) See the next section.

(7) This is new. These sections were not incorporated before. See the Circular of 30th September, 1875, *ante*, p. 10.

(8) *I.e.*, 26 & 27 Vict. c. 93, *post*.

(9) *I.e.*, 10 & 11 Vict. c. 17, ss. 28—34, 44—53, 54—60, 61—67, 68—74, *post*.

(10) Defined *ante*, p. 47.

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That section forty-four of the Waterworks Clauses Act, 1847, shall for the purposes of this Act have effect as if the words "with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner," were omitted therefrom; and any rent for pipes and works paid by an occupier under that section may be deducted by him from any rent from time to time due from him to such owner (1).

Power to supply water by measure.

58 (2). A local authority may agree with any person to supply water by measure, and as to the payment to be made in the form of rent or otherwise for every meter provided by them (3); they shall at all times at their own expense keep all meters and other instruments for measuring water let by them for hire to any person in proper order for correctly registering the supply of water, and in default of their so doing such person shall not be liable to pay rent for the same during such time as such default continues. The local authority shall for the purposes aforesaid have access to and be at liberty at all reasonable times to remove, test, inspect, and replace any such meter or other instrument (4).

Register of meter to be evidence.

59 (5). Where water is supplied by measure by any local authority, the register of the meter or other instrument for measuring water shall be *primâ facie* evidence of the quantity of water consumed; and if the local authority and the consumer differ with respect to the quantity consumed, the difference shall be determined, on the application of either party, by a Court of Summary Jurisdiction (6), and such Court may order by which of the parties the costs of the proceedings before them shall be paid, and its decision shall be final and binding.

Penalty for injuring meters.

60 (7). If any person wilfully or by culpable negligence injures or suffers to be injured any meter or fittings belonging to a local authority, or fraudulently alters the index to any meter, or prevents any meter from duly registering the quantity of water supplied, or fraudulently abstracts or uses water of the local authority, he shall (without prejudice to any other right or remedy of the local authority) be liable to a penalty not exceeding forty shillings, and the local authority may in addition thereto recover the amount of any damage sustained. The existence of artificial means, under the control of the consumer, for causing any such alteration, prevention, abstraction, or use shall be evidence that the consumer has fraudulently effected the same (8).

Power to supply water to authority of adjoining district.

61 (9). Any local authority for the time being supplying water within their own district may, with the sanction of the Local Government Board, supply water to the local authority of any adjoining district on such terms as may be agreed on between such authorities, or as, in case of dispute, may be settled by arbitration in manner provided by this Act (10).

Local authority may

62 (11). Where on the report of the surveyor of a local authority it appears to

(1) As to construction of incorporated Acts, see section 316, *post.*

(2) This provision is new.

(3) As to contracts by a local authority, see sections 173, 174, and the notes thereto, *post.*

(4) As to access to and inspection of meters, &c., see 10 & 11 Vict. c. 17, s. 57, and 26 & 27 Vict. c. 93, ss. 14 and 15, *post.*

(5) This provision is new. (6) Defined *ante*, p. 47. (7) This provision is new.

(8) As to recovery of penalty, see sections 251 *et seq.*, *post.*

(9) This provision is new. See the Circular of 30th September, 1875, *ante*, p. 10.

(10) As to arbitrations, see sections 179 *et seq.*, *post.*

In the case of *Mayor, &c., of Halifax* v. *Soothill Local Board*, 30 L. T. N. S. 513, it was held by Bacon, V.-C., that a corporation possessing Parliamentary powers for making waterworks, by which they were under an obligation to supply to a township an amount of water at the option of the latter not less than 25,000 or more than 75,000 gallons per day at a certain rate per gallon, might be forced to supply more than 25,000 per day to the township who were selling part of it at a profit to a neighbouring township.

(11) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63 s. 76; the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 51; and the Sanitary Act 1866, 29 & 30 Vict. c. 90, s. 59. See the Circular of 30th September, 1875, *ante*, p. 10.

such authority that any house within their district is without a proper supply of water, and that such a supply of water can be furnished thereto at a cost not exceeding the water rate authorised by any local Act in force within the district, or where there is not any local Act so in force at a cost not exceeding twopence a week, or at such other cost as the Local Government Board may, on the application of the local authority, determine under all the circumstances of the case to be reasonable, the local authority shall give notice in writing to the owner, requiring him, within a time therein specified, to obtain such supply, and to do all such works as may be necessary for that purpose.

require houses to be supplied with water in certain cases.

If such notice is not complied with within the time specified, the local authority may, if they think fit, do such works and obtain such supply, and for that purpose may enter into any contract with any water company supplying water within their district (1); and water rates may be made and levied on the premises by the authority or company which furnishes the supply and may be recovered as if the owner or occupier of the premises had demanded a supply of water and were willing to pay water rates for the same, and any expenses incurred by the local authority in doing any such works may be recovered in a summary manner from the owner of the premises, or may by order of the local authority be declared to be private improvement expenses (2).

Powers of water company for supplying water to local authority.

63 (3). Any water company (4) may contract to supply water, or may lease their waterworks to any local authority (5), and the directors of any water company, in pursuance, in the case of a company registered under the Companies Act, 1862, of a special resolution of the members passed in manner provided by that Act (6), and in the case of any other company of a resolution passed by three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to any local authority, on such terms as may be agreed on between the company and the local authority, all the rights, powers, and privileges, and all or any of the waterworks, premises, and other property of the company, but subject to all liabilities to which the same are subject at the time of such purchase (7).

Vesting of

64 (8). All existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts

By 41 & 42 Vict. c. 25, s. 8, *post*, it is provided that where application is made to the Local Government Board to determine what is a reasonable cost, the Board may fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and a cost shall be deemed to be determined to be reasonable which does not exceed the cost authorised by the scale.

Compare the provision as to common lodging houses, *post*, s. 81.

As to notices and the service thereof, see sections 266, 267, *post*.

(1) As to contracts by a local authority, see sections 173 *et seq.* and notes, *post*.

(2) As to rates, see sections 56, 57, *ante*.

As to recovery, see sections 251 *et seq.*, *post*.

As to private improvement expenses, see sections 213—215, and as to appeal to Local Government Board, see section 268, *post*.

It is not necessary to prove any special resolution of the local authority as a condition precedent to the recovery of expenses: *Caballero* v. *Lewis*, 38 J. P. 614.

(3) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 53. The majority is altered from three-fifths to three-fourths.

As to the power of a local authority to contract for supply of water, and to lease, hire, or purchase waterworks, &c., see section 51, *ante*.

(4) Defined *ante*, p. 47.

(5) See *Mayor of Halifax* v. *Soothill Local Board*, *ante*, p. 76.

(6) As to a "special resolution" under the Companies Act, 1862, see 25 & 26 Vict. c. 89, s. 51.

(7) As to the powers of a landowner under the Limited Owners and Water Supply Further Facilities Act, 1877, see *ante*, p. 69.

(8) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 78; the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 45 (5); the Nuisances Removal Act, 1860, 23 & 24 Vict. c. 77, s. 7; and see the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, s. 121, *post*.

Secs. 64–66.

public cisterns, &c., in local authority.

and works used for the gratuitous supply of water to the inhabitants of the district of any local authority shall vest in and be under the control of such authority, and such authority may cause the same to be maintained and plentifully supplied with pure and wholesome water, or may substitute, maintain, and plentifully supply with pure and wholesome water other such works equally convenient (1); they may also (subject to the provisions of this Act) construct any other such works for supplying water for the gratuitous use of any inhabitants who choose to carry the same away, not for sale, but for their own private use.

Water for public baths, or trading or manufacturing purposes.

65 (2). Any local authority may, if they think fit, supply water from any waterworks (3) purchased or constructed by them to any public baths or washhouses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied; moreover, any local authority may, if they think fit, construct any works for the gratuitous supply of any public baths or washhouses established otherwise than for private profit, or supported out of any poor or borough rates.

Duty of urban authority to provide fire-plugs.

66 (4). Every urban authority shall cause fire-plugs and all necessary works, machinery and assistance for securing an efficient supply of water in case of fire, to be provided and maintained, and for this purpose they may enter into an agreement with any water company or person (5); and they shall paint or

(1) Under the corresponding provision of the Public Health (Scotland) Act, 1867, 30 & 31 Vict. c. 101, s. 89 (4), it has been held that a well, situated on private ground, the water of which has been used for domestic purposes, gratuitously, by the inhabitants for the prescriptive period, is a public well, and the local authority can enter on the land and do all acts for continuing and maintaining it which the inhabitants might have done before. And this, notwithstanding that there may be a company with a vested right to supply the inhabitants with water: *Smith* v. *Archibald*, L. R. 5 App. Cas. 489.

But where five wells, situated in private land, suddenly failed by reason of the operations of the landowner, and the local authority, for the purpose of ascertaining the cause of the failure of supply or to recover the water, sent their servant, who commenced to dig holes in the roadway of a public lane passing through the land, on the motion of the landowner an injunction was granted against the local authority from entering the land. It was not suggested that the landowner had done anything more than he was entitled to do. The Act does not authorise the local authority to enter on another's land to help themselves to water: *Edwards* v. *Joliffe*, W. Notes, 1877, p. 120.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, ss. 77 and 78 (clause second).

See the Baths and Washhouses Acts, 1846 and 1847, 9 & 10 Vict. c. 74, and 10 & 11 Vict. c. 61, *post*.

(3) Defined *ante*, p. 47.

(4) This is the same as section 124 of the Towns' Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, which was incorporated with the Local Government Act, 1858, 21 & 22 Vict. c. 98, by section 45 (5).

As to enforcing performance of duty by local authority, see section 299, *post*.

As to liability for breach of statutory duty, see *Atkinson* v. *Newcastle Waterworks Co.*, *ante*, p. 54; *Campbell* v. *East London Waterworks Co.*, *ante*, p. 75.

Liability for injury caused by act of the contractor.

(5) Where a contractor is employed to execute *an order which is legal*, the employer is not liable for any injury which may occur through the contractor's negligence. See *Ellis* v. *Sheffield Gas Consumers Co.*, 2 E. & B. 767, 23 L. J. Q. B. 42.

But where the contractor is employed to do an unlawful act whereby an injury is occasioned, the employer is liable: *Ibid.*

And "a man who orders a work to be executed, from which in the natural course of things injurious consequences to his neighbour must be expected to arise unless means are adopted by which such consequences may be prevented, is bound to see to the doing of that which is necessary to prevent the mischief, and cannot relieve himself of his responsibility by employing some one else—whether it be the contractor employed to do the work from which the danger arises, or some independent person—to do what is

mark on the buildings and walls within the streets words or marks near to such fire-plugs, to denote the situation thereof, and do such other things for the purposes aforesaid, as they may deem expedient.

Agreements with universities.

67. In the Oxford or Cambridge district the local authority may supply water to any hall, college, or premises of the university within such district, on such terms with respect to the mode of paying for such supply as may from time to time be agreed on between such university, or any hall or college thereof, and the local authority (1).

Provisions for Protection of Water.

Penalty for causing water to be corrupted by gas washings.

68 (2). Any person engaged in the manufacture of gas who—

(1.) Causes or suffers to be brought or to flow into any stream, reservoir, aqueduct, pond or place for water, or into any drain or pipe communicating therewith, any washing or other substance produced in making or supplying gas; or,

(2.) Wilfully does any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond or place for water is fouled,

shall forfeit for every such offence the sum of £200, and, after the expiration of twenty-four hours notice from the local authority or the person to whom the water belongs in that behalf, a further sum of £20 for every day during which the offence is continued or during the continuance of the act whereby the water is fouled.

Every such penalty may be recovered, with full costs of suit, in any of the superior Courts, in the case of water belonging to or under the control of the local authority by the local authority, and in any other case by the person into whose water such washing or other substance is conveyed or flows or whose water is fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased.

necessary to prevent the act he has ordered to be done from becoming wrongful:" *per* Cockburn, C.J., delivering the judgment of the Court in *Bower* v. *Peate*, L. R. 1 Q.B.D. 321, 45 L. J. Q. B. 446, 35 L. T. N. S. 321; see also *Angus* v. *Dalton*, L. R. 6 App. Cas. 740, 50 L. J. Q. B. 689, 44 L. T. N. S. 844; and *Percival* v. *Hughes*, L. R. 8 App. Cas. 443, 52 L. J. Q. B. 719, 31 W. R. 725.

(1) This is the same as the proviso in section 93 of the Public Health Act, 1848, 11 & 12 Vict. c. 63.

See section 342, *post*.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 80, and the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, ss. 23, 24 and 25.

By section 57, *ante*, p. 75, there are incorporated with his Act the Waterworks Clauses Act, 1863, 26 & 27 Vict. c. 93 (sections 16—20 of which make provision against waste, &c., of water), and the following provisions of the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, viz.:—

"With respect to the waste or misuse of water, &c.," *i.e.* sections 54—60. "With respect to the provision for guarding against fouling the water," *i.e.* sections 61—67.

See these sections and the notes thereto, *post*. Section 307, *post*, p. 211, provides that any person wilfully damaging works of a local authority, in cases where no other penalty is provided by this Act, shall be liable to a penalty not exceeding £5.

By section 340, *post*, p. 223, where a local Act is in force providing for purposes the same or similar to the purposes of this Act, proceedings may be instituted either under the local Act or this Act.

As to notices and service thereof, see sections 266, 267, *post*.

Secs. 69, 71.

Local authority may take proceedings to prevent pollution of streams.

69 (1). Any local authority, with the sanction of the Attorney-General, may, either in their own name or in the name of any other person, with the consent of such person, take such proceedings by indictment, bill in Chancery, action or otherwise, as they may deem advisable for the purpose of protecting any watercourse within their jurisdiction from pollutions arising from sewage either within or without their district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by such authority in the execution of this Act.

Power to close polluted wells, &c.

70 (2). On the representation of any person to any local authority that within their district the water in any well, tank or cistern, public or private, or supplied from any public pump, and used, or likely to be used, by man for drinking or domestic purposes, or for manufacturing drinks for the use of man, is so polluted as to be injurious to health, such authority may apply to a Court of Summary Jurisdiction for an order to remedy the same; and thereupon such Court shall summon the owner or occupier of the premises to which the well, tank or cistern belongs if it be private, and in the case of a public well, tank, cistern or pump, any person alleged in the application to be interested in the same, and may either dismiss the application, or may make an order directing the well, tank, cistern or pump, to be permanently or temporarily closed, or the water to be used for certain purposes only, or such other order as may appear to them to be requisite to prevent injury to the health of persons drinking the water.

The Court may, if they see fit, cause the water complained of to be analysed at the cost of the local authority applying to them under this section (3).

If the person on whom an order under this section is made fails to comply with the same, the Court may, on the application of the local authority, authorise them to do whatever may be necessary in the execution of the order, and any expenses incurred by them may be recovered in a summary manner from the person on whom the order is made (4).

Expenses incurred by any rural authority in the execution of this section, and not recovered by them as aforesaid, shall be special expenses (5).

Regulation of Cellar Dwellings and Lodging Houses (6).

Occupation of Cellar Dwellings (6).

Prohibition of occupying cellar dwellings.

71 (7). It shall not be lawful to let or occupy (8), or suffer to be occupied, separately as a dwelling any cellar (including for the purposes of this Act in that

(1) The previous provision was the Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75, s. 10.

See the Rivers Pollution Prevention Act, 1876, 39 & 40 Vict. c. 75, *post.*

See section 17, *ante*, p. 55, and the notes thereto.

As to the mode of defraying the expenses, &c., of urban authorities, see sections 207 *et seq.*, *post*, and of rural authorities, sections 229 *et seq.*, *post.*

(2) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 50.

See the Circular of 30th September, 1875, *ante*, p. 10.

(3) Water is not "food" within the Sale of Food and Drugs Act, 1875, 38 & 39 Vict. c. 63, *post.* See section 2.

(4) As to recovery of expenses, see sections 251 *et seq.*, *post.*

(5) See section 229, *post.*

(6) As to the use of headings in determining the sense of sections ranged under them, see *Hammersmith Ry.* v. *Brand*, *ante*, p. 48.

(7) The previous enactments were, the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 67, which was substantially the same as sections 71, 72, 73 and 74 of this Act, and the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 42, which applied the 67th section of the Act of 1848 to every place in England and Ireland where cellar dwellings were not regulated by any other Act of Parliament.

"Occupy."

(8) "Occupying" is defined by section 74, *post.*

expression any vault or underground room) built or rebuilt after the passing of this Act, or which is not lawfully so let or occupied at the time of the passing of this Act (1).

Existing cellar dwellings only to be let or occupied on certain conditions.

72 (2). It shall not be lawful to let or occupy, or suffer to be occupied, separately as a dwelling, any cellar (3) whatsoever, unless the following requisitions are complied with; (that is to say,)

Unless the cellar is in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, and is at least three feet of its height above the surface of the street or ground adjoining or nearest to the same; and

Unless there is outside of and adjoining the cellar, and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part; and

Unless the cellar is effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor thereof; and

Unless there is appurtenant to the cellar the use of a watercloset, earthcloset, or privy, and an ashpit, furnished with proper doors and coverings, according to the provisions of this Act (3); and

Unless the cellar has a fireplace with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the surveyor (4) (except in the case of an inner or back cellar let or occupied along with a front cellar as part of the same letting or occupation, in which case the external window may be of any dimensions not being less than four superficial feet in area clear of the sash frame).

Provided that in any area adjoining a cellar there may be steps necessary for access to such cellar, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such cellar a clear space of six inches at the least, and that over or across any such area there may be steps necessary for access to any building above the cellar to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window.

Penalty on persons offending against enactment.

73 (5). Any person who lets, occupies, or knowingly suffers to be occupied for hire or rent, any cellar (6) contrary to the provisions of this Act, shall be liable for every such offence to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied after notice in writing from the local authority in this behalf.

Definition of occupying as a dwelling.

74. Any cellar in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act.

"Lawfully occupied at the time of the passing of the Act."

(1) The exception of cellars lawfully occupied at the time of the passing of the Act includes, (1) cellars occupied as dwellings before the passing of the Public Health Act, 1848, *viz.*, 31st Aug. 1848, in districts to which that Act applied before the passing of the Sanitary Act, 1866, *viz.*, 7th Aug. 1866, and (2) cellars occupied as dwellings before the 7th Aug. 1866, in districts to which the Act of 1848 did not apply before that date and where such dwellings were not regulated by any other Act of Parliament, and (3) cellars lawfully occupied as dwellings in districts where such dwellings were regulated by any other Act of Parliament, and to which the Public Health Act, 1848, was not applied otherwise than by the Sanitary Act, 1866.

Penalty.

The penalty is imposed by section 73, *infra*.

See the general powers of the local authority as to the regulation of buildings, sections 155—160, *post*.

(2) See the notes to the previous section.

(3) Defined in the previous section.

(4) See the interpretation clause, *ante*, p. 44.

(5) See the notes to section 71, *ante*, p. 80.

(6) Defined in section 71, *ante*, p. 80.

As to notices and the service thereof, see sections 266, 267, *post*.

As to recovery of penalty, see sections 251 *et seq.*, *post*.

Secs. 75, 76.

Power to close cellars in case of two convictions.

75 (1). Where two convictions against the provisions of any Act relating to the occupation of a cellar as a separate dwelling place have taken place within three months (whether the persons so convicted were or were not the same), a Court of Summary Jurisdiction may direct the closing of the premises so occupied for such time as it may deem necessary, or may empower the local authority permanently to close the same, and to defray any expenses incurred by them in the execution of this section.

Common Lodging-houses.

Registers of common lodging houses to be kept.

76 (2). Every local authority shall keep a register in which shall be entered the names and residences of the keepers of all common lodging-houses (3) within the

Appeal.

(1) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 36.

As to appeal from order, &c., of Court of Summary Jurisdiction, see section 269, *post*, p. 193.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 66; the Common Lodging Houses Act, 1851, 14 & 15 Vict c. 28, s. 7; and the Common Lodging Houses Act, 1853, 16 & 17 Vict. c. 41, s. 5.

(3) Neither the expression "common lodging-house," nor the expression "keeper of a common lodging-house," are defined in the Act. The following opinions of the then law officers of the Crown (the late Lord Chief Justice Cockburn and the late Lord Hatherley) as to the definition of the expression "common lodging-house" under the Common Lodging Houses Act, 1851, were given in 1853, and were published by the general Board of Health in a Circular dated 17 Oct. 1853:—

[First Opinion.]

It may be difficult to give a precise definition of the term common lodging-house, but looking to the preamble and general divisions of the Act, it appears to us to have reference to that class of lodging-houses in which persons of the poorer class are received for short periods, and, though strangers to one another, are allowed to inhabit one common room. We are of opinion that it does not include hotels, inns, publichouses, or lodgings let to the upper and middle classes.

(Signed) A. E. Cockburn,
W. P. Wood.

[Second Opinion.]

The points upon which our opinion is desired appear to us to be the following:—

1st. What is the meaning of that part of the definition of a common lodging-house in our former opinion which refers to the parties inhabiting a common room, being strangers to one another.

The observation made would imply that we meant that the parties must be persons previously unacquainted with one another. Our obvious intention was to distinguish lodgers promiscuously brought together from members of one family or household.

2nd. Whether lodging-houses otherwise coming within the definition, but let for a week or longer period, would from the latter circumstance be excluded from the operation of the Act.

We are of opinion that the period of letting is unimportant in determining whether a lodging-house comes under the Act now in question.

3rd. Who is to be considered the keeper of a common lodging-house where the owner letting the lodgings does not himself reside in the house.

We are of opinion that where he neither resides in the house nor exercises any control over its management, but simply receives the rents, he cannot be considered the keeper. It is clear that in such case he would not comply with the requirements of the 11th, 12th, and 13th sections of the Act. But where the owner, though not resident in the house either in person or through an agent, colourably or otherwise exercises control over its management, we have no doubt that he should be considered the keeper. A serious difficulty arises where the owner *bonâ fide* lets different parts of the house to different individuals, and these lessees take in lodgers of such a description as would in an ordinary case constitute the house a common lodging-house. The question which here arises is—Whether each apartment so used is to be considered a common lodging-house of which the lessee is the keeper.

It seems to us difficult to suppose that the Act which refers to common lodging-houses

district of such authority, and the situation of every such house, and the number of lodgers authorised under this Act by such authority to be received therein.

A copy of any entry in such register, certified by the clerk of the local authority to be a true copy, shall be received in all courts and on all occasions as evidence, and shall be sufficient proof of the matter registered, without production of the register or of any document or thing on which the entry is founded; and a certified copy of any such entry shall be supplied gratis by the clerk to any person applying at a reasonable time for the same.

All common lodging-houses to be registered, and to be kept only by registered keepers.

77 (1). A person shall not keep a common lodging-house or receive a lodger therein unless the house is registered in accordance with the provisions of this Act, nor unless his name as the keeper thereof is entered in the register kept under this Act: Provided that when the person so registered dies, his widow or any member of his family may keep the house as a common lodging-house for not more than four weeks after his death without being registered as the keeper thereof.

78 (2). A house shall not be registered as a common lodging-house until it has

was intended to apply to single apartments, so that every room in a house might become a separate common lodging-house. On the other hand it is to be observed, that it is by the 2nd section provided that part of a house "if used as a common lodging-house" shall be included in the Act; and it is also true that both under the law relating to burglary, and also with reference to the exercise of franchises, the separate apartments of lodgers, where the landlord did not reside, have been held to be dwelling-houses.

Considering, therefore, that apartments thus let and occupied are especially within the mischief intended to be remedied by the Act, we think that an attempt should be made to treat them as common lodging-houses, and to enforce the provisions of the Act with respect to them against the tenants who thus admit lodgers.

At the same time we feel bound to say we entertain considerable doubt as to the result. (Signed) A. E. Cockburn,
W. P. Wood.

In *Langdon* v. *Broadbent*, 37 L. T. N. S. 434, it was held that a lodging-house where hawkers, bone gatherers, chair menders, and persons of that class—of an itinerant character, making no long stay—though one person had stayed for two years and the majority for a few weeks, paying sixpence a night, and all taking their meals in a common room or kitchen, was held to be a common lodging-house. Grove, J., in giving judgment, said it was not necessary to show that the lodgers herded together in one sleeping apartment, and Lindley, J., said, "if one looks to sections 86 and 89 of the Act, it is evident that the kind of house that is meant is one that is open to all comers, and therefore requires supervision in order to insure cleanliness."

The landlord of a house, all the rooms of which were let out in tenements by the week at rents less than three shillings per week, although he did not reside upon the premises, has been held to be the keeper of a common lodging-house within the Dublin Improvement Act, 1864, s. 24: *Halligan* v. *Ganly*, 19 L. T. N. S. 268.

See further, section 89, *post*, p. 86, as to the interpretation of the expression "common lodging-house"; and as to the burthen of proof where the inmates allege that they are members of the same family, and as to the expression "family," see section 87, and the note thereto, *post*.

As to the power of the Local Government Board to empower a local authority to make bye-laws for the regulation of houses let in lodgings other than common lodging-houses, see section 90, *post*.

Labouring Classes Lodging Houses Act, 1851, &c.

See also the Labouring Classes' Lodging Houses Act, 1851, *post*, the Labouring Classes Dwelling Houses Acts, 1868 and 1879, *post*, the Artizans' and Labourers' Dwellings Acts, 1868 and 1879, *post*, and the Artizans' and Labourers' Dwellings Improvement Acts, 1875, 1879, and 1882, *post*.

(1) The previous enactments were the Common Lodging Houses Act, 1851, 14 & 15 Vict. c. 28, s. 8, and the Common Lodging Houses Act, 1853, 16 & 17 Vict. c. 41, s. 3.

See the preceding section and the notes thereto.

(2) The previous enactment was the Common Lodging Houses Act, 1853, 16 & 17 Vict. c. 41, ss. 3 and 4.

See the two preceding sections and the notes thereto.

Secs. 78–82.

Local authority may refuse to register houses.

been inspected and approved for the purpose by some officer of the local authority, and the local authority may refuse to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character, in such form as the local authority direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging-house is situate for property of the yearly rateable value of six pounds or upwards.

Notice of registration to be affixed to houses.

79 (1). The keeper of every common lodging-house (2) shall, if required in writing by the local authority so to do, affix and keep undefaced and legible a notice with the words "Registered Common Lodging-house" in some conspicuous place on the outside of such house.

The keeper of any such house who, after requisition in writing from the local authority, refuses or neglects to affix or renew such notice, shall be liable to a penalty not exceeding five pounds, and to a further penalty of ten shillings for every day that such refusal or neglect continues after conviction (3).

Bye-laws to be made by local authority.

80 (4). Every local authority shall from time to time make bye-laws—

(1.) For fixing and from time to time varying the number of lodgers who may be received into a common lodging-house, and for the separation of the sexes therein; and,

(2.) For promoting cleanliness and ventilation in such houses; and,

(3.) For the giving of notices and the taking precautions in the case of any infectious disease (5); and,

(4.) Generally for the well ordering of such houses.

Power to local authority to require supply of water to houses.

81 (6). Where it appears to any local authority that a common lodging-house (2) is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate (7), the local authority may by notice in writing require the owner (8) or keeper (9) of such house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose; and if the notice be not complied with accordingly, the local authority may remove such house from the register until it is complied with.

Limewashing of houses.

82 (10). The keeper of a common lodging-house (2) shall, to the satisfaction of the local authority (11), limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and shall if he fails to do so be liable to a penalty not exceeding forty shillings (12).

(1) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 49.

(2) See the note to section 76, *ante*.

(3) As to recovery of penalty, see sections 251 *et seq.*, *post*.

As to conviction for third offence, see section 88, *post*, p. 86, and compare provision in section 112, *post*, p. 100; and as to "continuing offences," see *R.* v. *Waterhouse*, *post*, p. 90, and *Rumball* v. *Schmidt*, *post*, p. 128.

(4) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 66, and the Common Lodging Houses Act, 1851, 14 & 15 Vict. c. 28, s. 9. Sub-section 3 is new.

As to the making, authentification, and confirmation of bye-laws generally, see sections 182—188, *post*.

(5) Special provision for the giving of notice in case of infectious disease is made by section 84, *post*. And see the general provisions in respect of infectious diseases, sections 120—130, *post*.

(6) The previous enactment was the Common Lodging Houses Act, 1853, 16 & 17 Vict. c. 41, s. 6.

(7) Compare section 62, *ante*, p. 76. (8) Defined *ante*, p. 45.

(9) See the note to section 76, *ante*. As to notices and the service thereof, see sections 266, 267, *post*.

(10) The previous enactment was the Common Lodging Houses Act, 1851, 14 & 15 Vict. c. 28, s. 13.

(11) Defined *ante*, p. 44.

(12) As to the recovery of the penalty, see sections 251 *et seq.*, *post*.

Power to order reports from keepers of houses receiving vagrants.

83 (1). The keeper of a common lodging-house (2) in which beggars or vagrants are received to lodge shall from time to time, if required in writing by the local authority so to do, report to the local authority, or to such person as the local authority direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the person so ordered to report, which schedules he shall fill up with the information required and transmit to the local authority (3).

Keepers to give notice of fever, &c., therein.

84 (4). The keeper of a common lodging-house (2) shall, when a person in such house is ill of fever or any infectious disease, give immediate notice thereof to the medical officer of health of the local authority, and also to the poor law relieving officer of the union or parish in which the common lodging-house is situated (3).

As to inspection.

85 (5). The keeper of a common lodging-house (2), and every other person having or acting in the care or management thereof, shall, at all times when required by any officer of the local authority, give him free access to such house or any part thereof; and any such keeper or person who refuses such access shall be liable to a penalty not exceeding £5 (6).

Offences by keepers of houses.

86 (7). Any keeper of a common lodging-house (2) who—

(1.) Receives any lodger in such house without the same being registered under this Act (8); or

(2.) Fails to make a report, after he has been furnished by the local authority with schedules for the purpose in pursuance of this Act, of the persons resorting to such house (9); or

(3.) Fails to give the notices required by this Act where any person has been confined to his bed in such house by fever or other infectious disease (10),

shall be liable to a penalty not exceeding five pounds, and in the case of a continuing offence to a further penalty not exceeding forty shillings for every day during which the offence continues (11).

As to conviction for a third offence, see section 88, *post*.

As to the power of the local authority to make bye-laws for promoting cleanliness, see section 80 (2), *ante*.

As to the general power of the local authority to compel houses to be purified, see section 46, *ante*; and to compel the cleansing and disinfecting of houses, see section 120, *post*.

(1) The previous enactment was the Common Lodging Houses Act, 1853, 16 & 17 Vict. c. 41, s. 8.

(2) See the note to section 76, *ante*.

(3) As to the penalty for failing to comply with this requirement, see section 86, *infra*.

(4) The previous enactment was the Common Lodging Houses Act, 1851, 14 & 15 Vict. c. 28, s. 11.

See the general provisions against infection, sections 120—130, *post*.

(5) The previous enactment was the Common Lodging Houses Act, 1851, 14 & 15 Vict. c. 28, s. 12. The Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 66, contained a similar provision, but access could only be had between 11 o'clock in the forenoon and 4 o'clock in the afternoon.

As to recovery of penalty, see sections 251 *et seq.*, *post*.

(6) As to conviction for third offence, see section 88, *post*.

(7) The corresponding sections of the previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 66; the Common Lodging Houses Act, 1851, 14 & 15 Vict. c. 28, s. 14; and the Common Lodging Houses Act, 1853, 16 & 17 Vict. c. 41, s. 11.

(8) See sections 76—78, *ante*. (9) See section 83, *supra*.

(10) See section 84, *ante*. The 14 & 15 Vict. c. 28, s. 14, *supra*, imposed the penalty only where the person was "confined to his bed for forty-eight hours" without notice being given. Now by section 84, *ante*, *immediate* notice is required to be given.

(11) As to continuing offences, compare the provision in section 79, and see the note thereto, *ante*; and as to conviction for third offence, see section 88, *post*.

As to recovery of penalty, see sections 251 *et seq.*, *post*.

Secs. 87–90.

Evidence as to family in proceedings.

87 (1). In any proceedings under the provisions of this Act relating to common lodging-houses, if the inmates of any house or part of a house allege that they are members of the same family, the burden of proving such allegation shall lie on the persons making it.

Conviction for third offence to disqualify persons from keeping common lodging-house.

88 (2). Where the keeper of a common lodging-house is convicted of a third offence against any of the provisions of this Act relating to common lodging-houses, the Court before whom the conviction for such third offence takes place may, if it thinks fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the Court thinks fit, keep a common lodging-house without the previous license in writing of the local authority, which license the local authority may withhold or grant on such terms and conditions as they think fit.

Interpretation of "common lodging-house."

89 (3). For the purposes of this Act the expression "common lodging-house" includes, in any case in which only part of a house is used as a common lodging-house, the part so used of such house.

Bye-laws as to Houses let in Lodgings.

Local Government Board may empower local authority to make bye-laws as to lodging-houses.

90 (4). The Local Government Board may, if they think fit, by notice published in the *London Gazette*, declare the following enactment to be in force within the district or any part of the district of any local authority, and from and after the publication of such notice such authority shall be empowered to make bye-laws (5) for the following matters; (that is to say,)

(1.) For fixing and from time to time varying the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family (6), and for the separation of the sexes in a house so let or occupied (7):

(2.) For the registration of houses so let or occupied:

(3.) For the inspection of such houses:

(4.) For enforcing drainage and the provision of privy accommodation for such houses, and for promoting cleanliness and ventilation in such houses (8):

(1) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 41.

The expression "family" is not defined in the Act. The following remarks were made by Lord Coleridge, C.J., in delivering judgment in *Liskeard Union* v. *Liskeard Waterworks Co.*, L. R. 7 Q. B. D. 505, at p. 509 (where a question was raised as to the meaning of the expression in the Liskeard Waterworks Act, 1860, 23 Vict. c. XIII. s. 33): "I do not intend to define the expression 'one family.' Every large family is partly made up of persons quite unconnected by ties of blood or marriage, and the number of those so connected may bear a very small proportion to the whole number of persons collected together, as, for instance, in the case of a school, where a number of persons of different families are collected from different places, but under one head and one roof, and are for all practical purposes one family."

(2) The previous enactment was the Common Lodging Houses Act, 1853, 16 & 17 Vict. c. 41, s. 12.

See the provision in case of two convictions for overcrowding, section 109, *post*.

(3) The previous enactment was the Common Lodging Houses Act, 1851, 14 & 15 Vict. c. 28, s. 2.

(4) The previous enactments were the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 35, and the Sanitary Law Amendment, 1874, 37 & 38 Vict. c. 89, s. 47.

(5) As to the authentification, confirmation, enforcing, &c., of bye-laws, and generally, see sections 182—188, *post*.

(6) As to the expression "one family," see *per* Lord Coleridge, C.J., in *Liskeard Union* v. *Liskeard Waterworks Co.*, *supra*.

(7) As to overcrowding, see further section 91 (5) *post*, p. 89, and section 109, *post*, p. 99.

(8) As to enforcing effectual drainage of houses, see further sections 23, 24, and 25, *ante*, pp. 58—59, and section 40, *ante*, p. 64. As to privy accommodation, sections 35—41, *ante*, pp. 62—4.

As to power to make bye-laws for securing the ventilation of buildings, see section 157 (3) *post*, p. 129.

(5.) For the cleansing and lime-washing at stated times of the premises, and for the paving of the courts and courtyards thereof (1):

(6.) For the giving of notices and the taking of precautions in case of any infectious disease (2).

This section shall not apply to common lodging-houses within the provisions of this Act relating to common lodging-houses (3).

Nuisances (5).

Definition of nuisances.

91 (4). For the purposes of this Act—

(1) See section 46, *ante*, and section 120, *post*.

(2) See further the provisions against infectiousdiseases, sections 120—130, *post*; and for the prevention of epidemic diseases, sections 134—139, *post*.

(3) As to the meaning of "common lodging-house," see the note to section 76, *ante*, p. 82; and as to the provisions relating to common lodging-houses, see sections 76—89, *ante*.

Labouring Classes Lodging-Houses Act, 1851, &c.

See further the Labouring Classes' Lodging Houses Act, the Labouring Classes Dwellings Acts, the Artizans' and Labourers' Dwellings Acts and Improvement Acts, *post*.

(4) The previous enactments were the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 8, and the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 19.

Provisions relating to nuisances not to affect other remedies.

(5) By section 111, *post*, p. 100, it is enacted that the provisions of this Act relating to nuisances (*i.e.*, sections 91—110) shall be deemed to be in addition to and not to abridge or affect any right, remedy or proceeding under any other provisions of the Act, or under any other Act or at law or in equity.

Definition of nuisance.

Nuisance (*nocumentum* or annoyance, fr. *nuire*, *to hurt*), signifies anything that worketh hurt, inconvenience or damage. Nuisance is of two kinds; such as is *public* or *common*, which affects the public and is an annoyance to all the lieges, which belongs to the class of public wrongs or crimes and may be the subject of an indictment; and such as is *private*, which may be defined as anything done to the hurt or annoyance of the hereditaments of another whereby he suffers more than the public at large, but which does not amount to a trespass thereon. See *Benjamin* v. *Storr*, L. R. 9 C. P. 400. FitzH. Nat. Brev. 183.

Public.

Private.

Private nuisances.

If a man builds a house so close to mine that his roof overhangs my roof and the water flows off his roof upon mine, this is a nuisance for which an action will lie. FitzH. Nat. Brev. 184. So if the boughs of his tree are allowed to grow so as to overhang my land, which they had not been accustomed to do: *Norris* v. *Baker*, 1 Roll. Rep. 393. If a person keeps his hogs or other noisome animals so near the house of another previously built and inhabited that the stench of them incommodes him and makes the air unwholesome, this is a nuisance: *Aldred's case*, 9 Rep. 58; *R.* v. *White*, 1 Burr. 337. So if any offensive trade be set up and exercised, as a tanner's, tallow-chandler's, brick maker's or the like: *Morley* v. *Pragnel*, Cro. Car. 510; and see *Stockport Waterworks Co.* v. *Potter*, 7 H. & N. 160, 31 L. J. Ex. 9, 7 Jur. N. S. 880; *Crump* v. *Lambert*, L. R. 3 Eq. 409, 15 L. T. N. S. 600, 15 W. R. 417, affirmed on appeal, 17 L. T. N. S. 133. And if one erects a smelting house so near the land of another that the vapour and smoke kill the corn and grass or damage the cattle, it is a nuisance: 1 Roll. Abr. 89. And it may be laid down generally that if one does any act, in itself lawful, which yet being done where it is done necessarily tends to damage the land of another, it is a nuisance; for it is incumbent on him to find some other place to do that act, where it will be less offensive, the rule being *sic utere tuo ut alienum non lædas*. A nuisance may arise by an omission to perform a legal duty, as where one is bound to scour a ditch, and omits to do so. But depriving one of a mere matter of pleasure, as of a fine prospect by building a wall, or opening a window so as to disturb a neighbour's privacy, is not an actionable nuisance, for such conduct does not abridge anything really necessary or convenient; it is, therefore, no injury to the sufferer: *Aldred's case*, *supra*; *Butt* v. *Imperial Gas Co.*, L. R. 2 Ch. App. 158, 16 L. T. N. S. 820. As to vibration consequent upon the use of a railway authorised by Parliament, see *Hammer-*

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smith Ry. v. *Brand*, L. R. 4 H. L. Ca. 171, 38 L. J. Q. B. 265, 21 L. T. N. S. 238, 18 W. R. 12. A private nuisance may also be caused by interfering with the enjoyment of an incorporeal hereditament, as by stopping or diverting the flow of waters: FitzH. Nat. Brev. 184, and see *ante*, pp. 70—73; or by obstructing or interfering with the use of a right of way or by putting logs across or ploughing over the way: *Ibid.* 183.

Remedies in case of private nuisance.

The party injured by a nuisance may (1) by *action* recover a satisfaction in damages for the injury sustained. He has also (2) the right to *abate* the nuisance by his own act, so as he commits no riot in the doing of it, nor occasions any damage beyond what the abatement necessarily requires: 3 Steph. Com., 8th ed., p. 246. And in certain cases (3) an *injunction* may be obtained to stay the nuisance or compel its abatement by the wrongdoer.

Public or common nuisances.

A common nuisance is an offence against public convenience and the economical regimen of the State, and it consists in either doing a thing to the annoyance of all the lieges, or neglecting to do some good which the common welfare requires: 4 Steph. Conv., p. 244, 8th ed.; Hawk. P. C. b. 1, c. 32 (4), s. 1. Common nuisances are of the class of *misdemeanours*, and are distinguished from private nuisances as being a grievance to the community at large and not merely to particular persons. Of the nature of common nuisances are: 1. Annoyances in *highways* or *bridges* by actual obstructions or by want of reparations by those upon whom lies an obligation to repair. 2. Carrying on any offensive or dangerous trade or manufacture. To support an indictment for such nuisances it is not necessary to prove that they are offensive to health, if they be manifestly offensive to the senses: *R.* v. *Neil*, 2 C. & P. 485. 3. Exposing in a public thoroughfare a person infected with contagious disease: *R.* v. *Vantandillo*, 4 M. & S. 73. 4. All disorderly inns or other houses, bawdy houses, gaming houses, unlicenced or improperly conducted playhouses and the like, are either at common law or by statute public nuisances. See as to public nuisances and proceedings to restrain, *Soltau* v. *De Held*, 2 Sim. N. S. 133. Further as to nuisances generally, see Stephen's Commentaries, 8th ed., vol. iii., pp. 415 *et seq.*, and vol. iv., pp. 244 *et seq.*, from which the above statement is taken; Gibbons on Nuisances; Addison on Torts, pp. 332 *et seq.*, 5th ed., and Russell on Crimes, vol. i., pp. 418 *et seq.*, 5th ed.

What are nuisances within the Act.

As already stated, the Act does not abridge or affect any of the rights or remedies given by any other statute, or at law or in equity, but makes additional provision for getting rid of the several nuisances specified in section 91. It is not necessary that a nuisance should be absolutely injurious to health in order to constitute a nuisance within the meaning of section 91. It is enough if the nuisance, though not absolutely injurious to health, is one which would interfere with the permanent comfort of those in the neighbourhood, and might probably become injurious to health: *Bishop Auckland Local Board* v. *Bishop Auckland Iron Co.*, L. R. 10 Q. B. D. 138, 52 L. J. M. C. 38, 48 L. J. N. S. 223, 31 W. R. 288; "I am of the same opinion as I then was (*viz.* in *Malton Board* v. *Malton Manure Co.*, *post*, p. 101), that the words 'nuisance, or injurious to health,' do not mean 'nuisance injurious to health.' That is obviously not their natural meaning, and I object, unless compelled, to give words a meaning which is different from their obvious natural one. The natural sense of the words seems to me the best one to apply in the present case, *i.e.*, a nuisance either interfering with personal comfort or injurious to health:" *Ibid.*, *per* Stephen, J. In this case it was held that quantities of cinders and ashes accumulated upon the defendant's premises from which were thrown off strong fumes or effluvia so as to be a nuisance to certain of the inhabitants of the district, but which the justices found as a fact were not injurious to health, constituted a nuisance within the meaning of section 91, sub-section 4; and see *per* Stephen, J. in *Malton Board* v. *Malton Manure Co.*, *post*, p. 101, and *Banbury Sanitary Authority* v. *Page*, *ante*, p. 67. In *Great Western Ry.* (app.) v. *Bishop* (resp.), L. R. 7 Q. B. 550, 41 L. J. M. C. 120, 26 L. T. N. S. 905, 20 W. R. 969, it was decided under the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 8, that the appellants, who were the owners of a railway bridge over a highway upon which water collected and dripped through the planks on to the highway, were not liable for allowing a nuisance to exist on their premises, as the nuisance was not injurious to health. But see this case distinguished as to the present Act, *per* Stephen, J., in *Bishop Auckland Board* v. *Bishop Auckland Iron Co.*, *supra*.

As to the use of headings of different portions of a statute to determine the sense of

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1. Any premises (1) in such a state as to be a nuisance or injurious to health (2):
2. Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain (3), or ashpit so foul or in such a state as to be a nuisance or injurious to health (4):
3. Any animal so kept as to be a nuisance or injurious to health (5):
4. Any accumulation or deposit which is a nuisance or injurious to health (6):
5. Any house (7) or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same family (8):

doubtful expressions on sections raised under them, see *Hammersmith Ry.* v. *Brand*, *ante*, p. 48.

Local authorities in performing their statutory duties will not be allowed to create a nuisance, unless it is clear that the Legislature intended to give them that power: *Metropolitan Asylum District* v. *Hill*, L. R. 6 App. Cas. 193, 50 L. J. Q. B. 353, 44 L. T. N. S. 653, 29 W. R. 617, and the cases there referred to, and see *ante*, pp. 53 and 54; see also *A.-G.* v. *Acton Local Board*, *ante*, p. 54. The burthen lies on those who seek to establish that the Legislature intended to take away the private rights of individuals, to show that by express words or by necessary implication, such an intention appears: *Met. Asylum Bd.* v. *Hill*, *supra*, *per* Lord Blackburn; but a local authority is not liable for merely permitting a nuisance to continue which was previously in existence: see *A.-G. Dorking Union*, *ante*, p. 56.

(1) See the interpretation clause, *ante*, p. 44.

As to ships lying within district or river adjoining district of local authority, see section 110, *post*, p. 99.

(2) See *Bishop Auckland Bd.* v. *Bishop Auckland Iron Co.*, *supra*, and *Gt. W. Ry.* v. *Bishop*, *supra*. Where a stableman kept dung accumulating so that the neighbouring inhabitants had to shut their windows, he was held liable to be convicted under a local Act, which imposed a penalty on offensive matter being kept so as to be a nuisance: *Smith* v. *Waghorn*, 27 J. P. 744. "The justices seem to have gone on the notion that because the defendant kept a stable, the dung and stench were necessary consequences, and must be tolerated. I cannot agree with that. A dunghill may, or may not, be a nuisance, according to the way in which it is kept. If the dung is kept accumulating so long that a stench arises, and annoyance to the neighbouring inhabitants, then I think the case comes within the enactment:" *Per* Cockburn, C.J., *ibid.*

As to suffering stagnant water to remain in a dwelling-house, see section 47 (2), *ante*, p. 67.

As to causing premises to be cleansed and disinfected so as to prevent or check infection, see section 120, *post*.

See *Draper* v. *Sperring*, *post*, p. 92, *Margate Pier Co.* v. *Margate Local Board*, *post*, p. 92.

(3) Defined *ante*, p. 46.

(4) As to the meaning of the words "nuisance or injurious to health," see *ante*, p. 88. The words "or in such a state" are new. See further the provisions in sections 40, 41, 42, 43, 44, 47 (3), and 48, *ante*.

As to repairing and cleansing sewers, see sections 15 and 19, *ante*.

See *St. Helen's Chemical Co.* v. *St. Helen's Corporation*, *post*, p. 91.

(5) As to the meaning of "nuisance or injurious to health," see *ante*, p. 88.

See the provision against keeping swine so as to be a nuisance in section 47 (1), *ante*, p. 67.

See *Draper* v. *Sperring*, *post*, p. 92.

(6) As to the true meaning of this provision, see *ante*, p. 88.

See further the provisions of sections 49 and 50, *ante*. And as to the removal of refuse by local authority, see sections 42, 43, 44 and 45, *ante*.

(7) See the interpretation clause, *ante*, p. 46.

(8) See the note *ante*, p. 88.

It had been decided under the Sanitary Act, 1866, that it was immaterial whether or not the overcrowding was caused by the same family: *Rye Union* v. *Page*, 44 L. J. M. C.

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6. Any factory, workshop, or workplace (not already under the operation of any general Act for the regulation of factories or bakehouses (1), not kept in a cleanly state, or not ventilated in such a manner as to render harmless as far as practicable any gases, vapours, dust, or other impurities generated in the course of the work carried on therein that are a nuisance or injurious to health (2), or so overcrowded while work is carried on as to be dangerous or injurious to the health of those employed therein (3):

7. Any fireplace or furnace which does not, as far as practicable, consume the smoke arising from the combustible used therein, and which is used for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufacturing or trade process whatsoever; and

Any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance (4),

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act (5): Provided—

First. That a penalty shall not be imposed on any person in respect of any accumulation or deposit necessary for the effectual carrying on any business or manufacture, if it be proved to the satisfaction of the Court that the accumulation or deposit has not been kept longer than is necessary for the purposes of the business or manufacture, and that the best available means have been taken for preventing injury thereby to the public health (6):

Secondly. That where a person is summoned before any Court in respect of a nuisance arising from a fireplace or furnace which does not consume the smoke arising from the combustible used in such fireplace or furnace, the Court shall hold that no nuisance is created within the meaning of this

148, 32 L. T. N. S. 757, 23 W. R. 692, 39 J. P. 375. The present sub-section is express upon the point.

As to closing a house after two convictions within three months for overcrowding, see section 109, *post*.

(1) These are the Factory and Workshop Acts, 1878 and 1883, 41 & 42 Vict. c. 16, and 46 & 47 Vict. c. 53. The latter and the provisions of the former, so far as they concern local authorities, will be found *post*. See note (1) *ante*, p. 47.

(2) As to the meaning of these words, see the note *ante*, p. 88.

(3) Compare subs. 5, *supra*, and see the interpretation clause as to the word "house." See section 38, *ante*, as to privy accommodation for factories.

(4) Under the corresponding provision in section 19 of the Sanitary Act, 1866, it was expressly decided that it need not be shown that the smoke is injurious to health: *Gaskell* v. *Bayley*, 30 L. T. N. S. 516, 38 J. P. 805. And see now *Bishop Auckland Board* v. *Bishop Auckland Iron Co.*, and the note, *ante*, p. 88.

Against whom order for abatement may be made.

An order may be made against the occupier of the premises if the person causing the smoke to issue was his servant: *Barnes* v. *Ackroyd*, L. R. 7 Q. B. 474, 41 L. J. M. C. 110, 26 L. T. N. S. 692, 20 W. R. 671. See further the note to section 94, *post*, p. 92.

Continuing offence.

Where an order for abatement or of prohibition has been made, each daily emission of smoke subsequently is a separate act of disobedience, for which a separate summons may be issued, and separate penalties and sets of costs imposed in respect of each separate conviction: *R.* v. *Waterhouse*, L. R. 7 Q. B. 545, 41 L. J. M. C. 115, 26 L. T. N. S. 761, 20 W. R. 712. See also *Higgins* v. *Northwich Union*, 22 L. T. N. S. 752. But where, under the previous enactments (see note *ante*, p. 87), an order for abatement and also an order of prohibition were made, and afterwards black smoke was emitted, it was held that there could not be two convictions in respect of the same emission of smoke, one in respect of each order: *Eddleston* v. *Barnes*, L. R. 1 Ex. D. 67, 45 L. J. M. C. 73, 34 L. T. N. S. 497.

See the saving clause in respect of mines, &c., section 334.

(5) See sections 94 *et seq.*

(6) The means taken must be "the best available." It is not enough to show that the means used are the same as those used by others in the neighbourhood: *Scholefield* v *Schunk*; 19 J. P. 84.

Act, and dismiss the complaint, if it is satisfied that such fireplace or furnace is constructed in such manner as to consume as far as practicable, having regard to the nature of the manufacture or trade, all smoke arising therefrom, and that such fireplace or furnace has been carefully attended to by the person having the charge thereof (1). Secs. 91–93.

Duty of local authority to inspect district for detection of nuisances.

92 (2). It shall be the duty of every local authority to cause to be made from time to time inspection of their district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of this Act in order to abate the same; also to enforce the provisions of any Act in force within their district requiring fireplaces and furnaces to consume their own smoke (3).

Information of nuisances to local authority.

93 (4). Information of any nuisance under this Act, in the district of any local authority, may be given to such local authority by any person aggrieved thereby, or by any two inhabitant householders of such district, or by any officer of such authority (5), or by the relieving officer, or by any constable or officer of the police force of such district.

(1) See *Cooper* v. *Woolley*, L. R. 2 Ex. 88, 36 L. J. M. C. 27, 15 L. T. N. S. 539, 15 W. R. 450, and *Manchester Ry.* v. *Wood*, 29 L. J. M. C. 29, 6 Jur. N. S. 70.

OTHER NUISANCES.

Unfenced shafts.

By the Coal Mines Regulation Act, 1872, 35 & 36 Vict. c. 76, s. 41, and the Metalliferous Mines Regulation Act, 1872, 35 & 36 Vict. c. 77, s. 13, it is provided that any shaft or side entrance to an abandoned mine which is not fenced as required by those sections, and is within fifty yards of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, shall be deemed to be a nuisance within the meaning of the Nuisances Removal Act as amended by the Sanitary Act, 1866 (now this section of the present Act). See section 313, *post*.

As to the meaning of "persons interested in the minerals of the mine" in the above sections, see *Evans* v. *Mostyn*, L. R. 2 C. P. D. 547, 36 L. T. N. S. 856.

Steam whistle, &c.

As to nuisances from the noise of steam whistles, &c., see 35 & 36 Vict. c. 61, *post*, and section 313, *post*.

Nuisances on village greens.

As to summary proceedings in case of nuisances on town and village greens and allotments for exercise and recreation, see 20 & 21 Vict. c. 31, s. 12, *post*, and 39 & 40 Vict. c. 56, ss. 5, 29, *post*.

Offensive trades.

As to offensive trades, see sections 112 *et seq.*, *post*.

As to alkali works, see 26 & 27 Vict. c. 124, *post*.

(2) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 20.

(3) The appellants were possessed of chemical works, and were entitled to discharge refuse by two separate drains into a public sewer. By one drain liquid impregnated with muriatic acid was discharged, and by the other liquid impregnated with sulphur. Upon their combination in the sewer, sulphuretted hydrogen gas was produced, which escaped in sufficient quantities to be injurious to the public health. No nuisance existed in the appellant's drains. The respondents had not properly flushed, cleansed and trapped the sewer, though bound to do so by a local Act. Complaint having been made by the respondents of the escape of the sulphuretted hydrogen gas, an order for the abatement thereof was made by justices upon the appellants. Held, that the escape of sulphuretted hydrogen gas from the sewer was a nuisance within the Nuisances Removal Act, 1855 (see note (4), *ante*, p. 87), and that it arose from the act of the appellants, and that the respondents could lawfully make complaint thereof, though they themselves might have contributed to the existence of the nuisance: *St. Helen's Chemical Co.* (app.) v. *St. Helen's Corporation* (resp.), L. R. 1 Ex. D. 196, 45 L. J. M. C. 150, 34 L. T. N. S. 397.

As to entry upon premises for the purpose of examining as to existence of nuisances, see section 102, *post*.

As to the duty of inspectors of nuisances, see the order of the Local Government Board, *post*.

(4) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 10.

(5) See the order of the Local Government Board, *post*.

Complaint may also be made to a justice by any person aggrieved, or by any inhabitant of or owner of premises within the district. See section 105, *post*, and see also sections 106, 107, and 111, *post*.

Sec. 94.

Local authority to serve notice requiring abatement of nuisance.

94 (1). On the receipt of any information respecting the existence of a nuisance, the local authority shall, if satisfied of the existence of a nuisance, serve a notice (2) on the person by whose act, default, or sufferance the nuisance arises or continues (3), or, if such person cannot be found, on the owner (4) or occupier

(1) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 21.

(2) See the form of notice given in Schedule IV. Form A., *post;* and as to service, &c., see sections 266, 267, *post.*

(3) See *St. Helen's Chemical Co.* (app.) v. *Corporation of St. Helen's* (resp.), *ante*, p. 91, where the appellants were held to be persons by whose act, &c., the nuisance arose. See also *Barnes* v. *Ackroyd, ante*, p. 90. So the owner of a market, who allowed sheep to be penned there, was held liable to have an order made upon him in respect of a nuisance created by the droppings of the sheep on the part where they were penned, as being the person by whose act, &c., the nuisance arose: *Draper* (app.) v. *Sperring* (resp.), 10 C. B. N. S. 113, 30 L. J. M. C. 225, 4 L. T. N. S. 365; and in the case of *Margate Pier and Harbour Co.* (app.) v. *Margate Local Board* (resp.), 20 L. T. N. S., it was held that the appellants, in whom was vested the harbour of Margate, were liable to have an order made upon them in respect of a quantity of seaweed, which by the action of the sea drifted into the harbour, and being left there became a nuisance. In *Brown* (app.) v. *Bussell* (resp.), *Francomb* (app.) v. *Freeman* (resp.), L. R. 3 Q. B. 251, 37 L. J. M. C. 65, 18 L. T. N. S. 19, 32 J. P. 196, 9 Best & S. 2, the appellants were respectively held to be liable under the following circumstances:—Brown drained his premises into a barrel-drain which received the sewage of other premises, and passed under a turnpike road for about 300 yards; the sewage was thence conveyed by an open drain through land not Brown's, and ultimately into an open drain about half a mile from Brown's premises by the side of a road on land not Brown's; this open drain was a nuisance, the matter from Brown's premises being sufficient to create a nuisance. An order upon Brown to abate the nuisance by cutting off all communication from his premises to the barrel-drain was held good. In the second case, Francomb was the owner of six houses let to tenants; he had constructed a drain from the houses under land not his own by leave of the owner, by which sewage was conveyed into and along a water-course, and the accumulation at the mouth of the drain was a nuisance. It is immaterial whether the persons causing the nuisance have a legal right to cause their sewage to flow in the given channel: *Ibid.* Again, in *Hendon Union* v. *Bowles*, 20 L. T. N. S. 609, where, in consequence of the overflow of sewage from the premises of the respondent and the premises of other persons, it ran some distance to the premises of a third party, where it accumulated and constituted a nuisance, though it was no nuisance while upon the premises of the respondent and the others, and only became so on those of the third person, it was held that an order might be made upon each party whose sewage contributed to cause the nuisance, and that the justices should ascertain whether the discharge from the respondent's premises was sufficient to cause a nuisance, and make an order accordingly. Where a landowner, under whose land, but without his consent, a sewer had been made and used for two years to carry on the sewage of several houses, stopped up the sewer and thereby caused a nuisance, though not on his own land, he was held to be a person, &c., by whose act, &c., a nuisance arose, and liable to be convicted under sections 94 and 96: *Riddell* v. *Spear*, 40 L. T. N. S. 130. See further *Mayor of Scarborough* v. *Scarborough Rural Sanitary Authority, post*, p. 94. As to liability of landlord, who lets premises for a definite purpose, for any nuisance that arises naturally and of necessity from the use of such premises, see *Harris* v. *James*, 35 L. T. N. S. 240.

(4) Defined *ante*, p. 45. Where the tenant of a house and shop for twenty-one years at a rack rent occupied the shop himself and sub-let the upper part of the house to a yearly tenant, the upper part being shut off from the shop and the first tenant having no access to it, it was held that the agent, who received the rent from the tenant of the house and shop as agent for his landlord, was not the "owner" in respect of the upper part of the house, where a nuisance existed arising from a defective construction of a structural convenience, inasmuch as the agent did not receive the rent from the sub-tenant who was the occupier of the part where the nuisance arose: *Cook* v. *Montague*, L. R. 7 Q. B. 418, 41 L. J. M. C. 149 26 L. T. N. S. 471, 20 W. R. 624.

of the premises on which the nuisance arises (1) requiring him to abate the same within a time to be specified in the notice, and to execute such works and do such things as may be necessary for that purpose (2): Provided—

First. That where the nuisance arises from the want or defective construction of any structural convenience, or where there is no occupier of the premises, notice under this section shall be served on the owner:

Secondly. That where the person causing the nuisance cannot be found, and it is clear that the nuisance does not arise or continue by the act, default or sufferance of the owner or occupier of the premises, the local authority may themselves abate the same without further order.

On non-compliance with notice complaint to be made to justice.

95 (3). If the person on whom a notice to abate a nuisance has been served makes default in complying with any of the requisitions thereof within the time specified, or if the nuisance, although abated since the service of the notice is, in the opinion of the local authority, likely to recur on the same premises, the local authority shall cause a complaint relating to such nuisance to be made before a justice, and such justice shall thereupon issue a summons (4) requiring the person on whom the notice was served to appear before a Court of Summary Jurisdiction (5).

Power of Court of

96 (6). If the Court is satisfied that the alleged nuisance exists, or that although

(1) "Suppose it to be a disputed question whether an open drain was made through land with the consent of the owner, the public health is not to suffer until this question is determined. The proceedings are to be in the first instance against the person whose act causes the nuisance; if he cannot be ascertained, then against the person who has the misfortune to have such a noxious easement on his land:" *Per* Mellor, J., *Brown* v. *Bussell*, *supra*.

(2) See *Ex parte Whitchurch* and *Ex parte Saunders*, *post*, p. 94, as to what the notice may require to be done.

As to proceedings where the nuisance appears to be wholly or partially caused by two or more persons, see section 255, *post*, p. 184. If the nuisance is caused by the joint contribution of different persons in such a way as that the contribution of each would not in itself cause a nuisance, it is doubtful whether, if the amount contributed by each is not in itself sufficient, proceedings can be taken against each person who contributes: *Brown* v. *Bussell*, *supra*, and see *Hendon Union* v. *Bowles*, *ante*, p. 92.

Immaterial whether persons causing nuisance have legal right to do so as against persons on whose premises it exists.

Proceedings may be taken under the Act though the persons causing the nuisance have a legal right to do so as against those on whose premises it exists: *Brown* v. *Bussell*, *supra*, and see *St. Helen's Chemical Co.* v. *St. Helen's Corporation*, *supra*.

As to duty of local authority to inspect district for detection of nuisances, see section 92, *ante*.

(3) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 12.

(4) See the form in Schedule IV., Form B., *post*, p. .

(5) Defined *ante*, p. 47. As to summary proceedings, see sections 256 *et seq.*, *post*, pp. 185 *et seq.*

As to proceedings in the superior Courts, see section 107, *post*.

As to proceedings in case the local authority make default in doing their duty, see section 106, *post*.

(6) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 13. The power to impose a penalty is new. Under the previous enactment a penalty could only be imposed such as is provided by section 98 of this Act, *viz.*, a penalty for contravention of the order of abatement, &c.

See the form of order in Schedule IV., Form C., *post*, p. .

Under this section the Court has power merely to order the nuisance to be abated or to prohibit its recurrence, and order the necessary works for these purposes to be done, but they cannot order any particular things to be erected. Therefore, where a privy and ashpit being in such a state as to be a nuisance, a local authority gave notice to the owner to abate the same, and for that purpose to fill up the ashpit, abandon the privy and build a pail closet, and the Court, upon failure to do so by the owner, ordered him to fill up the ashpit, abandon the privy, and construct a proper and sufficient pail closet

Secs. 99, 97.

Summary Jurisdiction to make order dealing with nuisance.

abated it is likely to recur on the same premises, the Court shall make an order on such person requiring him to comply with all or any of the requisitions of the notice, or otherwise to abate the nuisance within a time specified in the order, and to do any works necessary for that purpose; or an order prohibiting the recurrence of the nuisance and directing the execution of any works necessary to prevent the recurrence; or an order both requiring abatement and prohibiting the recurrence of the nuisance.

The Court may by their order impose a penalty not exceeding £5 on the person on whom the order is made, and shall also give directions as to the payment of all costs incurred up to the time of the hearing or making the order for abatement or prohibition of the nuisance.

Order of prohibition in case of

97 (1). Where the nuisance (2) proved to exist is such as to render a house or building, in the judgment of the Court (3), unfit for human habitation, the Court

in lieu thereof, it was held, upon a rule for a *certiorari* to quash the order, that the order was bad, as the Court had no power under this section to order the erection of the pail closet: *Ex parte Whitchurch*, L. R. 6 Q. B. D. 545, 50 L. J. M. C. 41, 29 W. R. 507, 45 J. P. 392. But in *Ex parte Saunders*, L. R. 11 Q. B. D. 191, 52 L. J. M. C. 89, 31 W. R. 918, 47 J. P. 584, where a watercloset in the centre of a house was a nuisance, it was held that the justices had jurisdiction to make an order, in pursuance of a notice by the Local Board to that effect, to remove the closet from the centre of the house and to place the same near an outer wall where there might be efficient ventilation, and to fix the soil-pipe outside the walls; and *Ex parte Whitchurch, supra*, was distinguished on the ground that that case ordered a particular kind of closet to be erected where none existed before, while in this case the order was for the removal of an already existing closet to a place where it would no longer be a nuisance. If there is any deficiency of construction, proceedings must be taken under section 36, *ante*. See *Ex parte Liverpool Corporation*, 8 E. & B. 537, 27 L. J. M. C. 89, 4 Jur. N. S. 333.

Order to abate cannot be made where its performance would involve committal of a trespass.

The Court cannot order the person by whose act, &c., a nuisance is caused to exist upon the land of another to *abate* the nuisance and to execute all necessary works for the purpose, where he is not the occupier of the premises where the nuisance exists and has no power or authority to enter on the premises for any purpose whatsoever, for it prescribes an act the execution of which might involve the committal of a trespass: *R.* v. *Trimble*, 36 L. T. N. S. 508; S. C. *sub. nom. R.* v. *Cumberland*, 41 J. P. 277; *Mayor of Scarborough* v. *Rural Authority of Scarborough*, L. R. 1 Ex. D. 344, 34 L. J. N. S. 768.

But the Court may under these circumstances make an order prohibiting a recurrence of the nuisance: *Ibid.* But see *Riddell* v. *Spear, supra*, and see *per* Mellor, J., in *Brown* v. *Bussell, supra.*

Proceedings may be taken though complainants contributed to the nuisance.

The fact that the local authority aided the perpetration of the nuisance by omitting to perform their own duties does not prevent them from taking proceedings: *St. Helen's Chemical Co.* v. *Corporation of St. Helen's, supra.*

Appeal.

As to appeal, see section 269, *post*, p. 193. And as to stay of proceedings pending appeal, see section 99, *post.*

As to whether the expenses incurred by a lessor in abating a nuisance pursuant to notice to that effect from the local authority are "taxes, rates, duties, assessments, &c.," within the meaning of those words in a covenant in a lease to pay rent without any deduction, see *Budd* v. *Marshall*, L. R. 5 C. P. D. 481 (C. A.), 50 L. J. C. P. 24, 42 L. T. N. S. 793, 29 W. R 148, 44 J. P. 584; *Rawlins* v. *Briggs*, L. R. 3 C. P. D. 368, 47 L. J. C. P. 487, 27 W. R. 138; and see section 226, *post.*

(1) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 13.

(2) See section 91, *ante.*

(3) Defined *ante*, p. 47. This word is substituted for the words "the justices" in the previous enactment.

As to the general powers of local authorities to deal with houses unfit for human habitation, see the Artizans' and Labourers' Dwellings Acts, 1868 and 1879, and the Artizans and Labourers' Dwellings Improvements Acts, 1875, 1879, and 1882, *post.*

may prohibit the using thereof for that purpose until, in its judgment, the house or building is rendered fit for that purpose; and on the Court being satisfied that it has been rendered fit for that purpose the Court may determine its previous order by another, declaring the house or building habitable, and from the date thereof such house or building may be let or inhabited.

house unfit for human habitation.

98 (1). Any person not obeying an order to comply with the requisitions of the local authority or otherwise to abate the nuisance, shall, if he fails to satisfy the Court that he has used all due diligence to carry out such order, be liable to a penalty not exceeding ten shillings per day during his default (2); and any person knowingly and wilfully acting contrary to an order of prohibition shall be liable to a penalty not exceeding twenty shillings per day during such contrary action (2); moreover, the local authority may enter the premises to which any order relates, and abate the nuisance and do whatever may be necessary in execution of such order, and recover in a summary manner the expenses incurred by them from the person on whom the order is made (3).

Penalty for contravention of order of Court.

99 (4). Where any person appeals against an order to the Court of Quarter Sessions in manner provided by this Act (5) no liability to penalty shall arise, nor shall any proceedings be taken or work be done under such order, until after the determination of such appeal, unless such appeal ceases to be prosecuted.

Appeal against order.

100 (6). Whenever it appears to the satisfaction of the Court of Summary Jurisdiction that the person by whose act or default the nuisance arises, or the owner or occupier of the premises is not known or cannot be found, then the order of the Court may be addressed to and executed by the local authority (7).

In certain cases order may be addressed to local authority.

101 (8). Any matter or thing removed by the local authority in abating any

As to the power to make bye-laws respecting the closing of buildings unfit for habitation, see section 157 (4), *post*.

Sanitary authority held justified in pulling down mud hut on non-compliance with order to quit it till rendered fit for human habitation: *Brown* v. *Guardians of Biggleswade* Q. B. D. 17th May, 1879, Chitty's Statutes, vol. 5, p. 644, note (*p*), 4th edition.

(1) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 14.

(2) The power to determine the nature and extent of the works required to be done is vested in the local authority, and when proceedings are taken for non-compliance with their requirements, the Court cannot review their determination in that respect: *Hargreaves* v. *Taylor*, *ante*, p. 63.

Where an order under the Nuisances Removal Act, 1855, ss. 13 and 14, to abate a nuisance by removing offensive privies, &c., was directed to "the owner or to the Nuisance Removal Committee," the owner being directed to remove the same within seven days, and if such order were not complied with the Committee were authorised and required to enter and remove it, it was held that the owner who had allowed the seven days to elapse without obeying the order might be fined, notwithstanding that the order was addressed to the Committee as well as the owner: *Tomlins* v. *Great Stanmore*, 12 L. T. N. S. 118, 29 J. P. 117.

(3) The local authority have a discretion as to entering and abating the nuisance themselves, and a *mandamus* to compel them to do so will not be granted: *Ex parte Bassett*, 7 E. & B. 280, 26 L. J. M. C. 64, 3 Jur. N. S. 136.

As to entry by local authority upon premises for the purpose of the Act, see sections 102, 305, and 306, *post*.

As to recovery of penalties and expenses, see sections 251 *et seq.*, *post*.

(4) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 16.

(5) Section 269, *post*.

(6) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 17.

(7) See the form, Schedule IV., Form D., *post*.

As to expenses of local authorities, see sections 101, 104, and Part 6 of the Act, *post*.

(8) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 18.

Ss. 101–102.

Power to sell manure, &c.

Power of entry of local authority.

nuisance under this Act (1) may be sold by public auction; and the money arising from the sale may be retained by the local authority, and applied in payment of the expenses incurred by them with reference to such nuisance, and the surplus (if any) shall be paid, on demand, to the owner of such matter or thing (2).

102 (3). The local authority, or any of their officers, shall be admitted into any premises for the purpose of examining as to the existence of any nuisance thereon, or of enforcing the provisions of any Act in force within the district requiring fireplaces and furnaces to consume their own smoke, at any time between the hours of nine in the forenoon and six in the afternoon, or in the case of a nuisance arising in respect of any business, then at any hour when such business is in progress or is usually carried on.

Where under this Act a nuisance has been ascertained to exist, or an order of abatement or prohibition has been made (4), the local authority or any of their officers shall be admitted from time to time into the premises between the hours aforesaid, until the nuisance is abated, or the works ordered to be done are completed, as the case may be.

Where an order of abatement or prohibition has not been complied with, or has been infringed, the local authority, or any of their officers, shall be admitted from time to time at all reasonable hours, or at all hours during which business is in progress or is usually carried on, into the premises where the nuisance exists, in order to abate the same.

If admission to premises for any of the purposes of this section is refused, any justice on complaint thereof on oath by any officer of the local authority (made after reasonable notice in writing of the intention to make the same (5) has been given to the person having custody of the premises), may, by order under his hand, require the person having custody of the premises to admit the local authority, or their officer, into the premises during the hours aforesaid, and if no person having custody of the premises can be found, the justice shall on oath made before him of that fact, by order under his hand, authorise the local authority or any of their officers to enter such premises during the hours aforesaid (6).

Any order made by a justice for admission of the local authority or any of their officers on premises shall continue in force until the nuisance has been abated, or the work for which the entry was necessary has been done.

(1) See sections 91 and 98, *ante*, and compare section 49, *ante*.

(2) See the marginal note to the section. But *Sutton* v. *Sutton*, L. R. 22 Ch. D. 511 52 L. J. Ch. 333, 48 L. T. N. S. 95, 31 W. R. 369, decides that the marginal note is no part of the statute, overruling *Venour* v. *Sellon*, L. R. 2 Ch. D. 522.

(3) The previous enactments were the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 11, and the Sanitary Act, 1866, 29 & 30 Vict. c. 90, ss. 20 and 31.

It will be observed that there are three distinct purposes mentioned in the section for which admission to premises may be required, *viz.*, (1) to examine as to *existence* of any nuisance, and to enforce provisions of Acts as to consumption by furnaces, &c., of their own smoke; (2) to examine whether nuisance ascertained to exist has been abated, or works ordered have been executed; and (3) for purpose of local authority, &c., themselves abating a nuisance. If admission is refused, an entrance cannot be enforced without obtaining the order of a justice as provided by the section, and an injunction may be obtained in the High Court to restrain the local authority from entering without such previous order of a justice: *Tinkler* v. *Wandsworth District Board*, 2 De G. & J. 261, 27 L. J. Ch. 342, 4 Jur. N. S. 293, 22 J. P. 223.

See section 98, *ante*, p. 95, as to authority to enter premises to abate nuisance on disobedience of owner, &c. And compare sections 305 and 306, *post*.

(4) See section 96, *ante*.

(5) *I.e.*, "complaint thereof on oath, &c." The words of the Nuisances Removal Act, 1855, s. 11 (see note (3), *supra*), were "after reasonable notice of the intended application to such justice, &c."

As to notices and the service thereof, see sections 266, 267, *post*.

(6) See the form of order, Schedule IV., Form F., *post*.

Secs. 103, 104.

Penalty for disobedience of order.

103 (1). Any person who refuses to obey an order of a justice for admission of the local authority or any of their officers on any premises shall be liable to a penalty not exceeding five pounds.

Costs and expenses of execution of provisions relating to nuisances.

104 (2). All reasonable costs and expenses incurred in making a complaint, or giving notice, or in obtaining any order of the court or any justice in relation to a nuisance under this Act, or in carrying the same into effect, shall be deemed to be money paid for the use and at the request of the person on whom the order is made; or if the order is made on the local authority, or if no order is made, but the nuisance is proved to have existed when the complaint was made or the notice given, then of the person by whose act or default the nuisance was caused; and in case of nuisances caused by the act or default of the owner (3) of premises, such costs and expenses may be recovered from any person who is for the time being owner of such premises (4): Provided that such costs and expenses shall not exceed in the whole one year's rackrent (5) of the premises.

Such costs and expenses, and any penalties incurred in relation to any such nuisance, may be recovered in a summary manner, or in any county or superior Court; and the Court shall have power to divide costs, expenses, and penalties between persons by whose acts or defaults a nuisance is caused, as to it may seem just (6).

Any costs and expenses recoverable under this section by a local authority from an owner of premises may be recovered from the occupier for the time being of such premises (4); and the owner shall allow such occupier to deduct any moneys which he pays under this enactment out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent:

Provided, that no such occupier shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuses, on application to him by the local authority, truly to disclose the amount of his rent and the name and address of

(1) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 36.

As to recovery of penalties, &c., see sections 251 *et seq.*, *post.*

Compare sections 305, 306, *post.*

(2) The first two paragraphs of this section correspond with the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 19; the three last paragraphs with the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 34.

(3) Defined *ante*, p. 45.

(4) In *Guardians of Blything Union* v. *Warton*, 3 B. & S. 352, 32 L. J. M. C. 132, 7 L. T. N. S. 672, 9 Jur. N. S. 867, it was decided, under the former enactment, that these costs, &c., could not be recovered from one who was not owner at the time the costs, &c., were incurred. This omission is now supplied by the above words.

Under the 77th and 96th sections of the Metropolis Management Amendment Act, 1862, which made certain paving expenses recoverable by the vestry by action from the present or any future owner of premises, or from any person who then or thereafter occupies the premises, it has been held that a judgment recovered against a former owner, and unsatisfied, is no bar to an action against a succeeding owner or person occupying as his tenant: *Vestry of Bermondsey* v. *Ramsey*, L. R. 6 C. P. 247, 40 L. J. C. P. 206, 24 L. T. N. S. 429; see also *Plumstead Board* v. *Ingoldby*, L. R. 8 Ex. 63, 174.

(5) Defined *ante*, p. 45.

(6) As to the summary recovery of costs, expenses, and penalties, see sections 251 *et seq.*, *post*, pp. 181 *et seq.* See also section 261, *post*, p. 187. It was held upon 11 & 12 Vict. c. 123, s. 3, that whatever may have been the amount of the costs, and though a question of title to the land on which the nuisance existed arose, the County Court had jurisdiction by the express terms of the Act: *R.* v. *Harden*, 2 E. & B. 188, 22 L. J. Q. B. 299, 17 Jur. 804; *Guardians Hertford Union* v. *Kimpton*, 11 Ex. Rep. 295, 25 L. J. M. C. 41.

Secs. 104—106.

the person to whom such rent is payable; but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie on such occupier:

Provided also, that nothing herein contained shall affect any contract between any owner or occupier of any house, building, or other property whereby it is or may be agreed that the occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect any contract whatsoever between landlord and tenant (1).

Power of individual to complain to justice of nuisance.

105 (2). Complaint may be made to a justice of the existence of a nuisance under this Act on any premises within the district of any local authority by any person aggrieved thereby, or by any inhabitant of such district, or by any owner (3) of premises within such district, and thereupon the like proceedings shall be had with the like incidents and consequences as to making of orders, penalties for disobedience of orders, appeal, and otherwise, as in the case of a complaint relating to a nuisance made to a justice by the local authority (4):

Provided that the Court may, if it thinks fit, adjourn the hearing or further hearing of the summons for an examination of the premises where the nuisance is alleged to exist, and may authorise the entry into such premises of any constable or other person for the purposes of such examination:

Provided also, that the Court may authorise any constable or other person to do all necessary acts for executing an order made under this section, and to recover the expenses from the person on whom the order is made in a summary manner (5).

Any constable or other person authorised under this section shall have the like powers and be subject to the like restrictions as if he were an officer of the local authority authorised under the provisions of this Act relating to nuisances to enter any premises and do any acts thereon.

Power of officer of police to proceed in certain cases against nuisances.

106 (6). Where it is proved to the satisfaction of the Local Government Board that a local authority have made default in doing their duty in relation to nuisances under this Act, the Local Government Board may authorise any officer of police acting within the district of the defaulting authority to institute any proceeding which the defaulting authority might institute with respect to such nuisances, and such officer may recover in a summary manner, or in any county or superior

(1) It has been held under the Metropolis Management Act, 1855, 18 & 19 Vict. c. 120, which contains a similar provision (section 96) to the above clause, that to entitle the occupier to avail himself of that provision, the moneys must have been actually paid by him, and consequently that a distress for rent, which became due after service of a notice from the vestry, made before payment by the occupier to the vestry clerk is not illegal: *Ryan* v. *Thompson*, L. R. 3 C. P. 144, 17 L. T. N. S. 506, 32 J. P. 135.

See, further, the saving clause as respects existing leases, agreements, &c., between landlord and tenants, section 226, *post*, p. 168, and cases there cited. See also section 320, *post*.

(2) The previous enactments were the Nuisances Removal Act, 1860, 23 & 24 Vict. c. 77, s. 13, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 53.

(3) Defined *ante*, p. 45.

(4) As to the proceedings which may be taken, see the preceding sections, sections 95 *et seq.*, and the notes thereto. As to appeal, see section 269, *post*.

The notice required by section 94, *ante*, to be given to the person causing the nuisance before making complaint, is not necessary before laying a complaint by an inhabitant: *Cocker* v. *Cardwell*, L. R. 5 Q. B. 15, 39 L. J. M. C. 28, decided on section 13 of the Nuisances Removal Act, 1860, *supra*, note (2).

(5) As to recovery of expenses, &c., see sections 251 *et seq.*, *post*.

(6) The previous enactments were the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 16, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 19. The former provisions were confined to the *chief* officer of police.

As to the summary recovery of expenses, see sections 251 *et seq.*, *post*.

As to enforcing performance of their duty by local authority in certain cases, see section 299, *post*.

Court, any expenses incurred by him, and not paid by the person proceeded against, from the defaulting authority:

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But such officer of police shall not be at liberty to enter any house or part of a house used as the dwelling of any person without such person's consent, or without the warrant of a justice, for the purpose of carrying into effect this enactment.

Local authority may take proceedings in superior court for abatement of nuisances.

107 (1). Any local authority may, if in their opinion summary proceedings would afford an inadequate remedy, cause any proceedings to be taken against any person in any superior Court of law or equity (2) to enforce the abatement or prohibition of any nuisance under this Act, or for the recovery of any penalties from or for the punishment of any persons offending against the provisions of this Act relating to nuisances, and may order the expenses of and incident to all such proceedings, to be paid out of the fund or rate applicable by them to the general purposes of this Act (3).

Power to proceed where cause of nuisance arises without district.

108 (4). Where a nuisance under this Act within the district of a local authority appears to be wholly or partially caused by some act or default committed or taking place without their district, the local authority may take or cause to be taken against any person in respect of such act or default any proceedings in relation to nuisances by this Act authorised, with the same incidents and consequences, as if such act or default were committed or took place wholly within their district; so, however, that summary proceedings shall in no case be taken otherwise than before a Court having jurisdiction in the district where the act or default is alleged to be committed or take place.

This section shall extend to the metropolis (5) so far as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any nuisance within the area of their jurisdiction caused by an act or default committed or taking place within the district of a local authority under this Act; or by any such local authority in respect of any nuisance within their district caused by an act or default committed or taking place within the jurisdiction of any such nuisance authority.

In this section "nuisance authority" means the local authority in the metropolis for the execution of the Nuisances Removal Act for England, 1855, and the Acts amending the same (6).

Provision in case of two convictions for overcrowding.

109 (7). Where two convictions against the provisions of any Act relating to the overcrowding of a house have taken place within a period of three months (whether the persons convicted were or were not the same) a Court of Summary Jurisdiction may, on the application of the local authority of the district in which the house is situated, direct the closing of the house for such period as the Court may deem necessary.

Provision as to ships.

110 (8). For the purpose of the provisions of this Act relating to nuisances,

(1) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 30.

(2) Now in "The High Court of Justice": 36 & 37 Vict. c. 66, ss. 3, 4, 5.

See section 111, *post*.

(3) As to these funds or rates, see sections 207 and 229, *post*.

(4) This provision is new. Under the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, it was held that the local authority could only proceed summarily in respect of a nuisance arising within their own district: *R.* v. *Cotton*, 1 E. & E. 203, 28 L. J. M. C. 22, 32 L. T. 125, 5 Jur. N. S. 311, 7 W. R. 62. See the circular of the Local Government Board of September 30th, 1875, *ante*, p. 11.

(5) Defined *ante*, p. 42.

(6) These Acts are not repealed by this Act "so far as relates to the metropolis." See Schedule V., Part I., *post*.

(7) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 36.

(8) The first paragraph of this section down to the words "within such district," and the two last paragraphs, correspond with section 32 of the previous enactment, *viz.*, the Sanitary Act, 1866, 29 & 30 Vict. c. 90, and the remaining portion of the first paragraph corresponds with section 30 of that Act. This last section contained the words "or boat" in addition to the words "ship" and "vessel." Section 32 of the previous enact-

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any ship or vessel lying in any river, harbour, or other water within the district of a local authority shall be subject to the jurisdiction of that authority in the same manner as if it were a house within such district; and any ship or vessel lying in any river, harbour or other water not within the district of a local authority shall be deemed to be within the district of such local authority as may be prescribed by the Local Government Board, and where no local authority has been prescribed, then of the local authority whose district nearest adjoins the place where such ship or vessel is lying.

The master or other officer in charge of any such ship or vessel shall be deemed for the purpose of the said provisions to be the occupier of such ship or vessel.

This section shall not apply to any ship or vessel under the command or charge of any officer bearing Her Majesty's commission, or to any ship or vessel belonging to any foreign government.

Provisions of Act relating to nuisances not to affect other remedies.

111. The provisions of this Act relating to nuisances shall be deemed to be in addition to and not to abridge or affect any right, remedy or proceeding under any other provisions of this Act or under any other Act, or at law or in equity:

Provided that no person shall be punished for the same offence both under the provisions of this Act relating to nuisances, and under any other law or enactment (1).

Offensive Trades.

Restriction on establishment of offensive trade in urban district.

112 (2). Any person who, after the passing of this Act, establishes (3) within the district of an urban authority (4), without their consent in writing, any offensive trade; that is to say, the trade of—

Blood boiler, or
Bone boiler, or
Fellmonger, or
Soap boiler, or
Tallow melter, or
Tripe boiler, or
Any other noxious or offensive trade, business, or manufacture (5),

ment exempted ships, &c., "*belonging* to Her Majesty." Now the exemption only applies to ships, &c., "under the command or charge of any officer, &c."

As to the meaning of "ship," see *The Mac*, L. R. 7 P. D. 38.

As to removal of person suffering from infectious disorder on board ship, see section 124, *post*, p. 105. See also sections 125 and 134, *post*, pp. 106 and 109. And as to port sanitary authorities, see sections 287 *et seq.*, *post*.

(1) See sections 340, 341, *post*.

(2) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 62, s. 64. That section included in its enumeration of offensive trades that of "slaughterer of cattle, horses, or animals of any description," which is dealt with specially by the present Act, sections 169, 170, *post*.

(3) The words of the previous enactment were "newly established in any building or place." Under that enactment (see the preceding note), in *Liverpool Cattle Market Co.* (app.) v. *Hodson* (resp.), L. R. 2 Q. B. 131, 36 L. J. M. C. 30, 8 B. & S. 184, 15 L. T. N. S. 534, 15 W. R. 563, where the appellants erected and completed upon their premises a building suitable for slaughtering cattle and allowed owners of cattle to slaughter them on the premises, the owner using the tackle in the building and paying a fixed charge for each beast, the men actually employed in the slaughter of the cattle being the servants of the owners, who provided all tools and implements except the tackle, &c., appurtenant to the building, it was held that the appellants were rightly convicted for "newly establishing" a business within the section.

(4) As to *rural* authorities, see section 276, *post*.

(5) The trade must be one analogous to those specifically mentioned so as to come within these general words: *Wanstead Board* v. *Hill*, 32 L. J. M. C. 135, 13 C. B. N. S. 479, 7 L. T. N. S. 744, 11 W. R. 368, 9 Jur. N. S. 972. There it was held that brick making is not *necessarily* "a noxious or offensive trade, &c." It may be carried on so as

shall be liable to a penalty not exceeding £50 in respect of the establishment thereof, and any person carrying on a business so established shall be liable to a penalty not exceeding 40*s.* for every day on which the offence is continued, whether there has or has not been any conviction in respect of the establishment thereof (1).

Bye-laws as to offensive trades in urban district.

113 (2). Any urban authority may from time to time make bye-laws with respect to any offensive trades established with their consent either before or after the passing of this Act, in order to prevent or diminish the noxious or injurious effects thereof.

Duty of urban authority to complain to justice of nuisance arising from offensive trade.

114 (3). Where any candle-house, melting-house, melting-place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling, burning, or crushing bones, or any manufactory, building, or place, used for any trade, business, process, or manufacture, causing effluvia, is certified to any urban authority by their medical officer of health, or by any two legally qualified medical practitioners (4), or by any ten inhabitants of the district of such urban authority, to be a nuisance or injurious to the health (5) of any of the inhabitants of the district, such urban authority shall direct complaint to be made before a

to be no annoyance. "As observed by the Lord Chief Justice, all the trades specifically mentioned in the section involve the collection of large quantities of animal matter, which, however the operation may be carried on, must by putrefaction be a nuisance to the neighbourhood. But that is not the case with brick-making, and the general words of the section must be controlled by the specific words which precede them." *Per* Willes, J., *ibid.*

The trade of a manure manufacturer is not necessarily or as a matter of law an offensive trade. It is a question of fact for the justices, which must depend on the evidence whether in point of fact it is offensive: *Cardell* (app.) v. *New Quay Board* (resp.), 39 J. P. 742.

A rag and bone shop which the justices have found as a matter of fact to be a noxious business is *ejusdem generis* with the trades specified, and within the section: *Passey* v. *Oxford Board*, 43 J. P. 622.

Although a trade or business may not come within the above section, it may yet amount to a private nuisance, for which the person injured may have his remedy. See *per* Williams, J., *Wanstead Board* v. *Hill*, *ante*, p. 100, and section 114, *infra*. And see the provisions as to "nuisances," sections 91 *et seq.*, and the notes *ante*, pp. 87 *et seq.*

As to *alkali* works, see 26 & 27 Vict. c. 134, *post*. As to manufacture, &c., of *gunpowder* and other *explosive substances*, see 37 & 38 Vict. c. 17, *post*. As to storing, &c., *petroleum*, see 34 & 35 Vict. c. 105, *post*. And as to *bakehouses*, see *ante*, p. 90.

(1) As to continuing offence, see *Rumball* v. *Schmidt*, *post*, p. 128; *R.* v. *Waterhouse*, and *Higgins* v. *Northwick Union*, *ante*, p. 90; and compare the provisions in section 79, *ante*, p. 84, and section 86, *ante*, p. 85.

As to recovery of penalty, see sections 251 *et seq.*, *post*.

(2) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 64. See the general provisions as to bye-laws, sections 182 *et seq.*, *post*.

(3) The previous enactments were the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, ss. 27 and 30, and the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 18.

(4) See the note (2) to section 191, *post*, p. 152.

(5) The effluvia caused by a trade, &c., are injurious to health if, though not injurious to persons in sound health, they cause sick persons to become worse: *Malton Board* v. *Malton Manure Co.*, L. R. 4 Ex. D. 302, 49 L. J. M. C. 90, 40 L. T. N. S. 755, 27 W. R. 802, 44 J. P. 155. In this case the trade was the manufacture of artificial manures (including bone manures and the dissolving of bones and coprolites with sulphuric acid, but not the boiling or burning of bones). But in order to bring a case within this section it is not necessary to prove that the nuisance causes injury to health; it is enough if the nuisance is one diminishing comfort: *Per* Stephen, J., *ibid.* See now *Bishop Auckland Board* v. *Bishop Auckland Iron Co.*, *ante*, p. 88. As to the meaning of "nuisance," see the note *ante*, p. 87.

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justice, who may summon the person by or on whose behalf the trade so complained of is carried on to appear before a Court of Summary Jurisdiction (1).

The Court shall inquire into the complaint, and if it appears to the Court that the business carried on by the person complained of is a nuisance (1), or causes any effluvia which is a nuisance or injurious to the health of any of the inhabitants of the district, and unless it be shown that such person has used the best practicable means for abating such nuisance, or preventing or counteracting such effluvia, the person so offending (being the owner or occupier of the premises, or being a foreman or other person employed by such owner or occupier) shall be liable to a penalty not exceeding five pounds nor less than forty shillings, and on a second and any subsequent conviction to a penalty double the amount of the penalty imposed for the last preceding conviction, but the highest amount of such penalty shall not in any case exceed the sum of two hundred pounds (2):

Provided, that the Court may suspend its final determination on condition that the person complained of undertakes to adopt, within a reasonable time, such means as the Court may deem to be practicable and order to be carried into effect for abating such nuisance, or mitigating or preventing the injurious effects of such effluvia, or if such person gives notice of appeal to the Court of Quarter Sessions in manner provided by this Act (3).

Any urban authority may, if they think fit, on such certificate as is in this section mentioned, cause to be taken any proceedings in any superior Court of law or equity (4) against any person in respect of the matters alleged in such certificate.

Power to proceed where nuisance arises from offensive trade carried on without district.

115 (5). Where any house, building, manufactory, or place which is certified in pursuance of the last preceding section to be a nuisance or injurious to the health of any of the inhabitants of the district of an urban authority is situated without such district, such urban authority may take or cause to be taken any proceedings by that section authorised in respect of the matters alleged in the certificate, with the same incidents and consequences, as if the house, building, manufactory, or place were situated within such district; so, however, that summary proceedings shall not in any case be had otherwise than before a Court having jurisdiction in the district where the house, building, manufactory, or place is situated.

This section shall extend to the metropolis so as to authorise proceedings to be taken under it by any nuisance authority in the metropolis in respect of any house, building, manufactory, or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants within the area of their jurisdiction, and is situated within the district of a local authority under this Act; or by any urban authority in respect of any house, building, manufactory, or place which is certified as aforesaid to be a nuisance or injurious to the health of any of the inhabitants of their district, and is situated within the jurisdiction of any such nuisance authority.

In this section "nuisance authority" means the local authority in the metropolis for the execution of the Nuisances Removal Act for England, 1855, and the Acts amending the same.

Unsound Meat, &c.

Power of medical

116 (6). Any medical officer of health or inspector of nuisances may at all reasonable times (7) inspect and examine any animal, carcase, meat, poultry, game,

(1) As to enforcing performance of their duties by local authority, see section 299, *post*. As to meaning of "Court of Summary Jurisdiction," see *ante*, p. 47.

(2) As to the recovery of penalties, see sections 251 *et seq.*, *post*.

(3) As to appeal to Quarter Sessions, see section 269, *post*.

(4) Now "The High Court of Justice": 36 & 37 Vict. c. 66, ss. 345.

(5) This section is new. See section 108 and note thereto, *ante*.

(6) The previous enactments were the Nuisances Removal Act, 1863, 26 & 27 Vict. c 117, s. 2; the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 63; the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 54; and see the Towns Improvement Clauses Act, 1847, s. 131, *post*.

(7) As to what is a "reasonable time," see *Small* v. *Bickley*, *post*, p. 104.

flesh, fish, fruit, vegetables, corn, bread, flour, or milk exposed for sale, or deposited in any place (1) for the purpose of sale, or of preparation for sale, and intended for the food of man, the proof that the same was not exposed or deposited for any such purpose, or was not intended for the food of man, resting with the party charged; and if any such animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk appears to such medical officer or inspector to be diseased, or unsound, or unwholesome, or unfit for the food of man, he may seize and carry away the same himself or by an assistant, in order to have the same dealt with by a justice (2).

Officer of health to inspect meat, &c.

117 (3). If it appears to the justice that any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk so seized is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall condemn the same, and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man; and the person to whom the same belongs or did belong at the time of exposure for sale, or in whose possession or on whose premises the same was found, shall be liable to a penalty not exceeding twenty pounds for every animal, carcase, or fish, or piece of meat, flesh, or fish, or any poultry or game, or for the parcel of fruit, vegetables, corn, bread, or flour,

Power of justice to order destruction of unsound meat, &c.

(1) There is nothing to qualify the generality of the term "place" in this section. See *Young* v. *Grattridge*, L. R. 4 Q. B. 166, 38 L. J. M. C. 67. See also *Daly* v. *Webb*, *infra*.

(2) The "animal, carcase, meat, &c.," must be seized by the medical officer of health or inspector of nuisances while exposed or deposited for sale in order to render a person liable to a penalty under the next section. Hence, where a butcher exposed unsound meat for sale, which was purchased and taken away by the purchaser, who three days afterwards gave it up to the inspector of nuisances, by whom it was taken away, and afterwards condemned by a justice, and ordered to be destroyed, it was held that the butcher could not be rightly convicted under the next section, as the meat must be seized while exposed for sale: *Vinter* v. *Hind*, L. R. 10 Q. B. D. 63, 52 L. J. M. C. 93, 48 L. T. N. S. 359, 31 W. R. 198, 46 J. P. 756.

The "animal, carcase, meat, &c.," may be taken *ex parte* by the medical officer or inspector before a justice and condemned without any summons or notice to the person to whom it belongs. The medical officer or inspector must be satisfied that the article is exposed for sale, or deposited, &c., and intended for the food of man, and all the justice has to do is to inspect the article, and if satisfied that it is diseased or unsound, &c., he is to condemn it, and order it to be destroyed. Afterwards, upon a summons taken out in the ordinary way, a conviction may be had under the next section: *White* v. *Redfern*, L. R. 5 Q. B. D. 15, 49 L. J. M. C. 19, 41 L. T. N. S. 524, 28 W. R. 168. (*Gill* v. *Bright*, 41 L. J. M. C. 22, and *Cooper* v. *Wandsworth Board*, 32 L. J. C. P. 185, are distinguishable.) It would seem that if the goods be erroneously condemned and destroyed compensation may be obtained under section 308, *post*: *Ibid.*

To expose for sale, or to have possession of with intent to sell, things for human food, meat, &c., unfit for human food, is a nuisance at common law, and a bye-law imposing a penalty upon persons in possession of unsound meat, &c., with intent to sell the same, made in pursuance of a power to make bye-laws for the suppression and prevention of all such nuisances as are not punishable in a summary manner by virtue of any Act in force in a borough, was held good: *Shillito* v. *Thompson*, L. R. 1 Q. B. D. 12, 45 L. J. M. C. 18, 33 L. T. N. S. 506, 24 W. R. 57.

In the case of *Daly* (app.) v. *Webb* (resp.), 4 Ir. Rep. Com. Law, 309, 18 W. R. 631, it was held that diseased meat placed upon a cart in charge of the servant of the appellant, and seized by an inspector of nuisances while passing along the streets of a city from a slaughterhouse to a place for the preparation of preserved meats, was "exposed for sale," or "deposited for the purposes of sale or preparation for sale," and "intended for the food of man," and that the appellant was properly committed.

See further the provisions of the Sale of Food and Drugs Acts, 1875 and 1879, and the notes thereto, *post*; and as to the adulteration of bread, see 6 & 7 Will. IV. c. 37, *post*.

(3) See the notes to the preceding section.

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or for the milk so condemned, or, at the discretion of the justice, without the infliction of a fine, to imprisonment for a term of not more than three months (1).

The justice who, under this section, is empowered to convict the offender may be either the justice who may have ordered the article to be disposed of or destroyed, or any other justice having jurisdiction in the place.

Penalty for hindering officer from inspecting meat, &c.

118 (2). Any person who in any manner prevents any medical officer of health or inspector of nuisances from entering any premises and inspecting any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk exposed or deposited for the purpose of sale, or of preparation for sale, and intended for the food of man, or who obstructs or impedes any such medical officer or inspector or his assistant, when carrying into execution the provisions of this Act, shall be liable to a penalty not exceeding five pounds (3).

119 (4). On complaint made on oath (5) by a medical officer of health, or by an inspector of nuisances, or other officer of a local authority, any justice may grant a warrant to any such officer to enter any building or part of a building in which such officer has reason for believing that there is kept or concealed any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk which is intended for sale for the food of man, and is diseased, unsound, or unwholesome, or unfit for the food of man; and to search for, seize and carry away any such animal or other article in order to have the same dealt with by a justice under the provisions of this Act.

Any person who obstructs any such officer in the performance of his duty under such warrant shall, in addition to any other punishment to which he may be subject, be liable to a penalty not exceeding twenty pounds (6).

Infectious Diseases and Hospitals.

Provisions against Infection.

Duty of local autho-

120 (7). Where any local authority are of opinion, on the certificate of their medical officer of health (8), or of any other legally qualified medical practitioner (9),

(1) Where justices made four separate convictions against three persons, one of whom was master and the other two his servants, in respect of four separate pieces of bad meat found at the same stall on the same day, and in each case adjudged a penalty of twenty shillings and fifteen shillings costs against each person, the Court refused to interfere with the discretion of the justices, inasmuch as they had jurisdiction, and there was no ground for saying that they had been actuated by improper motives, or had acted unreasonably: *In re Hartley*, 31 L. J. M. C. 232, S. C. *R.* v. *Hartley*, 26 J. P. 438.

As to recovery of penalties, &c., see sections 251 *et seq.*, *post.*

(2) The previous enactment was the Nuisances Removal Act, 1863, 26 & 27 Vict. c. 117, s. 3.

(3) Where a butcher, at his residence, about half a mile from his shop, on a Sunday afternoon, a little before three o'clock, was requested to go himself, or send some one with the key, to admit the inspector of nuisances to his shop, in order that some meat there might be examined, and he refused to do so, it was held, that though Sunday afternoon might under some circumstances be a reasonable time for the examination of meat under the Act, yet the fact of not going half a mile to open the door was not obstructing the inspector from entering the premises, and a conviction on that ground is bad: *Small* v. *Bickley*, 32 L. T. N. S. 726, 39 J. P. 422.

As to recovery of penalties, see sections 251 *et seq.*, *post.*

(4) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 55.

(5) Includes "affirmation" or "declaration" of person allowed by law to affirm or declare: 13 & 14 Vict. c. 21, s. 4.

(6) As to the recovery of penalties, &c., see sections 251 *et seq.*, *post.*

(7) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 22. The reference to the medical officer of health is new.

(8) As to the duties of medical officers of health, see the Regulations issued by the Local Government Board, *post;* and particularly as to certificates, see Section IV. (4) of these Regulations, *post.*

(9) See the note to section 189, *post.*

that the cleansing and disinfecting of any house (1) or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check infectious disease, it shall be the duty of such authority to give notice in writing to the owner (2) or occupier of such house or part thereof requiring him to cleanse and disinfect such house or part thereof and articles within a time specified in such notice (3).

rity to cause premises to be cleansed and disinfected.

If the person to whom notice is so given fails to comply therewith, he shall be liable to a penalty of not less than one shilling and not exceeding ten shillings for every day during which he continues to make default (4); and the local authority shall cause such house or part thereof and articles to be cleansed and disinfected, and may recover the expenses incurred from the owner or occupier in default in a summary manner (5).

Where the owner or occupier of any such house or part thereof is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out the requirements of this section, such authority may, without enforcing such requirements on such owner or occupier, with his consent cleanse and disinfect such house or part thereof and articles, and defray the expenses thereof (6).

Destruction of infected bedding, &c.

121 (7). Any local authority may direct the destruction of any bedding, clothing, or other articles which have been exposed to infection from any dangerous infectious disorder, and may give compensation for the same.

Provision of means of disinfection.

122 (8). Any local authority may provide a proper place, with all necessary apparatus and attendance, for the disinfection of bedding, clothing, or other articles which have become infected, and may cause any articles brought for disinfection to be disinfected free of charge.

Provision of conveyance for infected persons.

123 (9). Any local authority may provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any infectious disorder, and may pay the expense of conveying therein any person so suffering to a hospital or other place of destination.

Removal of infected per-

124 (10). Where any suitable hospital or place for the reception of the sick is provided within the district of a local authority, or within a convenient distance of

(1) Defined *ante*, p. 46.

(2) Defined *ante*, p. 45.

(3) As to requiring filthy houses to be purified or whitewashed, see section 46, *ante*.

As to whitewashing of lodging-houses, see section 82, *ante;* and as to notice of infectious disease in lodging-house, see section 84, *ante*.

As to notices and the service thereof, see sections 266, 267, *post*.

As to enforcing performance of duty by local authority, see section 299, *post*.

(4) As to "continuing offence," see *Rumball* v. *Schmidt*, *post*, p. 128; *Reg.* v. *Waterhouse* and *Higgins* v. *Northwich*, *ante*, p. 90; and compare the provisions of sections 79, 86, and 112, *ante*.

(5) As to recovery of penalties, see sections 251 *et seq.*, *post*.

(6) As to expenses of local authorities, see sections 207 and 229, *post*.

(7) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 51. Compare section 308, *post*, as to compensation for damage.

As to expenses of urban authority, see sections 209 *et seq.*, *post;* and of rural authority, section 229, *post*.

(8) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 23.

(9) The previous enactments were the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 24, and the Nuisances Removal Act, 1860, 23 & 24 Vict. c. 77, s. 12.

See the memorandum on Ambulances issued by the Local Government Board in December, 1876, *post*.

As to these expenses, see note (7) to section 121, *supra*.

(10) The previous enactments were the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 26, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 51. The words "suitable" and "or within a convenient distance of such district" are new. See as to this alteration the circular of 30th September, 1875, *ante*, p. 11.

As to the power of the local authority to provide hospitals, see sections 131 *et seq.*, *post*, pp. 108, 109.

Secs. 124—126.

sons without proper lodging to hospital by order of justice.

such district, any person who is suffering from any dangerous infectious disorder, and is without proper lodging or accommodation, or lodged in a room occupied by more than one family (1), or is on board any ship or vessel (2), may, on a certificate signed by a legally qualified medical practitioner (3), and with the consent of the superintending body of such hospital or place, be removed, by order of any justice, to such hospital or place at the cost of the local authority; and any person so suffering, who is lodged in any common lodging-house (4), may, with the like consent and on a like certificate, be so removed by order of the local authority.

An order under this section may be addressed to such constable or officer of the local authority as the justice or local authority making the same may think expedient; and any person who wilfully disobeys or obstructs the execution of such order shall be liable to a penalty not exceeding ten pounds (5).

Removal to hospital of infected persons brought by ships.

125 (6). Any local authority may make regulations (to be approved of by the Local Government Board) for removing to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship or boat who are infected with a dangerous infectious disorder, and such regulations may impose on offenders against the same reasonable penalties not exceeding forty shillings for each offence.

Penalty on exposure of infected persons and things.

126 (7). Any person who—

(1.) While suffering from any dangerous infectious disorder (8) wilfully exposes himself without proper precautions against spreading the said disorder in any street (9), public place, shop, inn (10), or public conveyance, or enters any public conveyance without previously notifying to the owner, conductor, or driver thereof that he is so suffering; or

(2.) Being in charge of any person so suffering, so exposes such sufferer (11); or

(1) As to the meaning of family, see note to section 87, *ante*, p. 86.

(2) See section 110, *ante*, p. 100, and the notes as to application to ships of the provisions of the Act relating to nuisances.

As to power of entry on vessel for purpose of executing regulations for prevention o epidemic diseases, see section 137, *post*.

As to quarantine, see note (2) to section 134, *post*.

As to prevention of infectious disease in canal boats, see the Canal Boats Act, 1877, sections 4 *et seq.*, *post*.

(3) See the note to section 189, *post*.

(4) As to meaning of "common lodging-house," see note (3) to section 76, *ante*, p. 82; and as to notice by the keeper in case of fever, &c., see section 84, *ante*.

(5) As to recovery of penalties, &c., see sections 251 *et seq.*, *post*.

(6) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 29.

The provisions of the Act as to bye-laws, sections 182 *et seq.*, do not apply to these regulations: Section 188, *post*, p. 150. Powers to make regulations are also given by sections 143, 189, 200, and 202, *post*.

As to recovery of penalties, see sections 251 *et seq.*, *post*.

(7) As to the provisions of this and the succeeding section, the previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, ss. 38, 25. The application of the provisions to exposure in a "shop or inn" are new.

(8) As to the meaning of infectious diseases, see note to section 134, *post*.

(9) See the interpretation clause, *ante*, p. 45.

(10) "An inn is a house, the owner of which holds out that he will receive all travellers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a situation in which they are fit to be received": *Per* Best, J., *Thompson* v. *Lacey*, 3 B. & Ald. 283, at p. 287. The true definition of an inn is a house where the traveller is furnished with everything which he has occasion for whilst upon his way: *Per* Bayley, J., *ibid.* See further, *Calye's case*, 8 Co. Rep. 32, 1 Smith's L. Cas. p. 131, 8th ed.; *R.* v. *Rymer*, L. R. 2 Q. B. D. 136, 46 L. J. M. C. 108, 35 L. T. N. S. 774, 25 W. R. 415, 13 Cox C. C. 378; and see 26 & 27 Vict. c. 41, s. 4.

(11) Where a medical man in Tunbridge sent a patient who was suffering from scarlet fever to the fever hospital there with a certificate, directing him to walk in the middle

(3.) Gives, lends, sells, transmits, or exposes, without previous disinfection, any bedding, clothing, rags, or other things which have been exposed to infection from any such disorder,

shall be liable to a penalty not exceeding five pounds; and a person who, while suffering from any such disorder, enters any public conveyance without previously notifying to the owner or driver that he is so suffering, shall in addition be ordered by the Court to pay such owner and driver the amount of any loss and expense they may incur in carrying into effect the provisions of this Act with respect to disinfection of the conveyance (1).

Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any bedding, clothing, rags, or other things for the purpose of having the same disinfected (2).

Penalty on failing to provide for disinfection of public conveyance.

127 (3). Every owner or driver of a public conveyance shall immediately provide for the disinfection of such conveyance after it has to his knowledge conveyed any person suffering from a dangerous infectious disorder; and if he fails to do so he shall be liable to a penalty not exceeding five pounds; but no such owner or driver shall be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred by him in carrying into effect the provisions of this section.

Penalty on letting houses in which infected persons have been lodging.

128 (4). Any person who knowingly lets for hire any house (5), room, or part of a house in which any person has been suffering from any dangerous infectious disorder (6), without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a legally qualified medical practitioner (7), as testified by a certificate signed by him, shall be liable to a penalty not exceeding twenty pounds (8).

For the purposes of this section, the keeper of an inn shall be deemed to let for hire part of a house to any person admitted as a guest into such inn (9).

Penalty on persons letting

129 (10). Any person letting for hire, or showing for the purpose of letting for

of the road, and not to talk to any one, but, in consequence of an alleged informality in the certificate, the patient was refused admission, whereupon the medical man walked with him through the streets of the town to the residence of the chairman of the local board, from whom, after some delay, he obtained an order for the man's admission to the hospital, and then returned with him to the police station to procure the ambulance to convey him thither, it was held that the decision of the justices, who upon an information against the medical man under the above sub-section, being of opinion that it was not proved that the medical man "had charge of" the patient, that he had not wilfully exposed the patient without proper precaution, and that he had made the best use of the means at his disposal to prevent the spread of fever, refused to convict, was right: *Tunbridge Wells Local Board* v. *Bisshopp*, L. R. 2 C. P. D. 187. But query whether the justices were right in holding that the patient was not "in charge of" the medical man: *Ibid.*

It is indictable at common law to expose in the public streets a child suffering from an infectious disease: *R.* v. *Vantandillo*, 4 M. & S. 73; *R.* v. *Burnett*, *ibid.* 272; and it is indictable to bring a horse diseased with glanders into a public place to the danger of infecting the Queen's subjects: *R.* v. *Henson*, Dears. 24.

(1) As to recovery of penalties, &c., see sections 251 *et seq.*, *post.*

As to disinfection of the conveyance, see the next section.

(2) See section 122, *ante*, p. 105.

(3) See the notes to the preceding section.

(4) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 39.

(5) See the interpretation clause, *ante*, p. 46.

(6) As to the meaning of infectious disease, see note (3), *post*, p. 109.

(7) See the note to section 189, *post.*

(8) As to recovery of penalties, &c., see sections 251 *et seq.*, *post.*

(9) As to "inn," see note (10) to section 126, *ante*, p. 106.

(10) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 56.

See the preceding section and the notes.

Secs. 129—132.

houses, making false statements as to infectious disease.

hire, any house or part of a house, who on being questioned by any person negotiating for the hire of such house or part of a house as to the fact of there being or within six weeks previously having been therein any person suffering from any dangerous infectious disorder, knowingly makes a false answer to such question, shall be liable, at the discretion of the Court, to a penalty not exceeding twenty pounds, or to imprisonment, with or without hard labour, for a period not exceeding one month.

Power of Local Government Board to make regulations.

130 (1). The Local Government Board may from time to time make, alter, and revoke such regulations as to the said Board may seem fit, with a view to the treatment of persons affected with cholera, or any other epidemic, endemic, or infectious disease, and preventing the spread of cholera and such other diseases, as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed. Regulations so made shall be published in the *London Gazette*, and such publication shall be for all purposes conclusive evidence of such regulations (2).

Any person wilfully neglecting or refusing to obey or carry out, or obstructing the execution of any regulation made under this section, shall be liable to a penalty not exceeding fifty pounds (3).

Hospitals (4).

Power of local authority to provide hospitals.

131 (5). Any local authority may provide for the use of the inhabitants of their district, hospitals or temporary places for the reception of the sick, and for that purpose may—

Themselves build such hospitals or places of reception (6); or

Contract for the use of any such hospital or part of a hospital, or place of reception (7); or

Enter into any agreement with any person having the management of any hospital, for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

Two or more local authorities may combine in providing a common hospital (8).

Recovery of cost of maintenance of patient in hospital.

132 (9). Any expenses incurred by a local authority in maintaining in a hospital, or in a temporary place for the reception of the sick (whether or not belonging to such authority), a patient who is not a pauper, shall be deemed to be a debt due

(1) The previous enactments were the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 52, and the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 52.

(2) As to regulations by the Local Government Board for prevention of diseases, see section 134 and the notes thereto, *post*.

See the order as to cholera issued by the Local Government Board, dated 17th July 1873, *post*.

As to ships, see sections 110 and 125, *ante*, pp. 99 and 106; and as to port sanitary authorities, see sections 287 *et seq.*, *post*.

(3) As to recovery of penalties, see sections 251 *et seq.*, *post*.

(4) See the memoranda as to "Hospital Accommodation" issued by the Local Government Board, dated December, 1876, *post*.

(5) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 37.

(6) If in pursuing these powers a nuisance is created to the injury of the health or property of persons resident in the neighbourhood of the place where the hospitals or places are built or erected, the section will not afford a statutory protection to the local authority, and proceedings may be taken against them: *Metropolitan Asylum District* v. *Hill*, *ante*, p. 89.

As to purchase of land for the purposes of the Act, see sections 175 *et seq.*

(7) As to contracts by a local authority, see sections 173 *et seq.*, *post*.

(8) See further section 285, *post*, p. 201, as to combining for execution of works.

As to the expenses of local authorities, see sections 207 *et seq.*, and section 229, *post*. And see the next section, section 132.

(9) This section is new. See the circular of the Local Government Board, issued 30th September, 1875, *ante*, p. 12.

from such patient to the local authority, and may be recovered from him at any time within six months after his discharge from such hospital or place of reception, or from his estate in the event of his dying in such hospital or place.

Power to provide temporary supply of medicine.

133 (1). Any local authority may, with the sanction of the Local Government Board, themselves provide or contract with any person to provide a temporary supply of medicine and medical assistance for the poorer inhabitants of their district.

Prevention of Epidemic Diseases.

Power of Local Government Board to make regulations for prevention of diseases.

134 (2). Whenever any part of England appears to be threatened with or is affected by any formidable epidemic, endemic, or infectious disease (3), the Local Government Board may make and from time to time alter and revoke regulations (4) for all or or any of the following purposes; (namely,)

(1.) For the speedy interment of the dead; and

(2.) For house to house visitation; and

(3.) For the provision of medical aid and accommodation, for the promotion of

(1) The previous enactment was the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 10. As to contracts by local authority, see sections 173 *et seq.*, *post.*

(2) The previous enactment was the Diseases Prevention Act, 1855, 18 & 19 Vict. c. 116, ss. 5, 6, 11.

(3) "*Epidemic*" is defined to be "a disease which attacks at the same time a number of individuals and which is referred to some particular *constitutio aeris*, or condition of the atmosphere (*influence* or *constitution*) with which we are utterly ignorant. It differs from *endemic*, the latter being owing to locality; but it is obvious that should a particular epidemic constitution of the air (*epidemicity*, épidémicité (F.)) exist along with a favouring endemic condition, these combined influences may act in the causation of several of those serious and fatal complaints which at times visit a district and are never afterwards met with, or at least not until after the lapse of a considerable period."—Dunglisson's Dictionary of Medical Science, 1876, sub. verb "epidemy."

"A disease is said to be '*endemic*,' *endemique* (F.), or to arise from endemicity (endémicité (F.)) when it is owing to some peculiarity in a situation or locality. Thus ague is endemic in marshy countries; goitre at the base of lofty mountains, &c. Some authors use the term in the same sense as epidemic. We have no accurate knowledge of the emanations or other circumstances which give occasion to endemic affections. We seem to know that some emanation from marshy lands does produce intermittents; but we are ignorant of the nature of such emanation."—Dunglisson, *ut supra*, sub. verb "endemic."

Instead of "infectious" the word "*contagious*" was used in the previous enactment. "Contagion" is "the transmission of a disease from one person to another by direct or indirect contact. . . . Contagious diseases are produced either by a virus, *contagium*, capable of causing them by inoculation, as in small pox, cow pox, hydrophobia, syphilis, &c., or by miasmata proceeding from a sick individual, as in plague, typhus gravior, and in measles and scarlatina (?). . . . Physicians are, indeed, by no means unanimous in deciding what diseases are contagious and what not. The contagion of plague and typhus, especially of the latter, is denied by many. It seems probable that a disease may be contagious under certain circumstances and not under others. A case of common fever, arising from *common causes*, as from cold, if the patient be kept in a close, foul situation, may be converted into a disease capable of producing emanations which may excite a similar disease in those exposed to them. *Contagion* and *infection* are generally esteemed synonymous. Frequently, however, the former is applied to diseases not produced by contact, as measles, scarlet fever (?), &c., while *infection* is used for those that require positive contact, as itch, syphilis, &c., and conversely."—Dunglisson, *ut supra.*

It will be observed that the section is confined to cases of "formidable" epidemic, &c., disease.

(4) See also section 130, *ante*, p. 108. As to the penalty for violating or obstructing the execution of these regulations, see section 140, *post.*

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cleansing, ventilation and disinfection, and for guarding against the spread of disease (1);

and may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority, and to apply to any vessels (2), whether on inland waters or on arms or parts of the sea within the jurisdiction of the Lord High Admiral of the United Kingdom or the commissioners for executing the office of the Lord High Admiral for the time being (3), for the period in such order mentioned; and may by any subsequent order abridge or extend such period.

Publication of regulations and orders.

135 (4). All regulations and orders so made by the Local Government Board

(1) See also sections 46, 90 and 120, *ante*.

Power of sanitary authorities to borrow money for carrying out the purposes of regulations.

By the Epidemic and other Diseases Prevention Act, 1883, 46 & 47 Vict. c. 59, s. 2, it is provided that "whenever any part of England [or of Ireland] appears to be threatened with or affected by any formidable epidemic, endemic, or infectious disease, and the Local Government Board, England, under the provisions of the Public Health Act, England, 1875, or the Local Government Board, Ireland, under the provisions of the Public Health Act, Ireland, 1878, make regulations for all or any of the following purposes, namely:—

(1.) For the speedy interment of the dead.

(2.) For house to house visitation.

(3.) For the provision of medical aid and hospital accommodation; and

(4.) For the promotion of cleansing, ventilation, and disinfection, and for guarding against the spreading of disease. The purposes named in the said regulations, shall be deemed to be purposes for which sanitary authorities may borrow money, and the local authorities in England, and the sanitary authorities in Ireland, charged with the carrying out of such regulations, may borrow, and the Public Works Loan Commissioners in England and the Board of Public Works in Ireland may lend money to such authorities, as if such purposes were "works" for which loans may be granted under the Public Health Act, England, 1875, and the Public Health Act, Ireland, 1878.

Such loans may be made forthwith and without any preliminary public notice or inquiry, if it appear to the Local Government Board desirable in order to the prompt and effective execution of such regulations." See the Public Works Loans Act, *post*, and the Schedule to the Public Works Loans Act, 1875, the First Schedule, *post*.

(2) As to ships, see sections 110, 125 and 130, *ante*, and the notes; and as to port sanitary authorities, see sections 287—292, *post*.

As to the Quarantine Act, 29 & 30 Vict. c. 90, ss. 51, 52, see section 343, *post*, and Schedule V., Part III., *post;* and see the order of 17th July, 1873, as to cholera, *post*.

(3) As to the jurisdiction of the Admiralty, see *R.* v. *Keyn*, L. R. 2 Ex. D. 63, 46 L. J. M. C. 17.

(4) The previous enactment was the Diseases' Prevention Act, 1855, 18 & 19 Vict. c. 116, s. 7.

"*Primâ facie* evidence of any Proclamation, Order, or Regulation issued by Her Majesty, or by or under the authority of the *Local Government Board*, may be given in all Courts of Justice and in all legal proceedings whatsoever in all or any of the modes hereinafter mentioned:—

(1) By the production of a copy of the *Gazette* purporting to contain such Proclamation, Order, or Regulation.

(2) By the production of a copy of such Proclamation, Order, or Regulation purporting to be printed by the government printer (or under the superintendence or authority of Her Majesty's stationery office).

(3) By the production of a copy or extract purporting to be certified to be true by any member or secretary or assistant secretary of the Local Government Board. Any copy or extract may be in print or in writing, or partly in print and partly in writing. No proof shall be required of the handwriting or official position of any person certifying to the truth of any copy of or extract from any Proclamation, Order, or Regulation." See

shall be published in the *London Gazette*, and such publication shall be conclusive evidence thereof for all purposes.

Local authority to see to the execution of regulations.

136 (1). The local authority of any district within which or part of which regulations so issued by the Local Government Board are declared to be in force, shall superintend and see to the execution thereof, and shall appoint and pay such medical or other officers or persons, and do and provide all such acts, matters, and things as may be necessary for mitigating any such disease, or for superintending or aiding in the execution of such regulations, or for executing the same, as the case may require. Moreover, the local authority may from time to time direct any prosecution or legal proceeding for or in respect of the wilful violation or neglect of any such regulation (2).

Power of entry.

137 (3). The local authority and their officers shall have power of entry on any premises or vessel for the purpose of executing or superintending the execution of any regulations so issued by the Local Government Board as aforesaid.

Poor law medical officer entitled to costs of attendance on board vessels.

138 (4). Whenever, in compliance with any regulation so issued by the Local Government Board as aforesaid, any poor law medical officer performs any medical service on board any vessel, he shall be entitled to charge extra for such service, at the general rate of his allowance for services for the union or place for which he is appointed; and such charges shall be payable by the captain of such vessel on behalf of the owners thereof, together with any reasonable expenses for the treatment of the sick.

Where such services are rendered by any medical practitioner who is not a poor law medical officer, he shall be entitled to charges for any service rendered on board, with extra remuneration on account of distance, at the same rate as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid. In case of dispute in respect of such charges, such dispute may, where the charges do not exceed twenty pounds, be determined by a Court of Summary Jurisdiction (5); and such Court shall determine summarily the amount which is reasonable, according to the accustomed rate of charge within the place where the dispute arises for attendance on patients of the like class as those in respect of whom the charge is made.

Local Government Board may combine local authorities.

139 (6). The Local Government Board may, if they think fit, by order authorise or require any two or more local authorities to act together for the purposes of the provisions of this Act relating to prevention of epidemic diseases (7), and may prescribe the mode of such joint action and of defraying the costs thereof.

Penalty for violating or

140 (8). Any person who—

the Documentary Evidence Act, 1868, 31 & 32 Vict. c. 37, s. 2, and the Schedule; the Local Government Board Act, 1871, 34 & 35 Vict. c. 70, ss. 1 and 7; and the Documentary Evidence Act, 1882, 45 Vict. c. 9, s. 2.

(1) The previous enactment was the Diseases Prevention Act, 1855, 18 & 19 Vict. c. 116, ss. 8 and 9.

(2) As to enforcing performance of their duties by a local authority, see s. 299, *post*.

As to appointment, &c., of officers of local authority, see sections 189 *et seq.*, *post*.

As to penalty for violation, &c., of regulations, see section 140, *post*.

(3) The previous enactment was the Diseases' Prevention Act, 1855, 18 & 19 Vict. c. 116, s. 4.

See the penalty for obstructing the execution of regulations, section 140, *post*.

(4) The previous enactment was the Diseases' Prevention Act, 1855, 18 & 19 Vict. c. 116, s. 12.

(5) Defined *ante*, p. 47.

(6) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. 90, s. 40.

(7) Sections 134—140. As to combining in providing a common hospital, see section 131, *ante*; as to appointment of medical officer of health by local authorities of two or more districts, see sections 191 and 286, *post*; and as to combining for execution of works, see section 285, *post*.

(8) The previous enactment was the Diseases Prevention Act, 1855, 18 & 19 Vict. c. 116, s. 14.

As to recovery of penalties, &c., see sections 251 *et seq.*, *post*.

Secs. 140—143.

obstructing the execution of regulations.

(1.) Wilfully violates any regulation so issued by the Local Government Board as aforesaid; or,

(2.) Wilfully obstructs any person acting under the authority or in the execution of any such regulation,

shall be liable to a penalty not exceeding five pounds.

MORTUARIES, &c.

Power of local authority to provide mortuaries.

141 (1). Any local authority may, and if required by the Local Government Board shall, provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary), and may make bye-laws with respect to the management and charges for use of the same; they may also provide for the decent and economical interment, at charges to be fixed by such bye-laws, of any dead body which may be received into a mortuary (2).

Justice may in certain cases order removal of dead body to mortuary.

142 (3). Where the body of one who has died of any infectious disease (4) is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, any justice may, on a certificate signed by a legally qualified medical practitioner (5), order the body to be removed, at the cost of the local authority, to any mortuary provided by such authority (6), and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the relieving officer to bury such body at the expense of the poor rate, but any expense so incurred may be recovered by the relieving officer in a summary manner from any person legally liable to pay the expense of such burial.

Any person obstructing the execution of an order made by a justice under this section shall be liable to a penalty not exceeding five pounds (7).

Power of local authority to provide places for *post-mortem* examinations.

143 (8). Any local authority may provide and maintain a proper place (otherwise than at a workhouse or at a mortuary) for the reception of dead bodies during the time required to conduct any *post-mortem* examination ordered by a coroner or other constituted authority, and may make regulations with respect to the management of such place (9); and where any such place has been provided, a coroner or other constituted authority may order the removal of the body to and from such place for carrying out such *post-mortem* examination, such costs of removal to be paid in the same manner and out of the same fund as the costs and fees for *post-mortem* examinations when ordered by the coroner (10).

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 81, and the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 27. The provision that the local authority, "if required by the Local Government Board, *shall* provide, &c.," a mortuary is new.

As to enforcing performance of their duty by local authority, see section 299, *post.*

As to the making, confirmation, &c., of bye-laws, see sections 182 *et seq.*, *post.*

As to power of local authority to purchase lands, see sections 175, 176, *post.*

(2) The provisions as to mortuaries are extended to cemeteries by the Public Health (Interments) Act, 1879, 42 & 43 Vict. c. 31, *post.*

(3) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 27. The last clause is new.

(4) As to "infectious" disease, see note (3) to section 134, *ante*, p. 109.

(5) See the note to section 189, *post.*

(6) See the preceding section.

(7) As to the recovery of expenses, penalties, &c., see sections 251 *et seq.*, *post.*

The Burial Acts will be found *post.*

(8) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 28.

(9) The provisions of the Act as to bye-laws, sections 182 *et seq.*, do not apply to these regulations: Section 188, *post.* See the note to section 155, *ante.*

(10) They are payable out of the county rates or borough fund, as the case may be: 6 & 7 Will. IV. c. 89, s. 3, 7 Will. IV. & 1 Vict. c. 68, s. 2.

PART IV.

LOCAL GOVERNMENT PROVISIONS (1).

Highways and Streets.

As to Highways.

144 (2). Every urban authority shall within their district, exclusively of any other person, execute the office of and be surveyor of highways, and have, exercise and be subject to all the powers, authorities, duties, and liabilities of surveyors of highways under the law for the time being in force, save so far as such powers, authorities, or duties are or may be inconsistent with the provisions of this Act; every urban authority shall also have, exercise, and be subject to all the powers, authorities, duties and liabilities, which by the Highway Act, 1835, or any Act amending the same, are vested in and given to the inhabitants in vestry assembled of any parish within their district (3).

Powers of surveyors of highways and of vestries under 5 & 6 W. 4. c. 50, vested in urban authority.

(1) These provisions, sections 144—172, are a consolidation of similar provisions in the previous Local Government Acts. They apply only to *urban* authorities and they deal with (1) Highways and Streets, sections 144—163; (2) Public Pleasure Grounds, &c., sections 164, 165; Markets and Slaughter Houses, sections 166—170; and (4) they incorporate certain provisions of the Towns Police Clauses Act, 1847, and give power to the local authority to make bye-laws for licensing horses, boats, &c., for hire, sections 171, 172.

By 35 & 36 Vict. c. 79, s. 36, all the powers and duties of the Secretary of State, under the Highway and Turnpike Acts, are transferred to the Local Government Board: see Schedule V., Part III., *post*.

Powers, &c., of Secretary of State transferred to Local Government Board.

The provisions in this part of the Act (sections 144—172) do not apply to rural authorities. But by sections 271, 272, *post*, rural districts or parts of rural districts may, in certain cases and under certain conditions, be formed into local government districts; and by 25 & 26 Vict. c. 61, s. 41, *post*, where any parish or part of a parish included in a highway district adopts the Local Government Act, such parish or part shall cease to form part of such district, subject to the payment of contributionts due to the Highway Board. But by 26 & 27 Vict. c. 17, s. 6, where any local government district or other place is surrounded by or adjoins a highway district under the Highway Acts, such first mentioned district, &c., shall be within the highway district for the purpose of any highway meetings. See Schedule V., Part III., *post*. By 25 & 26 Vict. c. 61, s. 7, *post*, certain places are restricted from being formed into highway districts.

Rural authorities.

Restriction on formation of highway districts.

As to the case of part of a parish liable to contribute to the highway rates of such parish being included within an urban district, see the proviso to section 216, *post*.

Parish liable to contribute to highway rate included in urban district.

As to highways in South Wales, see the Act for the better management and control of highways in South Wales, 23 & 24 Vict. c. 68 (repealed as to Llanelly and Aberavon by 28 & 29 Vict. c. 108, s. 2, and see 26 & 27 Vict. c. 64; as to Briton Ferry by 29 & 30 Vict. c. 79, s. 2; as to Llanwonno by 30 Vict. c. 21, s. 4, these places being now included in Local Government Districts; s. 33, from "provided" to the end of the section, and section 34 are repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66), and the South Wales Highway Act amendment Act, 1878, 41 & 42 Vict. c. 34.

South Wales highways.

As to defraying the cost of the repair of highways, see sections 216 and 217, *post*, and the next section, section 145.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 117, and the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 10. The last paragraph is new.

(3) As to the office of and the powers, authorities, duties and liabilities of surveyors and of vestries under the Highway Act, 1835, &c., see the Highway Act, 1835, and the various Acts amending, &c., the same, *post*.

A local board in their character of surveyor of highways are entitled to rely upon the period of three months limited by section 109 of the 5 & 6 Will. IV. c. 50, *post*, within which an action must be brought against a surveyor for anything done under

Secs. 144, 145.

All ministerial acts required by any Act of Parliament to be done by or to the surveyor of highways may be done by or to the surveyor (1) of the urban authority, or by or to such other person as they may appoint.

Inhabitants of urban district not liable to rates for roads without out district.

145 (2). The inhabitants within any urban district shall not in respect of any property situated therein be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways without such district (3): Provided, that any person who, in any place after the passing of this Act, ceases under or by virtue of any provision of this Act, or of that Act, notwithstanding section 264 of this Act, *post*, p. 188: *Burton* v. *Salford*, L. R. 11 Q. B. D. 286, 52 L. J. Q. B. 558, 49 L. T. N. S. 43, 31 W. R. 815.

Local authority not liable for *non-repair*.

A surveyor of highways appointed under the Highway Act, 1835, is not liable for damages arising from the *non-repair* of a highway: *Young* v. *Davis*, 2 H. & C. 197, 7 H. & N. 760, 31 L. J. Ex. 250; nor is a local authority in whom are vested the rights and duties of surveyor: *Gibson* v. *Mayor of Preston*, L. R. 5 Q. B. 218; *White* v. *Hindley*, *ante*, p. 53; *Parsons* v. *Vestry of Bethnal Green*, 37 L. J. C. P. 62, 9 L. T. N. S. 145; *Guardians Holborn Union* v. *St. Leonard's, Shoreditch*, L. R. 3 C. P. 56, 41 J. P. 38. And where a surveyor of highways lets the whole of the work to a contractor *and does not personally interfere*, he is not responsible for damage caused by the negligence of the contractor or his servants: *Taylor* v. *Greenhalgh*, L. R. 9 Q. B. 487. It is otherwise where the contractor does part of the work only, as where he does the labour at so much a yard and the surveyor supplies the stones and materials: *Pendlebury* v. *Greenhalgh*, L. R. 1 Q. B. D. 36; or where the contractor does the work under the superintendence of the surveyor: *Smith* v. *W. Derby Board*, *ante*, p. 53. See further as to liability for acts of contractors, the cases cited *ante*, p. 78, and *Reid* v. *Darlington Highway Board*, 41 J. P. 581. But a local authority are liable for damage caused by the *negligence* of their servants: *Foreman* v. *Mayor, &c., of Canterbury*, L. R. 6 Q. B. 214, 40 L. J. Q. B. 138 (overruling *Halliday* v. *St. Leonard's, Shoreditch*, 11 C. B. N. S. 192, 30 L. J. C. P. 361); see also *Coe* v. *Wise*, L. R. 1 Q. B. 711; *Winch* v. *Conservators of River Thames*, 41 L. J. C. P. 241. And a local authority, though not liable as the highway authority for injury caused through the *non-repair* of a grating put upon a highway in connection with a sewer running underneath, may yet be made liable in their characters of owners of the sewers under sections 13 and 15, *ante*. See the cases cited *ante*, p. 53.

As to action against a surveyor of a highway board committing a trespass by order of the board on a disputed highway, see *Mill* v. *Hawker*, 43 L. J. Ex. 129, 44 *Ib.* 49, 10 Cox M. C. 147.

A highway surveyor *bonâ fide* taking up drain pipes connected with a highway cannot be found guilty of wilful and malicious damage under 24 & 25 Vict. c. 97, s. 52: *Denny* v. *Thwaites*, L. R. 2 Ex. D. 21 (distinguishing *White* v. *Feast*, L. R. 7 Q. B. 353).

As to the meaning of the word "vest," see the cases cited in the note to section 149, *post*, p. 118.

(1) See the interpretation clause, *ante*, p. 44; and as to the appointment of a surveyor, see section 189, *post*, p. 150.

A person failing or refusing to perform a ministerial act may be made answerable in damages to those whom his refusal or failure injures: *Ferguson* v. *Kinnoul*, 9 Cl. & F., H. Lds. Cas. 251; and see *Taaffe* v. *Downes*, 3 Moo. P. C. Cas. at p. 36 n.; and *Pickering* v. *James*, L. R. 8 C. P. 489.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 117, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 37 (6).

(3) But where part of a parish is included within an urban district and the excluded part was previously liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district formed before the Act it was formed into a separate highway district or unless included in a highway district under the Highway Acts) be considered and treated as forming part of such district, section 216, *post*, p. 165.

As to the highway rates and the costs of repairs of highways, see sections 216, 217, *post*, pp. 165, 166; and as to the general provisions as to urban rates, see sections 218—228, *post*, pp. 166—169.

any order made thereunder, to be surveyor of highways within such place, may recover any highway rate made in respect of such place, and remaining unpaid at the time of his so ceasing to be such surveyor, as if he had not ceased to be such surveyor; and the money so recovered shall be applied, in the first place, in reimbursing himself any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction; and the surplus (if any) shall be paid by him to the treasurer of the urban authority, and carried to the fund or rate applicable to the repair of highways within their district.

Power of urban authority to agree as to making of new public roads.

146 (1). Any urban authority may agree with any person for the making of roads within their district for the public use through the lands and at the expense of such person, and may agree that such roads shall become and the same shall accordingly become on completion highways maintainable and repairable by the inhabitants at large within their district; they may also, with the consent of two-thirds of their number, agree with such person to pay, and may accordingly pay, any portion of the expenses of making such roads.

Power of urban authority to construct or adopt public bridges, &c. over or under canals, &c.

147 (2). Any urban authority may agree with the proprietors of any canal, railway, or tramway, to adopt and maintain any existing or projected bridge, viaduct, or arch within their district, over or under any such canal, railway or tramway, and the approaches thereto, and may accordingly adopt and maintain such bridge, viaduct, or arch and approaches as parts of public streets or roads maintainable and repairable by the inhabitants at large within their district: or such authority may themselves agree to construct any such bridge, viaduct, or arch at the expense of such proprietors; they may also, with the consent of two thirds of their number, agree to pay, and may accordingly pay, any portion of the expenses of the construction or alteration of any such bridge, viaduct, or arch, or of the purchase of any adjoining lands required for the foundation and support thereof, or for the approaches thereto.

Power of urban authority to enter into agreements with turnpike trustees as to repair, &c., of roads.

148 (3). Any urban authority may by agreement with the trustees of any turnpike road (4), or with any person liable to repair any street or road, or any part thereof, or with the surveyor of any county bridge, take on themselves the maintenance, repair, cleansing, or watering of any such street or road, or any part thereof, or of any road over any county bridge, and the approaches thereto, or of any part of the said streets or roads within their district, and may remove any turnpike gates,

(1) The previous enactment was the Local Government Act, 1858, section 39.

As to "highways repairable by the inhabitants at large," see the Highway Acts, *post*.

As to contracts by local authority, see sections 173, 174, *post*.

The local authority has also by section 152, *post*, power under certain circumstances to declare private streets within their district to be "highways repairable, &c."

By the direction of the Court parts of settled estates may, under the Settled Estates Act, 1877, 40 & 41 Vict. c. 18, ss. 20, 21, be laid out for streets, roads, paths, squares, gardens, or open spaces, &c., either to be dedicated to the public or not. See those sections *post*.

As to the powers of Improvement Commissioners over proposed roads marked on plans deposited for the purpose of obtaining a local Act, but never actually made or built upon, see *Mackett* v. *Herne Bay Commissioners*, W. Notes, 1876, p. 242, W. Notes, 1877, p. 221.

(2) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 40.

As to "streets, &c., maintainable by the inhabitants at large," see the notes to section 5 of the Highway Act, 1835, *post*.

As to contracts by a local authority, see sections 173, 174, *post*.

The Tramways Act, 1870, will be found *post*.

(3) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 41.

See the circular of the Local Government Board of 30th September, 1875, *ante*, p. 12.

As to contracts by a local authority, see sections 173, 174, *post*.

(4) As to the meaning of "turnpike road," and as to the repair, &c., thereof, see *post*.

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toll gates, or bars which may be situated within their district, and may erect other turnpike gates, toll gates, or bars in lieu thereof, on such terms as the urban authority and such trustees, or person, or surveyor as aforesaid may agree on (1).

Provided:—

That where any mortgage debt is charged on the tolls of any such turnpike road, no agreement shall be made for the removal of any of the toll gates, or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees; and

That where the terms arranged include any annual or other payments from such urban authority to the trustees of any such turnpike road, then the payments may be secured on any fund or rate applicable by such authority to any of the purposes of this Act, in the same manner as other charges on any such fund or rate are authorised by this Act (2).

(1) As to contracts by trustees of turnpikes for maintenance and repair thereof, see 4 Geo. IV. c. 95. s. 78, and see 3 Geo. IV. c. 126, ss. 106, 108.

And as to contracts with the surveyor of county bridge, see *post.*

As to contracts for the repair of highways in South Wales, see 23 & 24 Vict. c. 68, s. 20, *post.*

Power of Local Government Board to assess value of debts, &c., of turnpike trust.

(2) By the Annual Turnpike Acts Continuance Act, 1873, 36 & 37 Vict. c. 90, s. 15, it is provided that "if any highway board, or other local authority, shall be desirous of taking upon themselves the maintenance and repair of the roads of any turnpike trusts within or passing through their districts, such highway board or other local authority may, if not less than one half in length of such road is within the district, apply to the Local Government Board to determine the value of the existing debt and other liabilities of such turnpike trust, and the Local Government Board may by order made after such inquiry, and the publication of such notice as they may think sufficient, determine the value of such debts and liabilities; and the trustees and other persons interested in such debt and liabilities, shall accept a sum equivalent to the value so determined, as a full and complete discharge of such debt and liabilities; and from and after a day to be fixed by the said Local Government Board, no tolls shall be levied on the roads theretofore included within the district of such turnpike trust; and in case the said turnpike trust shall extend beyond the district of the Highway Board or local authority making the application as aforesaid, it shall be lawful for the said Local Government Board to apportion the value of the debts and liabilities of such turnpike trust so determined as aforesaid between the several authorities through whose districts the roads of such turnpike trust extend, and each such local authority shall raise and pay to the trustees the amount apportioned to such authority; Provided that an order made under this section shall not take effect until the expiration of one calendar month after the same has been published in the *London Gazette*, and some local newspaper circulating in the locality of the turnpike trust affected thereby; and if two-thirds in number and value of the creditors of the trust shall give notice in writing to the Local Government Board, before such order takes effect, that they object to the same, the order shall be provisional only, and shall not come into operation until it has been confirmed by Parliament; and by the Act of 1874, 37 & 38 Vict. c. 95, s. 11, it is provided that "where the Local Government Board, in the exercise of the discretionary power conferred upon them by section 15 of the Annual Turnpike Acts Continuance Act, 1873, make an order determining the value of the existing debt and liabilities of a turnpike trust, the Board may by the same order declare to whom, and in respect of what claim or claims the whole or any part of the value of such debt or liabilities is to be paid. The term 'existing debt and other liabilities' used in the said 15th section of the Annual Turnpike Acts Continuation Act, 1873, means the bonded or mortgage debt of a turnpike trust, and any unpaid interest thereon."

As to the transfer of the powers and duties of the Secretary of State under the Highway and Turnpike Acts to the Local Government Board, see 35 & 36 Vict. c. 79, s. 36, in Sched. 5, Part III., *post.*

By 38 & 39 Vict. c. cxciv. s. 11, it is provided that, "where in a Turnpike Act provision has been made that in any place in which the Local Government Act, or any Act relating

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Any executors, administrators, guardians, trustees, or committee of the estate of any idiot or lunatic, who are as such for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof; and all executors, administrators, guardians, trustees and committees so consenting are hereby severally indemnified for so doing.

Regulations of Streets and Buildings.

Vesting of

149 (1). All streets (2), being or which at any time become highways repairable

Power of Local Government Board to suspend provision that tolls shall not be expended in maintaining roads.

to the Public Health Act, is from time to time in force, none of the tolls or moneys received by the trustees by virtue of such Turnpike Act shall be expended in maintaining, repairing, or improving any roads within the limits of such place, and that the trustees shall not take any toll or erect or continue any toll gate within such limits, the Local Government Board may, if they think fit, in any case in which a district has been constituted under the Sanitary Acts, by provisional order or otherwise, after the 24th day of June, 1875, declare by order that such provision shall be suspended during the whole or any part of the continuance of such Turnpike Act, and such provision shall be suspended accordingly."

Toll-house or site, &c., of turnpike trust about to expire, not to be sold without giving notice to the highway authority.

By 34 & 35 Vict. c. 115, s. 17, it is provided that the "trustees or commissioners of a turnpike trust about to expire shall not sell any toll house, or the site thereof, or any part of the site, or any part of any garden or land belonging thereto, without giving notice in writing not later than two months before the expiration of such trust to the highway authority, on which an order might, under the provisions of the Act of the session of the fourth and fifth years in the reign of Her present Majesty, chapter fifty nine, or the Annual Turnpike Acts Continuance Act, 1863, be made for contribution to the repair of such road where it adjoins the said premises; and such authority, if of opinion that the road would be improved by the addition thereto of such premises or any part thereof, may within one month of such notice require the trustees or commissioners to make such improvement, and it shall be incumbent on such trustees or commissioners to give effect to such requisition; provided that if the trustees or commissioners feel aggrieved at such requisition they may appeal to the general or quarter sessions having jurisdiction in the place wherein such premises are situated at the next Court held not less than fifteen days after the receipt of such requisition; the appellants shall within seven days after receipt of such requisition give a notice in writing to the highway authority of their intention to appeal; the Court may adjourn the appeal, and at the hearing thereof may make such order in the matter, and also such order as to costs to be paid by either party, as the Court thinks just. No order made in pursuance of this section shall be quashed for want of form, or be removed by *certiorari* or otherwise into any superior Court. Any sale or agreement for any sale made with a view to evade the provisions of this section shall be void, provided that nothing herein contained shall invalidate any sale or contract for sale *bonâ fide* made before the passing of this Act."

And now, by 38 & 39 Vict. c. cxciv. s. 9, the above notice "may be given at any time within two years and not later than two months before the expiration of the trust; provided that in case of any such sale it shall be incumbent upon the trustees or commissioners to make such arrangements as may be necessary in order to secure for themselves, their lessees or servants, the occupation of any toll house so sold until the expiration of the trust."

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict c. 63, s. 68, and the First Public Health Supplemental Act, 1852, 15 & 16 Vict. c. 42, s. 13. The provision as to injuring trees is new.

(2) As to the meaning of "street," see the interpretation clause, *ante*, p. 45.

"The words of this section vest the property in the street; and the street does not include the houses by the side of the street; it includes the space between the houses which is used as the footway and roadway. 'Street' means more than the surface, it means the whole surface and so much of the depth as is or can be used not unfairly for the ordinary purposes of the street. It comprises a depth which enables the urban authority to do

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streets, &c., in urban authority.

by the inhabitants at large (1) within any urban district, and the pavements, stones and other materials thereof, and all buildings, implements and other things provided for the purposes thereof, shall vest in and be under the control of the urban authority (2).

The urban authority shall from time to time cause all such streets to be levelled, paved, metalled, flagged, channelled, altered and repaired as occasion may require; they may from time to time cause the soil of any such street to be raised, lowered or altered as they may think fit, and may place and keep in repair fences and posts for the safety of foot passengers (3).

that which is done in every street, namely, to raise the street and lay down sewers, for, at the present day, there can be no street in a town without sewers, and also for the purpose of laying down gas and water pipes. 'Street,' therefore, in my opinion includes the surface and so much of the depth as may be not unfairly used as streets are used; it does not include such a depth as would carry with it the right to mines, neither would 'street' include any buildings which happen to be built over the land, because that is not part of the street within the meaning of such an Act as this. If the enactment gives the Local Board that property in so much of the land, it gives them the absolute property in everything growing on the surface of the land. The legislature have, because the right of owners to the soil in a 'street' is of so little value, intentionally taken away that right, and have given it to the extent I have mentioned to the Local Board:" *Per* Brett, L. J., in *Coverdale* v. *Charlton*, *infra*.

(1) As to what is a "highway repairable by the inhabitants at large," see the Highway Acts, *post*.

A street which has been dedicated and used, but has not been repairable by the parish as provided by 5 & 6 Will. IV. c. 50, may nevertheless still be a highway: *Roberts* v. *Hunt*, 15 Q. B. 17; *R.* v. *Dayman*, 26 L. J. M. C. 129.

(2) By section 144, *ante*, p. 113, the powers of surveyors of highways and of vestries, under 5 & 6 Will. IV. c. 50, are vested in the urban authority.

Section 149 vests in the urban authority not merely such rights over the surface as are necessarily incidental to the use of the highway, but vests the property in the street, and they can dispose of it to a third person, so as to enable him to maintain trespass: *Coverdale* v. *Charlton*, L. R. 4 Q. B. D. 104, 48 L. J. Q. B. 128, 40 L. T. N. S. 88, 27 W. R. 257.

"Vested" means vested *sub modo*, not necessarily giving a right to the soil: *Bagshaw* v. *Buxton Local Board*, L. R. 1 Ch. D. 220, 45 L. J. Ch. 260, 34 L. T. N. S. 112, 24 W. R. 231, *per* Jessel, M. R.; and see the citation from the judgment of Brett, L. J., *supra*.

By the Highways and Locomotives Amendment Act, 1878, section 27, *post*, it is expressly provided that, notwithstanding this section, all mines and minerals shall belong to the person who would otherwise be entitled to them. This provision would seem to be made *ex abundante cautelâ*. See *per* Cotton, L. J., in *Rolls* v. *Vestry of St. George*, *infra*.

It has been decided under a similar section (section 96) in the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), by which the streets are vested in the vestry, that streets are only vested in the vestry so long as they are highways, and that when they cease to be highways, by being legally stopped up or diverted, the interest of the vestry determines: *Rolls* v. *Vestry of St. George*, *Southwark*, L. R. 14 Ch. D. 785, 49 L. J. Ch. 691, 43 L. T. N. S. 140, 28 W. R. 867.

Compare section 13, *ante*, p. 52, which vests sewers, &c, in the local authority, and see note (6) thereto.

Ordinarily the freehold of the highway belongs to the owner of the freehold of the soil, *Lade* v. *Shepherd*, 2 Str. 1004, who is entitled to the trees upon it and mines under it, 1 Burr. 143, and may maintain trespass or ejectment: *Stevens* v. *Whistler*, 11 East, 51, and has been held entitled to an injunction to restrain a stranger from laying down pipes there: *Goodson* v. *Richardson*, L. R. 9 Ch. 221. See further the notes to section 5 of the Highway Act, 1835, *post*, and see *Dovaston* v. *Payne*, and the notes thereto, in Smith's Leading Cases, Vol. 2.

As to obstructions of highways, see the Towns Improvement Clauses Act, *post*.

(3) As to sewering, levelling, &c., *private* streets, see the next section.

The local authority are not liable in an action for injuries occasioned by their

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Any person who, without the consent of the urban authority, wilfully displaces or takes up, or who injures the pavement, stones, materials, fences or posts of, or the trees in any such street, shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding five shillings for every square foot of pavement, stones or other materials so displaced, taken up or injured: he shall also be liable in the case of any injury to trees to pay to the local authority such amount of compensation as the Court may award (1).

Power to compel paving &c., of private streets.

150 (2). Where any street (3) within any urban district (not being a highway

non-feasance or non-repair of the highway. The remedy for non-repair is by indictment.

As to powers of the local authority to obtain materials for the repair of roads, see the Highway Act, 1835, 5 & 6 Will. IV. c. 50, ss. 46—57, and notes thereto, *post*.

Where a roadway and the houses abutting on it had subsided simultaneously in consequence of mining operations underneath, and the local authority raised the roadway, it being reasonably necessary to do so in order to put the road in a proper state for traffic, it was held that the owners, who were obliged to raise their houses (which had been constructed to allow of their doing so) simultaneously with the raising of the roadway, could not maintain an action of trespass against the local authority, that the owners had no right to have the roadway maintained at the level to which it had subsided, and that they had no claim to compensation under section 308, *post*, as the works were not done by the local authority "in the exercise of any of the powers" of the Act, but in pursuance of powers transferred to them by the Act, viz., the powers of surveyors of highways: *Burgess* v. *Northwich Local Board*, L. R. 6 Q. B. D. 264, 50 L. J. Q. B. 219, 44 L. T. N. S. 154, 29 W. R. 931. But see *R.* v. *Wallasey Local Board*, *post*, p. 122.

Where a Local Board having raised a footpath by the side of a road thereby prevented water which fell upon a space between the plaintiff's warehouse and the road from draining into the road, and caused injury to the plaintiff's goods, a mandatory injunction to prevent the board from allowing the water to remain dammed up so as to injure the plaintiff was granted, the evil being capable of easy remedy, and the case not one for compensation: *Milward* v. *Redditch Board*, 21 W. R. 429, Weekly Notes, 1873, p. 39.

The section does not make it obligatory on the authority to place posts or rails by the side of ancient footpaths where none have existed before: *Wilson* v. *Mayor, &c., Halifax*, L. R. 3 Ex. 114, 37 L. J. Ex. 44, 17 L. T. N. S. 660, 16 W. R. 707.

(1) As to the summary recovery of penalties, &c., see section 251 *et seq.*, *post*.

Where the owner and occupier of premises abutting on a highway conveyed heavy goods therefrom across a flagged footway, and crushed the paving stones (he having been prevented by the vestry from conveying the goods by means of rollers and levers, and his application for leave to take up the pavement and make a carriage way having been refused) it was held that he could not be convicted under 5 & 6 Will. IV. c. 50, s. 72, *post*, as the provisions of this latter Act and of the Metropolis Management Act (which gives to vestries similar powers to those given to the urban authority by the present Act) so far as they apply to roads and streets are subordinate to the paramount rights reserved by the owner, who may enjoy all rights consistent with the dedication: *Vestry of St. Mary, Newington* v. *Jacobs*, L. R. 7 Q. B. 47, 41 L. J. M. C. 72, 25 L. T. N. S. 800, 20 W. R. 249.

It is an indictable offence to dig trenches in a highway without Parliamentary powers: *R.* v. *Langton Gas Co.*, 2 E. & E. 651, *R.* v. *Train*, 2 B. & S. 640, *R.* v. *Electric Telegraph Co.*, 31 L. J. M. C. 166.

As to powers of urban authority with regard to obstructions in streets, see s. 160 (2), *post*.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 69, the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 38, the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 16, ss. 16 and 17.

(3) As to the meaning of the word "street," see the interpretation clause *ante*, p. 45, and note (2) to section 149 *ante*, p. 117, and see *Mackett* v. *Herne Bay Commissioners*, *ante*, p. 115.

Whether or not a road is a street is a question of fact for the justices, and they are not

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way repairable by the inhabitants at large (1)) or the carriageway, footway, or any other part of such street is not sewered, levelled, paved, metalled, flagged, channelled, and made good, or is not lighted to the satisfaction of the urban authority, such authority may, by notice (2) addressed to the respective

bound to find that it is so by the terms of the definition in the interpretation clause: *Maude* v. *Baildon Board*, L. R. 10 Q. B. D. 394, 48 L. T. N. S. 874.

(1) As to what is a highway "repairable by the inhabitants at large," see the notes to section 5 of the Highway Act, 1835, *post*. By the Common Law the duty of repairing highways is cast upon the inhabitants; the parish is bound to repair any highways within it, whether ancient or modern, and an owner of land in the suburb of a town who allows the public to pass over his land, but who does not make a road at his own expense, nor propose to dedicate a highway to the public by notice under the 5 & 6 Will. IV. c. 50, ss. 23, 62, *post*, nor undertake to keep the road in repair for twelve months, with a view of throwing the future care and expense of the highway on the surveyor and the general rate, is not liable to be compelled to sewer, level, pave, &c., the road: *Healey* v. *Corporation of Batley*, L. R. 19 Eq. 375, 44 L. J. Ch. 642. On the other hand, the mere setting out of an intended road, and allowing the public to traverse and use it, is not such an irrevocable act as that it will be held dedicated to the public; and the urban authority has no right to cast upon the lessee of the adjoining premises the expense of sewering, &c., it; and they will be restrained from executing such works: *Hall* v. *Bootle*, 44 L. T. N. S. 873, 29 W. R. 862. But see *Illingworth* v. *Montgomery*, 2 L. T. N. S. 726; *Thomas* v. *Williams*, 24 J. P. 821.

The section does not apply to streets repairable or partly repairable by the parish, but only to those in no part repairable by the parish: *Kingston-upon-Hull Local Board* v. *Jones*, 1 H. & N. 489, 26 L. J. Ex. 33, 2 Jur. N. S. 1193. It does not give power to make new streets: *Ibid.*

An adjudication by justices, upon a summons by an urban authority, to recover from an adjoining owner his proportion of expenses incurred by them under this section, that the street is a highway repairable by the inhabitants at large, and, therefore, that the owner is not liable, is not conclusive between the parties, so as to preclude the same justices from entertaining the question whether the street is a highway, &c., or not, as between the same parties in respect of similar expenses subsequently incurred: *R.* v. *Hutchins*, L. R. 6 Q. B. D. 300, 50 L. J. M. C. 35, 44 L. T. N. S. 364, 29 W. R. 724, 45 J. P. 504. But the owners are not required by the Act to raise any question as to their liability until their proportion of the cost of improving the street is settled. The proper time for doing so is when each owner is called upon for his share. If, when they are so called upon, they can prove that the street is a highway repairable by the inhabitants at large, they ought not to be liable: *Hesketh* v. *Atherton Local Board*, L. R. 9 Q. B. 4, 43 L. J. M. C. 37, 29 L. T. N. S. 530. See *R.* v. *Livesey*, 22 L. T. N. S. 470, 34 J. P. 645; this case, however, turned upon the words of 26 & 27 Vict. c. 70, s. 10. But where an owner of premises upon whom a notice was served under this section, indorsed on the notice an authority to the urban authority to do the works, and an undertaking to pay the costs on completion, he was held to have thereby admitted the right of the authority to issue the notice, and to have waived all proof by them of the preliminaries to the notice, and made it incumbent on himself to disprove their original authority if he wished to do so: *Lewis* v. *Cardiff Urban Authority*, 47 L. J. M. C. 101.

(2) See the form of notice Schedule IV., Form G., *post;* and as to notices and service thereof, see sections 266, 267, *post*.

Though the urban authority have executed the works they cannot recover from the owners their proportion of the expenses, unless this preliminary notice is proved to have been given: *Jarrow Local Board* v. *Kennedy*, L. R. 6 Q. B. 128, 19 W. R. 275.

Under the previous enactments (note (2) *ante* p. 119) a notice not specifying the particulars of the work required, but containing a statement at the foot of it that particulars of the necessary works might be obtained at the surveyor's office, was held good: *Bayley* v. *Wilkinson*, 16 C. B. N. S. 161, 33 L. J. M. C. 161, 10 L. T. N. S. 543, 10 Jur. N. S. 726.

A notice is not vitiated by reason that a portion of it is *ultra vires*—for instance, in requiring narrow strips of land, not forming part of the street, to be paved, &c., *Hall* v. *Potter*, 39 L. J. M. C. 1, 21 L. T. N. S. 454, 34 J. P. 515.

owners (1) or occupiers of the premises fronting, adjoining, or abutting on such parts thereof (2) as may require to be sewered, levelled, paved, metalled, flagged, or channelled, or to be lighted, require them to sewer, level, pave, metal, flag,

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(1) As to the meaning of "owner," see *ante*, p. 45.

The London School Board were held to be "owners" in respect of one of their school houses under a similar definition in the Metropolis Local Management Act, 1855: *London School Board* v. *Vestry of St. Mary*, L. R. 1 Q. B. D. 65, 45 L. J. M. C. 1, 33 L. T. N. S. 504, 24 W. R. 137. So, the trustees of a charity school were held the owners under the corresponding section in the previous enactments (note (2) *ante*, p. 119): *Bowditch* v. *Wakefield Local Board*, L. R. 6 Q. B. 567, 40 L. J. M. C. 214, 25 L. T. N. S. 88; and see *Lord Northbrook* v. *Plumstead Board*, and *Plumstead Board* v. *British Land Co.*, *infra*.

But the expenses of sewering, &c., by the urban authority cannot be recovered summarily from a person who is not the owner when the works are completed, see *R.* v. *Swindon* in note to section 257, *post*.

As to the exemption of the incumbent or minister of a church or chapel, see section 151, *post*.

(2) Houses fronting a street called York Place and adjoining or abutting at the rear upon a footpath at the end of a street called St. Julian Street, which formed a cul-de-sac, the ground at the back of the houses being five feet above the level of St. Julian Street and the wall being about twelve feet high on the outside, were held to "adjoin or abut," &c., on St. Julian Street, though there was no access from them to St. Julian Street: *Newport Urban Authority* v. *Graham*, L. R. 9 Q. B. D. 183, 47 L. T. N. S. 98, 31 W. R. 121.

In *Great Eastern Ry.* v. *Hackney Board*, L. R. 8 App. Cas. 687, 52 L. J. M. C. 105, 31 W. R. 769, it was held, reversing the decision of the Court of Appeal that the plaintiffs were not the owners of "premises fronting, adjoining, &c.," a road, which was carried over their line at a deep cutting upon a bridge supported on stone piers erected upon the slope of the cutting, *in respect of the parapet walls* on either side of the bridge. It would seem that the line and the slopes of the cuttings do not "front, adjoin, &c.," the road: *London, Brighton and S. Coast Ry.* v. *Vestry St. Giles*, L. R. 4 Ex. D. 239, 48 L. J. M. C. 186, 41 L. T. N. S. 162; and *Great Eastern Ry.* v. *Hackney Board*, *supra*, *per* Lords Blackburn and Watson. But see as to this, *Hackney Board* v. *Vestry of St. Mary*, *supra*. And where a railway was carried across a street by an arch, and on one side of the street, where the railway was carried forward on arches, there was a strip of land, ten feet wide, left open for the purpose of repairing the arches, which strip abutted for ten feet on the street and on the other side of the street, where the railway was carried forward on an embankment, the sloping part or buttress of the embankment abutted on the street about thirty-six feet, and at the foot of the embankment there was an open space about thirty-six feet wide also abutting on the street, it was held that the above pieces of land were "land bounding or abutting on the street:" *Higgins* v. *Harding*, L. R. 8 Q. B. 7, 42 L. J. M. C. 31, 27 L. T. N. S. 483, 21 W. R. 181.

Where the premises were divided from the street by a narrow stream, but, by two bridges over the stream, were connected with it, and by means of gates all communication could be effectually closed, the principal outlet from the premises being into another street, they were held (*per* Grove and Field, JJ.) to front and abut upon the first street, and by Cleasby, B., hesitating, to adjoin it, and, consequently, the owners to be liable to contribute to the expense of paving, &c., it: *Wakefield Board* v. *Lee*, L. R. 1 Ex. D. 336, 35 L. T. 481; see also the *London School Board* v. *Vestry of St. Mary*, *ut supra*, and *Baddeley* v. *Gingell*, 1 Ex. 319, 17 L. J. Ex. 63. The soil of *private* roads leading out of a street is land abutting, &c., upon the street and the "owner" is liable to contribute to the expenses of paving the street: *Lord Northbrook* v. *Plumstead Board*, L. R. 7 Q. B. 183, 41 L. J. M. C. 51. But it is otherwise where the roads have been irrevocably dedicated to the public: *Plumstead Board* v. *British Land Co.*, L. R. 10 Q. B. 203; see *Angell* v. *Vestry of Paddington*, *post*, p. 125.

"The section does not impose the liability on the owners of premises fronting

Sec. 150. channel, or make good or to provide proper means for lighting the same within a time to be specified in such notice (1).

Before giving such notice the urban authority shall cause plans and sections of any structural works intended to be executed under this section, and an estimate of the probable cost thereof, to be made under the direction of their surveyor, such plans and sections to be on a scale of not less than one inch for eighty-eight feet for a horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground: such plans, sections and estimate shall be deposited in the office of the urban authority, and shall be open at all reasonable hours for the inspection of all persons interested therein, during the time specified in such notice; and a reference to such plans and sections in such notice shall be sufficient without requiring any copy of such plans and sections to be annexed to such notice (2).

If such notice is not complied with, the urban authority may, if they think fit, execute the works mentioned or referred to therein (3); and may recover in a summary manner the expenses incurred by them in so doing from the owners in default, according to the frontage of their respective premises, and in such proportion as is settled by the surveyor of the urban authority (4); or (in case of

adjoining or abutting on 'such street' but on 'such parts thereof as require' repair. The meaning of this expression is to make the premises adjoining the part repaired liable." So where the footway on the one side only of a street was repaired, the whole cost was held to have been rightly apportioned among the owners and occupiers of premises on that side only: *Wakefield Urban Authority* v. *Mander*, L. R. 5 C. P. D. 248, 28 W. R. 922, 44 J. P. 522; *Vestry of Mile End* v. *Whitechapel Union*, L. R. 1 Q. B. D. 680, 45 L. J. M. C. 75, 34 L. T. N. S. 178, 24 W. R. 364 is distinguishable.

(1) Owners cannot be required under this section to raise the street to the level of other streets: *Caley* or *Cary* v. *Kingston-upon-Hull Board*, 5 B. & S. 815, 34 L. J. M. C. 7, 11 Jur. N. S. 171, 11 L. T. N. S. 339, 13 W. R. 143. See *Brown* v. *Clegg*, 16 Q. B. 681.

As to the powers of the urban authority for lighting their district, see ss. 161 *et seq.*, *post.*

The Metropolis Local Management Act, 25 & 26 Vict. c. 102, s. 112, contains an interpretation of the word "pave" for the purposes of that Act.

(2) The provision requiring an estimate to be made is new. Under the previous enactments it was held to be unnecessary to do so: *Cunningham* v. *Wolverhampton*, 7 E. & B. 107, 26 L. J. M. C. 33.

See *Bayley* v. *Wilkinson*, *ante*, p. 120.

(3) Where the urban authority, having served a notice upon the owners of premises fronting, &c., the street, in default of the owners doing so, proceed to execute the works, they are liable to make compensation under section 308, *post*, for any injury done by the execution of the works, even to an owner upon whom notice has been served; for instance, where access to his house is rendered more difficult: *R.* v. *Wallasey Board*, L. R. 4 Q. B. 351, 10 B. & S. 428, 38 L. J. Q. B. 217, 21 L. T. N. S. 90, 17 W. R. 766. As to non-liability of urban authority for injury done in repairing a highway repairable by the inhabitants, see *ante*, p. 114.

(4) The expenses must be apportioned among the owners or occupiers of all premises fronting, adjoining, or abutting on the parts of the street repaired, whether the premises have direct access to the street or not, and in proportion to the linear frontage of the premises to the street irrespective of the width of the street: *R.* v. *Newport Board*, 3 B. & S. 341, 32 L. J. M. C. 97, 11 W. R. 263, 9 Jur. N. S. 746; and see *Wakefield Urban Authority* v. *Mander*, *supra.*

It has been decided under the Metropolitan Management Acts that where it has been resolved to repair the whole of a road, there must be but one apportionment on all the owners along the entire road, and that where the surveyor divided the road into four sections, and apportioned the cost of repairing each section amongst the owners in each section respectively, such apportionments were invalid, and could not be enforced: *Whitchurch* v. *Board of Fulham District*, L. R. 1 Q. B. 233, 35 L. J. M. C. 145, 12 Jur. N. S. 353, 14 W. R. 277. But where the one apportionment has been made upon a

wrong principle, the surveyor may make a fresh apportionment: *Cook* v. *Ipswich Board*, L. R. 6 Q. B. 451, 40 L. J. M. C. 169, 24 L. T. N. S. 579, 19 W. R. 1079.

Neither the justices nor the arbitrators in settling the apportionments can inquire whether the amount alleged to have been expended has been actually so expended by the surveyor: *Ibid*, and see *Hesketh* v. *Atherton Board*, L. R. 9 Q. B. 4, 43 L. J. M. C. 37, 29 L. T. N. S. 530.

The apportionment is binding and conclusive unless it be disputed within three months from the service of the notice of the amount, section 257, *post*. The apportionment is not a decision of the local authority within the meaning of section 268, *post*. The demand of payment by the urban authority from the owner is the only decision within that section: *R.* v. *Local Government Board*, L. R. 10 Q. B. D. 309, 52 L. J. M. C. 4. If the owner disputes the apportionment, then the urban authority are to appoint an arbitrator to settle it.

Where the notice of apportionment is met by a counter notice disputing the amount only, such demand may be the subject of arbitration, but where the counter notice disputes the liability to pay, such demand must be tried by justices, who, if the counter notice also disputes the amount, may exercise their jurisdiction as to the amount also: *West* v. *Downman* (V.-C. Bacon), *infra*. But query as to last proposition.

As to recovery of expenses in a summary manner, see sections 251 *et seq.* and section 257, *post*.

Where the expenses incurred by the board are partly in respect of work executed upon lands belonging to private owners which was shown upon the plans of the work intended to be executed, it was held that a *certiorari* would not lie to quash an order for payment made upon a frontager by a magistrate, who found, contrary to the fact, that the land belonging to the private owners formed part of the street: *Semble, per* Cave, J., the remedy was by appeal under section 268, *post*. *Ex parte Wake*, L. R. 11 Q. B. D. 291.

Where the urban authority have declared their intention to treat the expenses incurred by them as private improvement expenses they cannot afterwards proceed summarily: *Gould* v. *Bacup Local Board*, 50 L. J. M. C. 44, 44 L. T. N. S. 103, 29 W. R. 471, 45 J. P. 325.

After the three months allowed for disputing the apportionment have elapsed there must be a real demand made by the urban authority for payment of the owner's proportion, and the six months limited by section 252, *post*, run from this last demand: *Simcox* v. *Handsworth Board*, L. R. 8 Q. B. D. 39, 51 L. J. Q. B. 168, 30 W. R. 273. *Grece* v. *Hunt*, L. R. 2 Q. B. D. 389, 46 L. J. M. C. 202. See *Jacomb* v. *Dodgson*, 3 B. & S. 461, 32 L. J. M. C. 113, 7 L. T. N. S. 674, 11 W. R. 30, 9 Jur. N. S. 848.

In *Wilson* v. *Mayor, &c., of Bolton*, L. R. 7 Q. B. 105, 41 L. J. M. C. 4, 25 L. T. N. S. 597, it was held, under the previous enactments (note (²) *ante*, p. 119), that an account delivered on the day on which the apportionment was made to the owner, containing a notice that unless the amount of the account were paid within fourteen days after delivery interest would be charged thereon until fully liquidated, and then setting out the proportion of the expenses payable by the owner, this being the first notice of apportionment, was a demand upon the appellant, and that summary proceedings should be taken within nine months from the service of such notice. But now see *Simcox* v. *Handsworth Board*, *supra*.

Where the six months have elapsed and no proceedings have been taken before justices, the claim of the urban authority is barred, and they cannot prove in an administration of the owner's estate: *West* v. *Downman*, L. R. 14 Ch. D. 111, 42 L. T. N. S. 340, 29 W. R. 6 (C. A.).

But the limit of six months from service of notice of demand does not apply to enforcing instalments charged upon the land under section 257, *post: Tottenham Board* v. *Rowell*, L. R. 15 Ch. D. 378, 50 L. J. Ch. 99, 43 L. T. N. S. 615, 29 W. R. 36.

Neither the justices nor an arbitrator have power to inquire whether the amount alleged to have been expended has been actually expended. The only remedy is by appeal under section 268, *post: Cook* v. *Ipswich Board*, *supra*, and see *Bayley* v. *Wilkinson*, *ante*, p. 120. Nor can the justices inquire into the correctness of the apportionment: *Hesketh* v. *Atherton*, *infra;* and see *Nesbitt* v. *Greenwich District Board*, L. R. 10 Q. B. 465, 44 L. J. M. C. 119, 32 L. T. N. S. 762, 39 J. P. 582.

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dispute) by arbitration in manner provided by this Act (1); or the urban authority may by order declare the expenses so incurred to be private improvement expenses (2).

The same proceedings may be taken, and the same powers may be exercised, in respect of any street or road of which a part is or may be a public footpath or repairable by the inhabitants at large, as fully as if the whole of such street or road was a highway not repairable by the inhabitants at large.

Exemption from expenses under last section of incumbent of church, &c.

151 (3). The incumbent or minister of any church, chapel or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor (4), shall not be liable to any expenses under the last preceding section,

But the justices may inquire whether the street is a highway repairable by the inhabitants at large or not: *Hesketh* v. *Atherton Board*, L. R. 9 Q. B. 4, 43 L. J. M. C. 37, 29 L. T. N. S. 530.

As to the effect of an indorsement by the owner upon the original notice of an authority to the urban authority to do the work in proceedings before justices, see *Lewis* v. *Cardiff Urban Authority*, *ante*, p. 120.

As to restraining the urban authority from enforcing an order obtained from justices where an understanding had been come to that the order was to abide the result of a case stated for the opinion of the Queen's Bench Division in similar proceedings against a second owner of premises, but which case had not been in fact stated, see *Ashworth* v. *Hebden Board*, 47 L. Ch. 195, 37 L. N. S. 496.

As to agreements between landlord and tenant of premises, see section 226, *post*. Expenses incurred by an urban authority in sewering, &c., a street under this section are a "charge upon the premises" or "upon a person in respect thereof" within the meaning of these phrases in a covenant by a tenant in a lease to pay rates, taxes and charges: *Hartley* v. *Hudson*, L. R. 4 C. P. D. 367, 48 L. J. C. P. 751.

As to appeal to Local Government Board, see section 268, and to Quarter Sessions, see section 269.

(1) As to arbitration, see sections 179—181, *post*.

The arbitration is as to the proportion to be borne by the owner complaining only, and not as to whether the expenses are reasonable or properly incurred: *Bayley* v. *Wilkinson*, *ante*, p. 120.

(2) As to private improvement expenses, see sections 213 *et seq.*, *post*.

Where the original notice requiring the owners of premises to execute certain works to the street and stating that if not executed within a time fixed, the urban authority would proceed to execute the same, concluded thus—"And the said urban authority will thereupon also proceed to declare all costs, charges and expenses paid, expended or incurred by them in consequence of such neglect or default to be private improvement expenses and to enforce payment according to law," it was held that after this declaration of intention to treat the expenses as private improvement expenses, the urban authority could not proceed summarily: *Gould* v. *Bacup Board*, *ante*, p. 123. So, on the other hand, if the expenses be treated as a debt recoverable summarily, they cannot afterwards be treated as private improvement expenses: *Wilson* v. *Mayor, &c., of Bolton*, *ante*, p. 123. But under the previous enactments (note (2) p. 119) it was held that the election to treat expenses as private improvement expenses did not preclude the urban authority from enforcing the charge on the land (section 257, *post*) as by action against the executors of the owner of the premises: *Tottenham Board* v. *Rowell*, *ante*, p. 123. But the charge can only be enforced in respect of instalments in arrear: *Ibid.*

As to appeal to Local Government Board from decision of local authority, see section 268, *post*.

(3) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 38.

(4) By 3 & 4 Will. IV. c. 30, "an Act to exempt from poor and church rates all churches, chapels and other places of religious worship," it is provided: Section 1—"That. . . . no person or persons shall be rated or shall be liable to be rated or to pay to any church or poor rates or cesses for or in respect of any churches, district churches, chapels, meeting

as the owner or occupier of such church, chapel or place or of any churchyard or burial ground attached thereto, nor shall any such expenses be deemed to be a charge on such church, chapel or other place, or on such churchyard or burial ground, or to subject the same to distress, execution or other legal process; and the urban authority may, if they think fit, undertake any works, from the expenses of which any such incumbent or minister is hereby exempted.

Power to declare private streets when sewered, &c., to be highways.

152 (1). When any street (2) within any urban district, not being a highway repairable by the inhabitants at large (2), has been sewered, levelled, paved, flagged, metalled, channelled and made good, and provided with proper means of lighting to the satisfaction of the urban authority, such authority may, if they think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway repairable by the inhabitants at large (2); and every such notice shall be entered among the proceedings of the urban authority.

Provided that no such street shall become a highway so repairable, if within one month after such notice has been put up the proprietor (3) or the majority in number of proprietors (3) of such street, by notice in writing to the urban authority, object thereto, and in ascertaining such majority joint proprietors shall be reckoned as one proprietor.

Power to require gas and water

153 (4). Where for any purpose of this Act any urban authority deem it necessary to raise, sink, or otherwise alter the situation of any water or gas pipes, mains,

houses or premises or such part thereof as shall be exclusively appropriated to public religious worship and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provision of any Act or Acts now in force. Provided always that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any parts of such churches, district churches, chapels, meeting houses or other premises which are not so exclusively appropriated and from which parts not so exclusively appropriated such person or persons shall receive any rent or rents or shall derive profit or advantage." Section 2—"Provided always and be it enacted that no person or persions shall be liable to any such rates or cesses because the said churches, district churches, chapels, meeting houses or other premises or any vestry rooms belonging thereto or any part thereof may be used for Sunday or infant schools or for the charitable education of the poor."

See *Angell* v. *Paddington Vestry*, L. R. 3 Q. B. 714, 9 B. & S. 496, 37 L. J. M. C. 171, 16 W. R. 1167, as to non-liability of church to be assessed to expenses of forming a new street under the Metropolis Management Acts.

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 70, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 42.

(2) See section 150 and notes thereto, *ante*, pp. 119, 120.

As to the dedication of a road as a highway, see the Highway Act, 1835, section 5, and notes thereto, and section 23, *post*.

Where a landowner gave notice to a local board of health, under the previous enactments, of his intention to dedicate a road as a highway, to which the board replied that they would not adopt the road, as it had not been sewered, levelled, &c., to their satisfaction, and the landowner then obtained and enrolled the certificate of two justices, under 5 & 6 Will. IV. c. 50, s. 23, *post*, and the road was used by the public and kept in repair by the landowner for twelve months; after which, being out of repair, an indictment was preferred against the inhabitants of the parish, it was held that the inhabitants were not liable, as the road had not become a highway, for, assuming 5 & 6 Will. IV. c. 50, s. 23, to apply to the case, the road had not been made to the satisfaction of the board, who were the surveyors (section 144, *ante*): *R.* v. *Inhabitants of Dukinfield*, 4 B. & S. 158, 32 L. J. M. C. 230.

(3) The word "proprietor" would seem to include any person having a beneficial interest in the street which might be prejudiced by the exercise of the power given by the section. See *Lister* v. *Lobley*, 7 A. & E. 125, 6 Nev. & M. 340; and see also *Chauntler* v. *Robinson*, 4 Ex. 163; and *Russell* v. *Shenton*, 11 L. J. Q. B. 289, 3 Q. B. 449.

(4) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 71.

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pipes to be moved.

plugs, or other waterworks or gasworks laid in or under any street, they may by notice (1) in writing require the owner of the pipes, mains, plugs, or works to raise, sink, or otherwise alter the situation of the same in such manner and within such reasonable time as is specified in the notice; the expenses of or connected with any such alteration shall be paid by the urban authority; and if such notice is not complied with the urban authority may themselves make the alteration required:

Provided—

That no such alteration shall be required or made which will permanently injure any such pipes, mains, plugs or works, or prevent the water or gas from flowing as freely and conveniently as usual; and

That where under any local Act of Parliament the expenses of or connected with the raising, sinking, or otherwise altering the situation of any water or gas pipes, mains, plugs or other waterworks or gasworks, are directed to be borne by the owner of such pipes or works, his liability in that respect shall continue in the same manner and under the same conditions in all respects as if this Act had not been passed.

Power to purchase premises for improvement of streets.

154 (2). Any urban authority may purchase any premises (3) for the purpose of widening, opening, enlarging, or otherwise improving any street or (with the sanction of the Local Government Board) for the purpose of making any new street (4).

Power to regulate line of buildings.

155 (5). When any house (6) or building (7) situated in any street (8) in an urban district, or the front thereof, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building, or the front thereof, to be built or rebuilt in the same situation shall be erected, and such house or building, or the front thereof, shall be erected in accordance therewith (9).

The urban authority shall pay or tender compensation to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the

(1) As to notices and the service of notices, see sections 266, 267, *post.*

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 73, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 36.

(3) See the interpretation clause, *ante*, p. 44.

(4) As to the meaning of "street," see the interpretation clause, *ante*, p. 45.

In *Galloway* v. *Mayor, &c., of London and Metropolitan Ry.*, L. R. 1 Ho. Lds. Cas. 34, 35 L. J. Ch. 477, 12 Jur. N. S. 747, it was held, under a local Act giving compulsory powers of taking lands for the purpose of forming a street, that the word "street" did not mean the mere roadway, but a thoroughfare with houses on both sides.

As to the powers of the authority to purchase lands, &c., see sections 175, 176, *post.*

The General Turnpike Act, 65 Geo. III. c. 51, which authorised the trustees of roads to "make, divert, shorten, vary, alter and improve the course or path" of the roads under their management, was held to thereby authorise them to lower hills and raise hollows: *Boulton* v. *Crowther*, 2 B. & C. 703.

As to compensation in case of damage by a local authority, see section 308, *post*, and *R.* v. *Wallasey Board*, *ante*, p. 122.

As to the expenses of urban authorities, see sections 207 *et seq.*, *post.*

(5) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 35. The words "or the front thereof" are new.

(6) See the interpretation clause, *ante*, p. 46. A church has been held to be a "house" within the meaning of a local Act authorising a corporation to prescribe the line in which any "house" to be thereafter built should be erected: *Folkestone Corporation* v. *Woodward*, L. R. 15 Eq. 159, 42 L. J. Ch. 782, 27 L. T. N. S. 574.

(7) See note to section 157, *post.* In *Brown* v. *Holyhead Board*, 7 L. T. N. S. 332, Pollock, C. B., doubted whether a wall was a building within the meaning of the previous enactment (note (5) *supra*).

(8) See the interpretation clause *ante*, p. 45, and see *R.* v. *Fullford*, *post*, p. 127.

(9) See *Hargreaves* v. *Taylor*, *ante*, p. 63, and *Austin* v. *Vestry of Lambeth*, *ante*, p. 58.

amount of such compensation, in case of dispute, to be settled by arbitration in manner provided by this Act (1).

Secs. 155, 156.

156 (2). It shall not be lawful in any urban district, without the written consent (3) of the urban authority, to bring forward any house (4) or building (5) forming part of any street (6), or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of the house or building on either side of the same (7).

Buildings not to be brought forward.

(1) The provisions of this section do not apply to the buildings of any railway company. See the last clause of section 157, *post*.

As to the power of the urban authority with regard to the line, &c., of *new* streets, see section 157, *post*.

Where the owner of a house deposited a plan of an intended new building on the site thereof, in accordance with a bye-law of the Local Government Board, and the local authority passed a resolution approving of the plan, and offering £40 for certain land thrown into the street by the owner, but he refused to accept the compensation and proceeded with the works, and pulled down the front of the house, it was held that the local authority, having approved of the plans, could not afterwards avail themselves of their powers under this section when the front was pulled down: *Masters* v. *Pontypool Board*, L. R. 9 Ch. D. 677, 47 L. J. Ch. 797.

The urban authority must prescribe the line in which the building must be erected, and must pay or tender compensation for the ground required by them, otherwise they cannot proceed against the owner, &c.: *Brown* v. *Holyhead Board*, 32 L. J. Ex. 25, 7 L. T. N. S. 332.

Where a committee to whom a Local Board had delegated their powers for the regulation of buildings, &c., had approved of plans for rebuilding a factory, it was held that the Local Board could not afterwards interfere with the erection of the factory according to the approved plans: *Slee* v. *Mayor, &c., Bradford*, 4 Giff. 262, 9 Jur. N. S. 815, 8 L. T. N. S. 491.

See sections 66—68 of the Towns Improvement Clauses Act, 1847, *post*, which are incorporated with this Act by section 160, *post*.

As to arbitration, see sections 179 *et seq.*, *post*.

(2) The previous enactment was the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 16, s. 28.

The provisions of this section do not apply to the buildings of any railway company, see the last clause of section 157, *post*.

(3) The consent must be in writing. Mere acquiescence on the part of the urban authority is not enough, and will not preclude them from proceeding against the person infringing the section: *Kerr* v. *Corporation of Preston*, L. R. 6 Ch. D. 463, 46 L. J. Ch. 409, 25 W. R. 265.

(4) See note (6) to section 155, *ante*.

(5) See note (7) to section 155, *ante*.

(6) *R.* v. *Fullford*, L. & C. 403, 33 L. J. M. C. 122, 10 L. T. N. S. 346, 12 W. R. 715, 10 Jur. N. S. 522, 9 Cox, C. C. 453, it was held under the previous enactment (note (2) *supra*) that it is a question of fact whether the houses, &c., form a street or not, and that in order to constitute a street there must be a row of houses sufficiently continuous and sufficiently proximate to one another. "I think that a house or building forming part of any street within the meaning of section 156, must be a house or building forming part of a continuous, I do not mean necessarily physically continuous in every part, but a continuous line of building": *Robinson* v. *Barton Board*, L. R. 21 Ch. D. 621, 51 L. J. Ch. 467, *per* Fry, J. *Semble*, a set of detached houses not being in a continuous line, but some facing one way and some another, and having no appearance of uniformity, is not a street within the meaning of the section: *R.* v. *Fullford*, *supra*.

See the interpretation clause, *ante*, p. 45.

(7) A Court of Equity will not interfere to restrain criminal proceedings under this section: *Kerr* v. *Corporation of Preston*, *supra*.

See further the Towns Improvement Clauses Act, 1847, ss. 69, 70, *post*, which are incorporated with this Act by section 160, *post*.

As to recovery of penalties, &c., see sections 251 *et seq.*, *post*.

As to "continuing offence," see *R.* v. *Waterhouse*, *ante*, p. 90. An offence to which the

Secs. 156, 157.

Any person offending against this enactment shall be liable to a penalty not exceeding forty shillings for every day during which the offence is continued after written notice in this behalf from the urban authority.

Power to make bye-laws respecting new buildings, &c.

157 (1). Every urban authority may make bye-laws with respect to the following matters (2); (that is to say,)

(1.) With respect to the level, width, and construction of new streets, and the provisions for the sewerage thereof (3);

(2.) With respect to the structure of walls, foundations, roofs, and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health (4).

penalty is applicable continues so long as the addition to the house is maintained after written notice from the urban authority, notwithstanding that the addition is completed before the notice is given, and a conviction may be had for continuing the offence, though more than six months has elapsed since the notice was given: *Rumball* v. *Schmidt*, L. R. 8 Q. B. D. 603, 46 L. T. N. S. 661, 30 W. R. 949, 46 J. P. 567; *Marshall* v. *Smith*, *post*, p. 129, is distinguishable. But a penalty cannot be incurred after the expiration of one year from the day when the offence was committed or the bye-law broken, in respect of any work begun or executed in contravention of any bye-law. See section 158, *post*.

(1) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 34, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 44.

(2) See the general provisions as to the making of bye-laws under the Act, ss. 182 *et seq.*

And see the bye-laws under this section issued by the Local Government Board, *post*.

(3) Generally as to scope of this sub-section, see *Robinson* v. *Barton-Eccles Board*, L. R. 8 App. Cas. 798, 32 W. R. 249. "New streets" here is not confined to streets constructed for first time, but applies to an old highway, which has long been a street within section 4, *ante*, p. 45, but which by building of houses has recently become a new street in the popular sense: *Ibid.* But see *Williams* v. *Powning*, 48 L. T. N. S. 672. The sub-section applies to the buildings on the side of the street as well as to the roadway: *Baker* v. *Mayor, &c., of Portsmouth*, L. R. 3 Ex. D. 4 and 157 (C. A.), 47 L. J. Ex. 223, 289, 37 L. T. N. S. 822.

"Street" means something more than the roadway, that is to say the street with the houses: *Ibid.*, *per* Huddleston, B. See the interpretation clause *ante*, p. 46.

"Width" means width of roadway, not width between houses on each side of the street: *Robinson* v. *Barton-Eccles Board*, *supra*.

Where a bye-law requiring every new street to be of a certain width is imperative, the urban authority cannot permit any deviation from the bye-law: *A.-G.* v. *Folkestone*, Weekly Notes, 1873, p. 127.

(4) The word "chimneys" is new.

By 3 & 4 Vict. c. 85, s. 6, it is "enacted that all withs and partitions between any chimney or flue which at any time after the passing of this Act shall be built or rebuilt shall be of brick or stone, and at least equal to half a brick in thickness, and every breast-back and with or partition of any chimney or flue hereafter to be built or rebuilt shall be built of sound materials, and the joints of the work well filled in with good mortar or cement, and rendered or stuccoed within; and also that every chimney or flue hereafter to be built or rebuilt in any wall, or of greater length than four feet out of the wall not being a circular chimney or flue twelve inches in diameter, shall in every section of the same be not less than fourteen inches by nine inches, and no chimney or flue shall be constructed with any angle therein which shall be less obtuse than an angle of one hundred and twenty degrees, except as hereinafter excepted, and every salient or projecting angle in any chimney or flue shall be rounded off four inches at the least, upon pain of forfeiture by every master builder or other master workman who shall make or cause to be made such chimney or flue of any sum not less than £10, not exceeding £50. Provided, nevertheless, that, notwithstanding this Act, chimneys or flues may be built at angles with each other of ninety degrees and more, such chimneys or flues having therein proper doors or openings not less than six inches square"; and in *Hill* v. *Hall*, L. R. 1 Ex. D. 411, 45 L. J. M. C. 150, 35 L. T. N. S. 860, it was decided that this pro-

(3.) With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings [1]: Sec. 157.

vision was not impliedly repealed by the fact that a subsequent local Act made other provisions as to the construction of chimneys within the locality to which the Act applied.

As to "new buildings," see section 159, *post*.

New building.

In *Hobbs* v. *Dance*, L. R. 9 C. P. 30, 43 L. J. M. C. 21, 29 L. T. N. S. 687, 22 W. R. 90, it was held under the previous enactment (note [1], *ante*, p. 128) that a small building erected against the wall of the yard of a house, which was removed to another side of the yard, and erected against other parts of the wall of the yard, the same materials being substantially used in its re-erection, was a "new building" within the meaning of a bye-law which required notice to be given before the erection of a new building. But in *Shiel* v. *Mayor, &c., of Sunderland*, 6 H. & N. 769, 30 L. J. M. C. 215, it was held that the proprietor of a house, yard, and coach-house and stables, who had pulled down the coach-house and stable below the ground floor, and erected a building, partly upon their site and partly upon the yard, with rooms over, the ground floor opening into the yard, but the access to the rooms above being by a covered way from the old house, the object of the new building being to increase the accommodation of the old house, which had been converted into an hotel, had not erected a new building within the previous enactment (note [4], *post*, p. 131), but only an addition to the old building.

As to whether a wall is or is not a building, see *Brown* v. *Holyhead Board*, *ante*, p. 126, and *Child* v. *Douglas*, Kay. 560, 5 De G. M. & G.; *Weston* v. *Arnold*, L. R. 8 Ch. App. 1084; *Arnell* v. *Regent's Canal Co.*, 12 C. B. 697, 14 C. B. 564; *Bowes* v. *Law*, L. R. 9 Eq. 636.

A structure of wood of considerable size (16 feet by 13), and intended to be permanently used as a shop, is a building within the Metropolitan Building Act, 1855, 18 & 19 Vict. c. 122, although not let into the ground, but merely laid upon timbers upon the surface: *Stevens* v. *Gourley*, 7 C. B. N. S. 99, 1 F. & F. 498, 29 L. J. C. P. 1, 1 L. T. N. S. 33.

In *Bowes* v. *Law*, *supra*, a vinery attached to a wall was held a building.

A bye-law providing that every person intending to erect any new building should give a week's notice in writing to the surveyor, and also leave at the office details, plans, and sections of every floor, &c., and imposing a penalty of £5 for non-compliance with this requirement, is unreasonable and void, if meant to apply to merely temporary structures: *Fielding* v. *Rhyl Improvement Commissioners*, L. R. 3 C. P. D. 272, 38 L. T. N. S. 223, 26 W. R. 881. See also *Hattersley* v. *Burr*, *post*, p. 130.

Where a person has been convicted under a bye-law requiring the party wall of a house to be built of a certain thickness, he cannot be convicted under a bye-law imposing a penalty *de die in diem* in case of a continuing offence, for having neglected to comply with a notice requiring him to make the wall of the requisite thickness, for the latter bye-law cannot apply to an offence of this description. The proper remedy is the removal of the structure by the urban authority: *Marshall* v. *Smith*, L. R. 8 C. P. 416, 42 L. J. M. C. 108, 28 L. T. N. S. 538. See *Rumball* v. *Schmidt*, *ante*, p. 128.

A person who, in accordance with his contract with a building owner, simply builds along the line of a street already laid out by such owner, is not a "person who lays out a new street" within the meaning of a bye-law, which provides that "every person who lays out a new street shall, as regards the minimum width of such street, comply with the requirements hereinafter mentioned," &c.: *Mayor, &c., of Sunderland* v. *Brown*, 43 L. T. N. S. 478, 44 J. P. 831.

Where a person contracted with the owner of land to erect seventy-six houses thereon, and accordingly lodged plans with the urban authority, and afterwards when fifty-nine houses were erected agreed with another person to erect the rest of the houses, and the latter in erecting the houses made the walls of insufficient thickness, it was held that the first contractor was not "the person erecting the buildings" within the meaning of these words in a bye-law, which imposed a penalty for violation of rules as to thickness: *Brown* v. *Edmonton Board*, 45 J. P. 553.

[1] Under the corresponding provision of the previous enactment (note [1], *ante*, p. 128), it was held that a bye-law made in pursuance of this power, whereby it was provided

Secs. 157, 158.

(4.) With respect to the drainage of buildings, to waterclosets, earth closets, privies, ashpits and cesspools in connexion with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation (1):

And they may further provide for the observance of such bye-laws by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the urban authority, and as to the power of such authority (subject to the provisions of this Act) to remove, alter, or pull down any work begun or done in contravention of such bye-laws (2): Provided that no bye-law made under this section shall affect any building erected in any place (which at the time of the passing of this Act is included in an urban sanitary district) before the Local Government Acts (3) came into force in such place, or any building erected in any place (which at the time of the passing of this Act is not included in an urban sanitary district) before such place becomes constituted or included in an urban district, or by virtue of any order of the Local Government Board subject to this enactment (4).

The provisions of this section and of the two last preceding sections shall not apply to buildings belonging to any railway company and used for the purposes of such railway under any Act of Parliament.

As to commencement

158 (5). Where a notice, plan, or description of any work is required by any

that wherever any open space had been left belonging to any building, such space should never afterwards be built upon without the consent of the local authority, was unreasonable and void: *Tucker* v. *Rees*, 7 Jur. N. S. 629.

Further as to the ventilation of buildings, see the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, ss. 110—115, *post*.

(1) A bye-law that no dwelling-house should be erected without having at the rear or side a roadway at least twelve feet wide communicating with some adjoining public highway, in such situation as should be approved by the local authority, for the purpose of affording access to the privy or ashpit of the house, is invalid, as being in excess of the powers conveyed by this section: *Waite* v. *Garston Board*, L. R. 3 Q. B. 5, 37 L. J. M. C. 19, 17 L. T. N. S. 201, 16 W. R. 78.

Further as to the drainage of houses, see the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, ss. 35—46, and sections 23, 24 and 25, *ante*. As to waterclosets, &c., see sections 35—41, *ante*. As to closing buildings unfit for habitation, see section 97, *ante*; and see 31 & 32 Vict. c. 130, *post*.

(2) The power to make provision as to removing, altering, or pulling down work, is not confined to bye-laws relating to structure, but may be extended to and incorporated in bye-laws as to notice and deposit of plans: *Baker* v. *Mayor, &c., of Portsmouth*, *ante*, p. 128; and see *Hall* v. *Nixon*, L. R. 10 Q. B. 152, 44 L. J. M. C. 51, 32 L. T. N. S. 87, 23 W. R. 612, where *Hattersley* v. *Burr*, 4 H. & C. 523, 14 L. T. N. S. 565, 14 W. R. 864, and *Young* v. *Edwards*, 33 L. J. M. C. 227, are discussed. In the latter case a bye-law imposing continuing penalties upon any person who should construct any work, or do or omit to do any act, or to comply with any requirements of the local authority, or make any alteration or deviation in any plan approved by them, whether in new or existing buildings, or should do any act, matter, or thing contrary to the bye-laws, or should omit, neglect, or fail to perform any of the works, matters, or things required by such bye-laws, and empowering the authority to pull down or otherwise deal with such work as the case might require, was held invalid as exceeding the powers given by the previous enactment (note (1), *ante*, p. 128). See also *Brown* v. *Holyhead Board*, 1 H. & C. 601, 32 L. J. Ex. 25, 7 L. T. N. S. 332, and *Pearson* v. *Kingston-upon-Hull Board*, 3 H. & C. 921, 35 L. J. M. C. 36. But now see further section 158, *post*, and *Masters* v. *Pontypool Board*, *post*, p. 131.

(3) See Sched. V., Part I., *post*.

(4) As to this proviso, see *Burgess* v. *Peacock*, 10 Jur. N. S. 803, 10 L. T. N. S. 617; *Tucker* v. *Rees*, *supra*; *Shiel* v. *Mayor, &c., Sunderland*, *ante*, p. 129.

(5) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, ss. 41, 42, 43.

Secs. 158—160.

of works and removal of works made contrary to bye-laws.

bye-law made by an urban authority to be laid before that authority, the urban authority shall, within one month after the same has been delivered or sent to their surveyor or clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same; and if the work is commenced after such notice of disapproval, or before the expiration of such month without such approval, and is in any respect not in conformity with any bye-law of the urban authority, the urban authority may cause so much of the work as has been executed to be pulled down or removed (1).

Where an urban authority incur expenses in or about the removal of any work executed contrary to any bye-law, such authority may recover in a summary manner the amount of such expenses either from the person executing the works removed or from the person causing the works to be executed at their discretion (2).

Where an urban authority may under this section pull down or remove any work begun or executed in contravention of any bye-law, or where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any bye-law to a penalty, the existence of the work during its continuance in such a form and state as to be in contravention of the bye-law shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed, or the bye-law was broken (3).

What to be deemed a new building.

159 (4). For the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework is left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building.

Incorporation of certain provisions of 10 & 11 Vict. c. 34.

160 (5). The provisions of the Towns Improvement Clauses Act, 1847, with respect to the following matters; that is to say,

(1.) With respect to naming the streets and numbering the houses (6); and

(2.) With respect to improving the line of the streets and removing obstructions (7); and

(3.) With respect to ruinous or dangerous buildings (8); and

(1) See the preceding section and the notes thereto.

Where the urban authority has not during the prescribed month signified its disapproval of the plans laid before them, they cannot afterwards object to the building according to the plan: *Masters* v. *Pontypool Board*, L. R. 9 Ch. D. 677, 47 L. J. Ch. 797.

The urban authority cannot under this section pull down a building without giving the owner an opportunity of showing cause why it should not be pulled down: *Ibid.*; and see *Cooper* v. *Wandsworth Board*, 14 C. B. N. S. 180, 32 L. J. M. C. 185, 8 L. T. N. S. 278, 9 Jur. N. S. 1155, decided under section 76 of the Metropolis Local Management Act, 1855, 18 & 19 Vict. c. 120.

(2) See *Brutton* v. *Vestry of St. George*, L. R. 13 Eq. 339, 41 L. J. Ch. 134, where it was held under section 75 of the Metropolis Local Management Amendment Act, 1862, 25 & 26 Vict. c. 102, that a summons can only be issued against the builder whilst he is "engaged upon the work."

As to summary recovery of penalties, &c., see sections 251 *et seq.*, *post*.

(3) See *Rumball* v. *Schimdt*, *ante*, p. 128.

(4) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 34.

See *Hobbs* v. *Dance*, and *Shiel* v. *Mayor, &c., of Sunderland*, *ante*, p. 129.

(5) These provisions were incorporated with the Local Government Act, 1858, 21 & 22 Vict. c. 98, by s. 45 of that Act, and the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 16, s. 11, contained a provision similar to that in this Act as to notices for alterations.

(6) *I.e.*, sections 64, 65, see *post*.

(7) *I.e.*, sections 66—74, see *post*.

(8) *I.e.*, sections 75—78, see *post*.

Secs. 160—162.

(4.) With respect to precautions during the construction and repair of the sewers, streets and houses (1);

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act (2).

Notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the said Towns Improvement Clauses Act, may, at the option of the urban authority, be served on owners instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers (3); and when such cost is recovered from occupiers so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under this Act (4).

Lighting Sreets, &c.

Powers of urban authority for lighting their district. 12 & 13 Vict. c. 94, s. 8.

161 (5). Any urban authority may contract with any person (6) for the supply of gas, or other means of lighting the streets, markets and public buildings in their district, and may provide such lamps, lamp posts and other materials and apparatus as they may think necessary for lighting the same (7).

Where there is not any company or person (6) (other than the urban authority) authorised by or in pursuance of any Act of Parliament, or any order confirmed by Parliament, to supply gas for public and private purposes, supplying gas within any part of the district of such authority, such authority may themselves undertake to supply gas for such purposes or any of them throughout the whole or any part of their district; and if there is any such company or person so supplying gas, but the limits of supply of such company or person include part only of the district, then the urban authority may themselves undertake to supply gas throughout any part of the district not included within such limits of supply.

Where an urban authority may under this Act themselves undertake to supply gas for the whole or any part of their district, a provisional order authorising a gas undertaking may be obtained by such authority under and subject to the provisions of the Gas and Water Works Facilities Act, 1870, and any Act amending the same (8); and in the construction of the said Act the term "the undertakers" shall be deemed to include any such urban authority: Provided that for the purposes of this Act the Local Government Board shall throughout the said Act be deemed to be substituted for the Board of Trade.

Power for sale of undertaking of gas company to urban authority.

162 (9). For the purpose of supplying gas within their district or any part thereof either for public or private purposes, any urban authority may (with the sanction of the Local Government Board (10)) buy, and the directors of any gas company, in pursuance, in the case of a company registered under the

(1) *I.e.*, sections 79—83, *post.*

(2) As to the construction of incorporated Acts, see section 316, *post.*

(3) As to notices and service thereof, see sections 266, 267, *post.*

As to recovery of expenses, see section 257, *post.*

(4) As to deduction of proportion of cost from rent, see section 214, *post.*

(5) The previous enactment was the Public Health Supplemental Act, 1849, 12 & 13 Vict. c. 94, s. 8. As to the present section, see the Circular of the Local Government Board, 30th September, 1875, *ante*, p. 12.

(6) See the interpretation clause, *ante*, p. 44.

(7) As to contracts by urban authorities, see section 174, *post.*

As to lighting streets not being highways repairable by the inhabitants at large, see section 150, *ante.*

As to lighting public clocks, see section 165, *post.*

(8) See these Acts, *post.*

As to obtaining provisional orders, see *post*

(9) This provision is new.

(10) As to power of Local Government Board to direct inquiries, see section 293, *post.*

Companies Act, 1862, of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to such authority, on such terms as may be agreed on between such authority and the company, all the rights, powers and privileges, and all or any of the lands, premises, works and other property of the company, but subject to all liabilities attached to the same at the time of such purchase (1).

Watching and Lighting Act (3 & 4 Will. IV. c. 90) to be superseded by this Act.

163 (2). Where in any place which after the passing of this Act becomes constituted or included in an urban district, or which by virtue of any order of the Local Government Board becomes subject to this enactment, the Act passed in the fourth year of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of His late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said Act shall be superseded by this Act, and all lamps, lamp posts, gas pipes, fire engines, hose, and other property vested in the inspectors for the time being under the said Act, shall vest in the authority having under this Act jurisdiction in such place.

Public Pleasure Grounds, &c.

Urban authority may provide places of public recreation.

164 (3). Any urban authority may purchase or take on lease, lay out, plant, improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever (4).

Any urban authority may make bye-laws for the regulation of any such public walk or pleasure ground, and may by such bye-laws provide for the removal from

(1) Compare the provisions of section 63, *ante*, and section 168, *post;* and see the notes to section 63.

(2) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 46. But the words "or which by virtue of any order of the Local Government Board becomes subject to this enactment" are new, see the Circular of 30th September, 1875, *ante*, p. 13; and see section 272, *post*, section 276, *post*, as to the power of the Board to invest rural with the powers of urban authorities.

(3) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 74. The provision as to bye-laws is new.

(4) As to investing rural with powers of urban authorities, see section 276, *post*.

As to the purchase of lands, see sections 175 *et seq.*, *post*.

Where a piece of land of about ten acres was purchased by an urban authority to be added to a public garden of fifteen acres, and afterwards the authority determined to appropriate about a quarter of an acre at one extremity as a site for the erection of town buildings, and of a museum, public library, and school of art, and conservatory, it was held that they could not be restrained from so doing as regarded the museum, conservatory, and free library, as the erection of these was conducive to the better enjoyment of the public walks and grounds as such: *A.-G.* v. *Corporation of Sunderland*, L. R. 2 Ch. D. 634, 45 L. J. Ch. 839, 34 L. T. N. S. 921, 24 W. R. 991; and see *A.-G.* v. *Southampton Corporation*, 29 L. J. Ch. 282.

See further as to recreation grounds, public parks, &c., the various statutes referring to these subjects, *post*.

Upon an application to the Consistory Court of London for a faculty to sanction the appropriation of a portion of a churchyard which had been closed for burials under an Order in Council, for the purpose of a public garden, the Court authorised the construction of footpaths in such portion of the churchyard for the convenience of the parishioners, and the erection of gates to give them access to it, but held that it was not competent to grant a faculty authorising a churchyard to be appropriated as a public garden: *In re Rector, &c. of St. George's-in-the-East*, L. R. 1 P. D. 311; and see *R.* v. *Twiss*, L. R. 4 Q. B. 407.

Secs. 164—166.

such public walk or pleasure ground of any person infringing any such bye-law by any officer of the urban authority or constable (1).

Urban authority may provide public clocks.

165 (2). Any urban authority may from time to time provide such clocks as they consider necessary, and cause them to be fixed on or against any public building, or, with the consent of the owner or occupier, on or against any private building the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and may from time to time alter and remove any such clocks to such other like situation as they may consider expedient.

Markets and Slaughter-Houses.

Urban authority may provide markets.

166 (3). Where an urban authority are a Local Board or Improvement Commissioners they shall have power, with the consent of the owners and ratepayers of their district, expressed by resolution passed in manner provided by Schedule III. (4) to this Act, and where the urban authority are a Town Council they shall have power, with the consent of two-thirds of their number, to do the following things, or any of them, within their district (5):

To provide a market place, and construct a market house and other conveniences, for the purpose of holding markets:

To provide houses and places for weighing carts:

To make convenient approaches to such market:

To provide all such matters and things as may be necessary for the convenient use of such market:

To purchase or take on lease land, and public or private rights in markets and tolls for any of the foregoing purposes:

To take stallages, rents, and tolls in respect of the use by any person of such market (6):

But no market shall be established in pursuance of this section so as to interfere with any rights, powers, or privileges enjoyed within the district by any person without his consent (7).

(1) As to bye-laws, see sections 182 *et seq.*, *post.*

(2) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 45, which incorporated s. 143 of the Towns Improvement Clauses Act, 1847, *post.*

(3) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 50.

(4) *Post*, p. 243.

(5) As to the constitution of urban authorities, see sections 6, 7, 8, and the notes thereto, *ante.*

(6) As to the purchase of lands, see sections 175 *et seq.*, *post;* and as to the purchase of markets, see section 158, *post.*

(7) A corporation being lords of a market and owners of the soil, is entitled at common law to remove the market; but where the corporation acting as an urban authority takes steps under the statute to set up a market in a new place, it can only act under the powers and subject to the provisions of the statute, and is not entitled to fall back upon its common law right: *Ellis* v. *Bridgnorth Corporation*, 2 Johns. & H. 67, 4 L. T. N. S. 112, 9 W. R. 331.

The corporation of Bridgnorth were owners of an ancient market, and also lords of the manor in which the borough of Bridgnorth was situated. The market had from time immemorial been held in and near the High Street. The plaintiff had a house in that street, and he and the previous owners and occupiers of the house in which he lived, as well as several other occupiers of houses in the same street, had from time immemorial erected on market days stalls opposite their houses, and either used the stalls themselves or let them to others. No tolls were ever taken in respect of the goods sold at these stalls, though they were formerly taken for similar produce exposed in the market elsewhere. In an action against the corporation of Bridgnorth for removing the market to another place within the borough, held that the right to the stalls was a right

Secs. 167, 168.

Incorporation of provisions of 10 & 11 Vict. c. 14, as to markets.

167 (1). For the purpose of enabling any urban authority to establish or to regulate markets, there shall be incorporated with this Act the provisions of the Markets and Fairs Clauses Act, 1847 (2), in so far as the same relate to markets; that is to say,

With respect to the holding of the market or fair, and the protection thereof; and

With respect to the weighing goods and carts; and

With respect to the stallages, rents, and tolls:

Provided that all tolls leviable by an urban authority in pursuance of this section shall be approved by the Local Government Board.

An urban authority may with respect to any market belonging to them make bye-laws for any of the purposes mentioned in section forty-two of the Markets and Fairs Clauses Act, 1847, so far as those purposes relate to markets, and printed copies of any bye-laws so made shall be conspicuously exhibited in the market (3).

Power for sale of undertaking of market company to urban authority.

168 (4). Any urban authority may purchase, and the directors of any market company, in pursuance, in the case of a company registered under the Companies Act, 1862, of a special resolution of the members passed in manner provided by that Act, and in the case of any other company, of a resolution passed by a majority of three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened with notice of the business to be transacted, may sell and transfer to any urban authority, on such terms as may be agreed on between the company and the urban authority, all the rights, powers, and privileges, and all or any of the markets, premises, and things which at the time of such purchase are the property of the company, but subject to all liabilities attached to the same at the time of such purchase.

which might reasonably be supposed to have been granted by the owners of the market to the owners and occupiers of the houses, and that it was sufficiently connected with the enjoyment of the houses to be claimed an appurtenant thereto. Held also, that if the original grant were presumably to hold the market at any place within the borough, still the corporation could not now remove it, as to do so would be in derogation of their own grant of the right now claimed: *Ellis* v. *Corporation of Bridgnorth*, 15 C. B. N. S. 52, 32 L. J. C. P. 273, 8 L. J. N. S. 668, 9 Jur. N. S. 1078.

In *Fearon* v. *Mitchell*, L. R. 7 Q. B. 690, 41 L. J. M. C. 170, it was held that a person who under the approval of the local authority had established a large building, where he was in the habit of advertising and holding large sales by public auction of cattle the property of farmers and others, he charging a commission and guaranteeing payment of the sales, had not acquired any right, power, or privilege within the meaning of the previous enactment (note (3), *ante*, p. 134).

Where power was given by an Act to a corporation to "enlarge" as well as improve the market of their borough, it was held that the meaning of the word was not restricted to merely extending the market to streets theretofore forming parts of its sides, but authorised them to extend the market to other streets in the immediate neighbourhood: *A.-G.* v. *Mayor of Cambridge*, L. R. 6 H. L. 303.

It would seem that the getting up of a new market under the statute at a short distance from and in lieu of an ancient market is an establishment of a market within the previous enactment (note (3), *ante*, p. 134), and not a mere removal: *Ellis* v. *Corporation of Bridgnorth*, *ante*, p. 134.

(1) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98 s. 50.

(2) See this Act, *post*; and see section 316, *post*, as to the construction of incorporated Acts.

(3) See the bye-laws issued by the Local Government Board, *post*; and see sections 182 *et seq.*, *post*.

(4) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 53.

Compare sections 63 and 162, and the notes thereto *ante*.

Secs. 169—171.

Power to provide slaughter-houses.

169 (1). Any urban authority may, if they think fit, provide slaughter-houses (2), and they shall make bye-laws with respect to the management and charges for the use of any slaughter-houses so provided (3).

For the purpose of enabling any urban authority to regulate slaughter-houses within their district the provisions of the Towns Improvement Clauses Act, 1847, with respect to slaughter-houses shall be incorporated with this Act (4).

Nothing in this section shall prejudice or affect any rights, powers, or privileges of any persons incorporated by any local Act passed before the passing of the Public Health Act, 1848, for the purpose of making and maintaining slaughter-houses.

Notice to be affixed on slaughter-houses.

170 (5). The owner (6) or occupier of any slaughter-house licensed or registered under this Act shall, within one month after the licensing or registration of the premises, affix, and shall keep undefaced and legible on some conspicuous place on the premises, a notice with the words "Licensed slaughter-house," or "Registered slaughter-house," as the case may be.

Any person who makes default in this respect, or who neglects or refuses to affix or renew such notice after requisition in writing from the urban authority, shall be liable to a penalty not exceeding five pounds for every such offence, and of ten shillings for every day during which such offence continues after conviction (7).

Police Regulations.

Incorporation of certain provisions of 10 & 11 Vict. c. 89.

171 (8). The provisions of the Towns Police Clauses Act, 1847, with respect to the following matters, (namely,)

(1.) With respect to obstructions and nuisances in the streets (9); and
(2.) With respect to fires (10); and
(3.) With respect to places of public resort (11); and
(4.) With respect to hackney carriages (12); and
(5.) With respect to public bathing (13);

shall, for the purpose of regulating such matters in urban districts, be incorporated with this Act (14).

The expression in the provisions so incorporated "the superintendent constable," and the expression "any constable or other officer appointed by virtue of this or the special Act," shall, for the purposes of this Act, respectively include any superintendent of police, and any constable or officer of police acting for or in the

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 62, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 45. See section 112, note (2), *ante*, p. 100.

(2) See the interpretation clause, *ante*, p. 47.

(3) See the bye-laws issued by the Local Government Board, *post;* and see sections 182 *et seq.*, *post.*

(4) See the Towns Improvement Clauses Act, 1847, ss. 125—131, *post;* and as to the construction of incorporated Acts, see section 316, *post.*

(5) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 49.

(6) See the interpretation clause, *ante*, p. 45.

(7) As to notices and service thereof, see sections 266, 267, *post.*

As to recovery of penalties, &c., see sections 251 *et seq.*, *post.*

As to continuing offence, see sections 91, 156, and the notes thereto, *ante*, pp. 90, 127.

(8) The previous were before incorporated with the Local Government Act, 1858, 21 & 22 Vict. c. 98, by s. 44.

(9) *I.e.*, ss. 21—29, *post.*

(10) *I.e.*, ss. 30—33, *post;* and see ss. 66 and 157, *ante.*

(11) *I.e.*, ss. 34—36, *post.*

(12) *I.e.*, ss. 37—68, *post.* See the bye-laws issued by the Local Government Board, *post.*

(13) *I.e.*, s. 69, *post.* See the bye-laws issued by the Local Government Board, *post.*

(14) As to the construction of incorporated Acts, see section 316, *post.*

district of any urban authority; and the expression "within the prescribed distance" shall for the purposes of this Act mean within any urban district.

Secs. 171—173.

Notwithstanding anything in the provisions so incorporated, a license granted to the driver of any hackney carriage in pursuance thereof shall be in force for one year only from the date of the license, or until the next general licensing meeting where a day for such meeting is appointed.

Urban authority may make bye-laws for licensing horses, boats, &c., for hire.

172 (1). Any urban authority may license the proprietors, drivers, and conductors of horses, ponies, mules, or asses standing for hire within the district in like manner and with the like incidents and consequences as in the case of proprietors and drivers of hackney carriages, and may make bye-laws for regulating stands and fixing rates of hire, and as to the qualification of such drivers and conductors, and for securing their good and orderly conduct while in charge.

Any urban authority may also license the proprietors of pleasure boats and vessels, and the boatmen or other persons in charge thereof, and may make bye-laws for regulating the numbering and naming of such boats and vessels, and the number of persons to be carried therein, and the mooring places for the same, and for fixing rates of hire, and the qualification of such boatmen or other persons in charge, and for securing their good and orderly conduct while in charge (2).

PART V.

GENERAL PROVISIONS.

Contracts.

Power of local authorities to contract.

173 (3). Any local authority may enter into any contracts necessary for carrying this Act into execution (4).

(1) The previous enactment was the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 16, s. 25. But the power to license the proprietors, &c., of horses, &c., and of pleasure boats, &c., and of the boatmen, &c., in charge thereof is new. The extension of the bye-laws to the qualification of the drivers, boatmen, &c., to the numbering and naming of the boats, and to the number of persons to be carried therein, and to the mooring places is also new.

(2) As to bye-laws, see sections 182 *et seq.*, *post*.

The driver of an hotel cab when plying for hire and standing in a square in front of the hotel which was not enclosed and where the public could freely pass, was held liable to a penalty under a bye-law which required every driver of a hackney carriage when plying for hire to station his carriage on one of the appointed stands: *Marks* v. *Ford*, 45 J. P. 157.

Where the fishermen of a sea village had been immemorially accustomed to beach their boats in winter on ground adjoining the harbour, and where the proprietor had subsequently obtained a local Act authorising him to levy five shillings yearly for each boat beached, the fishermen's rights were enforced against him, and it was held that he could not exclude the fishermen from the ground used for beaching without assigning to them other ground equally well adapted to the purpose: *Aiton* v. *Stephen*, L. R. 1 App. Cas. 456.

(3) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 85.

(4) "The general rule of law is that a corporation contracts under its common seal; as a general rule it is only in that way that a corporation can express its will or do any act. That general rule, however, has from the earliest traceable periods been subject to exceptions, the decisions as to which furnish the principle on which they have been established, and are instances illustrating its application, but are not to be taken as so prescribing in terms the exact limit that a merely circumstantial difference is to exclude from the exception. This principle appears to be convenience amounting almost to necessity. Wherever to hold the rule applicable would occasion very great inconvenience, or tend to defeat the very object for which the corporation was created, the exception

Sec. 173.

has prevailed: hence the retainer by parol of an inferior servant, the doing of acts very frequently recurring, or too insignificant to be worth the trouble of affixing the common seal, are established exceptions. On the same principle stands the powers of accepting bills of exchange and issuing promissory notes by companies incorporated for the purposes of trade, with the rights and liabilities consequent thereon": *Church* v. *Imperial Gas Co.*, 6 A. & E. 846, 861; "to every word of this we entirely subscribe," *per cur. Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815, 822; and see *Beverley* v. *Lincoln Gas Co.*, 6 A. & E. 829, 844; *Cope* v. *Thames Haven Co.*, 3 Ex. 841, 844; and Comyns' Digest, *tit.* "Franchise" (F), 12, 13. These exceptions have been classed under two heads. "First, when the acts done are such as the corporation by its very constitution is appointed to do, as in the case of trading corporations, whose duty, by their very appointments, being to draw bills of exchange, they may do it without affixing the common seal. Secondly, when the acts are required for convenience, as where either the acts are trivial in their nature and of frequent occurrence, so that the doing them in the usual way would be inconvenient or absurd, or such that an overruling necessity requires them to be done at once, in that case also the corporation may proceed by parol instead of affixing the seal according to the proper and regular course:" *Per* Alderson, B., *Diggle* v. *London & Blackwall Ry. Co.*, 5 Ex. 442, 450; and see *Mayor of Ludlow* v. *Charlton*, 6 M. & W. 815, 821; *East London Waterwovks Co.* v. *Bailey*, 4 Bing. 283, 287; *Henderson* v. *Australian Steam Navigation Co.*, 5 E. & B. 409, 24 L. J. Q. B. 322, 1 Jur. N. S. 830; *London Dock Co.* v. *Sinnott*, 8 E. & B. 347, 27 L. J. Q. B. 129; *South of Ireland Colliery Co.* v. *Waddle*, L. R. 4 C. P. 617 (Ex. Ch.), 17 W. R. 896, 38 L. J. C. P. 338, 18 L. T. N. S. 405 (affirmed on appeal). *Query* whether this last case does not overrule *Diggle* v. *London, &c., Ry., E. London Waterworks Co.* v. *Bailey*, and *London Dock Co.* v. *Sinnott*, *supra*. See Pollock on Contracts, 3rd ed., p. 161.

The guardians of a poor law union have power to contract for ordinary and trifling services, as for the supply of goods and for the work necessary for the union workhouse: *Clarke* v. *Cuckfield Union*, 21 L. J. Q. B. 349, 16 Jur. 686; *Sanders* v. *St. Neot's Union*, 8 Q. B. 810, 10 Jur. 566; *Nicholson* v. *Bradfield Union*, L. R. 1 Q. B. 620, 35 L. J. Q. B. 176; *Haigh* v. *Brierley Union*, E. B. & E. 873, 28 L. J. Q. B. 62; and see *Hunt* v. *Wimbledon Local Board*, L. R. 4 C. P. D. 48, 48 L. J. C. P. 207, 40 L. T. N. S. 115, 27 W. R. 123 (approved in *Young* v. *Corporation of Leamington*, *post*, p. 140), where these cases are discussed. But the guardians of a union have been held not liable for work done in building the workhouse under a contract not under seal: *Lamprell* v. *Billericay Union*, 3 Ex. 283, 18 L. J. Ex. 282, 12 L. T. 533. And the guardians of a union cannot bind themselves by an order not under seal for making a survey and map of a particular parish, where such map is not incident to the general purposes of the union: *Paine* v. *Strand Union*, 8 Q. B. 326. So a contract for the engagement of a clerk to the master of a workhouse by a board of guardians must to bind them be under their common seal: *Austin* v. *Bethnal Green Guardians*, L. R. 9 C. P. 91, 43 L. J. C. P. 100, 29 L. T. N. S. 807, 22 W. R. 406, 38 J. P. 248. And an appointment by poor law guardians of a person to be their medical officer for any fixed and definite time ought to be under seal: *Dyte* v. *St. Pancras Board*, 27 L. T. N. S. 342.

Further, where work has been done for a corporation under a contract not under seal, and the corporation have had the benefit of it, the person who has done the work may recover. But this is limited to cases where the benefit has been actually received, and to cases in which it could be said that the work is such as was necessary. And it would seem that the doctrine is also limited to contracts of small amount. See *per* Bramwell, L.J., in *Hunt* v. *Wimbledon Local Board*, *supra*. But see *Crook* v. *Corporation of Seaford*, 6 L. R. Ch. 551, 25 L. T. 1, 19 W. R. 938, where a corporation having passed a resolution agreeing to let for 300 years part of a sea-beach at a nominal rent, and a wall and terrace were built by the intended lessee, it was held that after the lapse of four years the corporation were bound by acquiescence, and must perform the agreement to grant a lease, though it was not under seal.

A corporation may maintain an action to recover a reasonable compensation for the use and occupation of land held and occupied by the permission of the corporation without a demise under seal: *Dean of Rochester* v. *Pierce*, 1 Camp. 466; *Mayor of Stafford* v. *Till*, 4 Bing. 75, 12 Moo. 260. And a corporation is also liable to pay such reasonable

174 (1). With respect to contracts made by an urban authority under this Act, the following regulations shall be observed; (namely,) **Sec. 174.**

(1.) Every contract made by an urban authority whereof the value or amount exceeds fifty pounds shall be in writing and sealed with the common seal of such authority (2): **Provisions to contracts by urban authority.**

satisfaction for the use and occupation of land actually held and occupied by the corporation: *Beverley* v. *Lincoln Gas Co.*, 6 A. & E. 829, 841; *Lowe* v. *London & North Western Ry.*, 18 Q. B. 632, 21 L. J. Q. B. 361. But the occupation of the land, or the payment or acceptance of rent by a corporation, does not operate as evidence of a demise, as in the case of an individual: *Finlay* v. *Bristol & Exeter Ry.*, 7 Ex. 409, 21 L. J. Ex. 117.

Further, where a corporation is created by an Act of Parliament for particular purposes, with special powers, another question arises; their deed, though under their corporate seal and that regularly affixed, does not bind them, if it appear by the express provisions of the statute creating the corporation, or by reasonable or necessary inference from its enactments, that the deed was *ultra vires*, that is, that the Legislature meant that such a deed should not be made. "When the Legislature constitutes a corporation it gives to that body *primâ facie* an absolute right of contracting. But this *primâ facie* right does not exist in any case where the contract is one which, from the nature and object of incorporation, the corporate body is expressly or impliedly prohibited from making; such a contract is said to be *ultra vires*:" *Per* Lord Cranworth, L.C., *Shrewsbury & Birmingham Ry.* v. *London & North Western Ry.*, 26 L. J. Ch. 482, 493, 3 Jur. N. S. 781; *per* Lord Wensleydale, *Scottish North Eastern Ry.* v. *Stewart*, 3 Macq. 382, 415. See *Ashbury Ry. Carriage Co.* v. *Riche*, L. R. 7 H. L. 653, 44 L. J. Ex. 185; *Bateman* v. *Ashton-under-Lyne*, 3 H. & N. 323, 27 L. J. Ex. 458; *Clemenshaw* v. *Dublin Corporation*, 10 Ir. R. C. L. 1. **Contracts *ultra vires*.**

Contracts of a local authority must be taken as being made subject to the provisions of the existing law, and may be overridden by as ubsequent Act of Parliament. Thus, by an agreement between the Newington Board and the Cottingham Board, it was agreed that the former should make a sewer and allow the sewers of the latter to drain into it, but the sewage of any other districts or places was not to be permitted by the latter board to pass into their sewers so as to discharge into the sewer made by the Newington Board. Under the then existing Acts the owner of premises beyond the limits of a district had power to make a sewer to communicate with the sewers of the district, and similar powers are given by section 22 of this Act. Held that the Newington Board, notwithstanding the agreement, could not restrain the Cottingham Board and the owners of premises beyond their district from making sewers which would discharge into the sewer of the Newington district: *Newington Board* v. *Cottingham Board*, L. R. 12 Ch. D. 725, 48 L. J. Ch. 226, 40 L. T. N. S. 58.

As to contracts by urban authorities, see the next section.

The Public Health Act, 1848, 11 & 12 Vict. c. 63, by section 151, exempted from stamp duty deeds, contracts, agreements, &c., made by a Local Board, but this section was repealed by section 42 of the Public Health Act, 1872, 35 & 36 Vict c. 79, and has not since been restored. **Stamp duty.**

Officers of a local authority are forbidden to contract with such authority for any of the purposes of the Act. See section 193, *post.*

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 85.

(2) See the notes to section 173, *ante.*

The previous enactment required in addition that the contract should be signed by five or more members of the authority. See Circular of 30th Sept., 1875, *ante*, p. 13.

This provision is imperative and not directory merely. Thus, an urban authority directed their surveyor to employ an architect to prepare plans for offices, which he accordingly did, and the authority thereupon advertised for tenders for building offices in accordance with the plans, but it was found that the plans were upon too expensive a scale and the offices were not built. At the trial of an action brought by the architect against the urban authority, it was found by the jury that the offices were necessary for the purposes of the urban authority, and the plans necessary for the erection of the buildings, and the cost of the plans was found to be £94, yet it was held,

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(2.) Every such contract shall specify the work, materials, matters or things to be furnished, had or done, the price to be paid, and the time or times within which the contract is to be performed, and shall specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed (1):

(3.) Before contracting for the execution of any works under the provisions of this Act, an urban authority shall obtain from their surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise (2):

even assuming that there was a contract and the consideration was performed, that the architect could not recover, there being no contract under seal: *Hunt* v. *Wimbledon Local Board*, L. R. 4 C. P. D. 48, 48 L. J. C. P. 207, 40 L. T. N. S. 115, 27 W. R. 123; *Frend* v. *Dennett*, 4 C. B. N. S. 576, 27 L. J. C. P. 314, 4 Jur. N. S. 897; *Ibid.* (in Chancery), 5 L. T. N. S. 73.

The provision applies not only to an executory, but to an executed contract. The fact that the urban authority have had the benefit of the contract does not prevent them from setting up the defence that the contract is not under seal: *Young* v. *Corporation of Leamington*, L. R. 8 App. Cas. 517, 52 L. J. Q. B. 713, 49 L. T. N. S. 1, 31 W. R. 925, 47 J. P. 660. The fact that the contract is entered into with an agent of the urban authority duly appointed under seal make no difference: *Ibid.* And formerly it was held that the Court of Chancery would not entertain a suit for specific performance of a contract on the ground that through want of formality there was no remedy at law, even though the contract was part performed by the party seeking to enforce it: *Crampton* v. *Varna Railway Co.*, L. R. 7 Ch. 562, 41 L. J. Ch. 817, 20 W. R. 713; *Frend* v. *Dennett*, 5 L. T. N. S. 73, *supra*; and see *Mayor, &c., of Kidderminster* v. *Hardwick*, L. R. 9 Ex. 13, 43 L. J. Ex. 9, 29 L. T. N. S. 612, 22 W. R. 160.

But this provision applies only to a contract of which the parties at the time of entering into it contemplate that the value or amount shall exceed £50. Therefore, where scarlet fever having broken out, an urban authority appointed a committee under section 200, *post*, and a medical man agreed verbally with the committee on behalf of the urban authority to attend the patients at the rate of 5*s.* 3*d.* per tent per day, and attended until the amount was £100, it was held that this was not a contract whereof the value or amount exceeded £50 within the meaning of the provision: *Eaton* v. *Basker*, L. R. 7 Q. B. D. 529, 50 L. J. Q. B. 444, 44 L. T. N. S. 703, 29 W. R. 597, 45 J. P. 616. And an agreement by an urban authority compromising an action does not fall within the provision, and is not void by reason of not being under seal: *A.-G.* v. *Gaskill*, L. R. 22 Ch. D. 537, 52 L. J. Ch. 163, 47 L. T. N. S. 566, 31 W. R. 135.

Where a committee appointed under sections 200 and 201, *post*, enter into a contract as such, which is avoided by reason of not being under seal, the members of the committee cannot be made liable personally: *Eaton* v. *Basker*, *supra*.

Though a corporation, which is an urban authority (section 6, *ante*) in making contracts uses the name and style of the corporation "acting as the local board," yet the corporation is the essential body and contracting party, and may be sued as such on the contracts: *Andrews* v. *Mayor, &c., of Ryde*, L. R. 9 Ex. 302, 43 L. J. Ex. 174, 23 W. R. 58.

(1) In a contract for the performance of certain building work according to plans and specifications, there is no implied warranty that the work can be successfully executed in the manner described by the plans, &c.: *Thorn* v. *Mayor, &c., of London*, L. R. 1 App. Cas. 120, 45 L. J. Ex. 487, 34 L. T. N. S. 545, 24 W. R. 932.

The urban authority cannot be make liable for "extras," unless there is a contract in respect of them under seal: *Lamprell* v. *Billericay Union*, 3 Ex. 283, 18 L. J. Ex. 282, 12 L. T. 533; *Rutledge* v. *Farnham*, 2 F. & F. 406.

(2) This provision is directory merely and not imperative, and, therefore, an urban

(4.) Before any contract of the value or amount of one hundred pounds or upwards is entered into by an urban authority ten days public notice at the least shall be given, expressing the nature and purpose thereof, and inviting tenders for the execution of the same; and such authority shall require and take sufficient security for the due performance of the same (1):

(5.) Every contract entered into by an urban authority in conformity with the provisions of this section, and duly executed by the other parties thereto, shall be binding on the authority by whom the same is executed and their successors, and on all other parties thereto and their executors, administrators, successors, or assigns to all intents and purposes: Provided that an urban authority may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty is mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such authority may seem proper (2).

Purchase of Lands.

Power to purchase lands.

175 (3). Any local authority may for the purposes and subject to the provisions of this Act purchase or take on lease, sell or exchange any lands (4), whether situated within or without their district; they may also buy up any water-mill, dam, or weir which interferes with the proper drainage of or the supply of water to their district (5).

authority will be liable upon their contract, though these requirements have not been performed. But the non-observance of the provisions may effect the right of the urban authority to levy a rate for the purposes of the contract: *Nowell* v. *Mayor, &c., of Worcester*, 9 Ex. Rep. 457, 23 L. J. Ex. 139; *Cunningham* v. *Wolverhampton Board*, 7 E. & B. 107, 26 L. J. M. C. 33.

(1) Where the authority withheld the fact that the works were to be executed subject to the supervision of another surveyor besides their own, the contractor's surety was held to be discharged: *Stiff* v. *Eastbourne Board*, 19 L. T. N. S. 408, 17 W. R. 68.

(2) There is an implied undertaking on the part of the authority that they are in a position to collect the funds for the purposes of the contract, and to pay the contractor who has done work for them: *Worthington* v. *Sudlow*, 2 B. & S. 509, 31 L. J. Q. B. 131, 6 L. T. N. S. 283, 8 Jur. N. S. 668.

(3) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 84; the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 16, s. 22; the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 47; the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, ss. 31 and 33.

(4) See the interpretation clause, *ante*, p. 44, and the note.

(5) See also section 51 (2), *ante*, and the opinion of the law officers in note (1) thereto.

A local authority who require lands for the purposes of the Act are not confined in exercising their compulsory powers of purchase (see the next section) to the narrow limits of the property strictly required for the purposes specified, as the cases deciding that railway companies cannot take compulsorily more land than is actually required for their works do not apply to a corporation taking lands for public improvements and not for gain: *Quinton* v. *Corporation of Bristol*, L. R. 17 Eq. 524, 43 L. J. Ch. 783, 38 J. P. 516; *Galloway* v. *Mayor, &c., of London*, L. R. 1 H. L. 34, 35 L. J. Ch. 477, 12 Jur. N. S. 747.

In the case of *Re Corporation of Dudley*, *ante*, p. 55, it was held that where a local authority, under section 16, *ante*, run a sewer through the land of a landowner, there is no obligation on them to purchase the right to subjacent support, though this is an easement included in the meaning of the word "lands," but the landowner is under an obligation to afford such support, and must obtain compensation under section 308, *post*. But now see section 4 of the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, *post*.

So manholes for the purpose of entering a sewer may be made without purchasing the land for the purpose: *Swanston* v. *Twickenham Board*, *ante*, p. 54.

Secs. 175, 176.

Any lands acquired by a local authority in pursuance of any powers in this Act contained and not required for the purpose for which they were acquired shall (unless the Local Government Board otherwise direct) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this Act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate (1).

Regulations as to purchase of land.

176 (2). With respect to the purchase of lands (3) by a local authority for the purposes of this Act, the following regulations shall be observed; (that is to say,)

(1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845 (4):

(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

Serve a notice in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands (5).

(3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees and occupiers of lands who have assented, dissented, or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires (6):

(4.) On the receipt of such petition and on due proof of the proper advertise-

(1) As to this clause, see the circular of the Local Government Board, 30th September, 1875, *ante*, p. 13.

As to the power of letting lands which can be conveniently spared, see section 177, *post*.

(2) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 75; the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 18; the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 35.

(3) See the interpretation clause and note (6) thereto, *ante*, p. 44.

(4) See these Acts, *post;* and as to the construction of incorporated Acts, see section 316, *post;* and see the preceding section and the notes thereto. The second clause of the preceding section supplies the place of section 127 of the Lands Clauses Act, 1845.

(5) As to notices and service thereof, see sections 266, 267, *post;* and see the proviso at the end of this section, *post*, p. 143.

(6) See the instructions of the Local Government Board, *post*.

ments having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees and occupiers thereof (1):

(5.) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served (2):

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more of such persons on behalf of all such persons (3).

Power to let lands.

177 (4). Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same (5).

Provision for lands belonging to the Duchy of Lancaster.

178 (6). The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee, tenant or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration,

(1) As to local inquiries, see sections 293—296, *post.*

(2) As to provisional orders, see sections 297 *et seq.*, *post.*

As to service of notices, see note (5), p. 142, *ante.*

A provisional order empowering a local authority to put in force the Lands Clauses Consolidation Acts with respect to the purchase of land has no validity until it has been confirmed by Act of Parliament, and cannot be brought up by *certiorari* in order to be quashed: *Frewen* v. *Hastings Board*, 34 L. J. Q. B. 159, 12 L. T. N. S. 346, 13 W. R. 678, 11 Jur. N. S. 670.

The representation made upon a plan deposited and referred to in an Act of Parliament is of no effect unless the representation is incorporated in the Act: *N. British Ry.* v. *Tod*, 12 Cl. & F. H. L. Cas. 722; *A.-G.* v. *Gt. Eastern Ry.*, L. R. 6 H. L. 367, 23 L. T. N. S. 344.

Where an arbitration takes place to determine the value of lands taken under the provisions of this Act, the procedure with regard to arbitration and the right to costs are wholly governed by the provisions of the Lands Clauses Consolidation Acts and not by the provisions in sections 179 *et seq.*, *post: Ex parte Rayner*, 3 Q. B. D. 446, 47 L. J. Q. B. 660, 39 L. T. N. S. 232.

As to injunctions to restrain a public body from promoting a scheme contrary to the stipulations of a contract entered into by them, see *Telford* v. *Metropolitan Board of Works*, L. R. 13 Eq. 574, 41 L. J. Ch. 589, 26 L. T. N. S. 150, 20 W. R. 481.

(3) The proviso as to service in the case of owners of rights of common is new.

(4) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 34.

(5) See section 175, *ante*, p. 141, and the notes thereto.

(6) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 32.

Secs. 178, 179.

the whole or any part of any lands belonging to Her Majesty, her heirs or successors in right of the said duchy, or any right, interest or easement in, through, over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty, her heirs or successors, the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855 (1).

ARBITRATION.

Mode of reference to arbitration.

179 (2). In case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for), and in case of any matter which by this Act is authorised or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred (3).

(1) *I.e.*, 18 & 19 Vict. c. 58.

(2) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 123.

(3) The following are the sections of the Act which authorise or direct reference of matters in dispute to arbitration, *viz.*:—sections 22, 52, 61, 150, 155, 228, 308, 328, 333.

Generally as to the submission to arbitration, proceedings before an arbitrator, making an award, referring back, setting aside and enforcing the award, see Russell on Awards, 6th ed., Redman on Awards, and the chapter on "Arbitration" in Archibald's Country Solicitor's Practice, pp. 399—477. The general rules are subject to the special provisions of the next section.

It is not a condition precedent to the settlement of the amount of compensation by arbitration under this section that there should be no dispute as to liability or that such dispute, if any, should have been determined: *Pearsall* v. *Brierley Hill Board*, L. R. 11 Q. B. D. 735, 52 L. J. Q. B. 529, 32 W. R. 141 (C. A.), 49 L. T. N. S. 486.

It would seem that a special case may be stated by the arbitrator or umpire under the Common Law Procedure Act, 1854, section 5: *Re Corporation of Dudley*, *ante*, p. 55; *Rhodes* v. *Airedale Drainage Commissioners*, L. R. 1 C. P. D. 402, 45 L. J. Q. B. 861, 35 L. T. N. S. 46, 24 W. R. 1053; but see *Bexley Board* v. *W. Kent Sewerage Board*, L. R. 9 Q. B. D. 518, 51 L. J. Q. B. 456, and section 180, sub-sections (2) and (15), *post*.

Under the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 144 (which corresponded with section 308 of the present Act), it was held that a *mandamus* lay to a local board to compel them to make compensation, where they had denied their liability to do so, although the person seeking compensation had claimed no specific sum and had taken no steps to have the amount settled by arbitration: *R.* v. *Burslem Board*, 1 El. & El. 1077, 29 L. J. Q. B. 242, 8 W. R. 584, 31 L. T. N. S. 445, 6 Jur. N. S. 696.

As to resisting an award on the ground that the arbitrator has taken into consideration matters which he ought not properly to have considered, see *Uttley* v. *Todmorden Board*, 44 L. J. C. P. 19, and *Duke of Buccleugh* v. *Metropolitan Board*, *post*, p. 147.

It would seem that in an action on an award when the defendants plead that the compensation awarded is in respect of matters not the subject of compensation, the award is not evidence that the compensation awarded is in respect of matters the subject of compensation: *Rhodes* v. *Airedale Drainage Commissioners*, *supra*.

Where a claim is made for compensation under section 308, *post*, and the local authority refuse to acknowledge any liability or to appoint an arbitrator, and the reference proceeds before the arbitrator appointed by the claimant without the local authority becoming in any way a party to the proceedings, and an award is made against them, it is not enough, on a motion to set aside the award for want of jurisdiction, to simply deny any liability to make compensation, but some ground for asserting non-

Sec. 180.

Regulations as to arbitration.

180 (1). With respect to arbitrations under this Act, the following regulations shall be observed; (that is to say,)

(1.) Every appointment of an arbitrator under this Act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his hand, or if such party be a corporation aggregate under their common seal:

(2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same:

(3.) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation:

(4.) If for the space of fourteen days after any matter by this Act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties (2):

(5.) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead; and if such party fails so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed *ex parte;* and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made:

(6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made (3):

(7.) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire (4):

liability must be shown: *Burgess* v. *Northwich Local Board*, 37 L. T. N. S. 355, 26 W. R. 19.

See section 181, *post*, as to cases where the amount claimed is less than £20.

See also section 308 and the notes thereto, *post*, and sections 25—37 of the Lands Clauses Consolidation Act, 1845 (which by section 176 (1), *ante*, is incorporated with this Act), *post*. But as to arbitrations under the Lands Clauses Consolidation Acts, see *Ex parte Rayner*, *ante*, p. 143.

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, ss. 123—128.

(2) See *Burgess* v. *Northwich Board*, *supra*.

As to notices and service thereof, see sections 266, 267, *post*.

(3) Where an arbitrator published his award after the time limited for making it, and without enlarging the time, the award was held bad: *Kellett* v. *Tranmere*, 34 L. J. Q. B. 87, 11 L. T. N. S. 457, 13 W. R. 207. See sub-section 8, *post*.

(4) See the Circular of the Local Government Board of 30th September, 1875, *ante*, p. 14.

If the arbitrators allow twenty-one days from the last of their appointments to expire without entering upon the reference or making an award, they may still, if called upon

Sec. 180.

(8.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire (1):

(9.) The time for making an award by arbitrators under this Act shall not in any case be extended beyond the period of two months from the date of the submission, and the time for making an award by an umpire under this Act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him (2):

(10.) Before any arbitrator or umpire enters on a reference under this Act he shall make and subscribe the following declaration before a justice of the peace; (that is to say,)

"I, *A. B.*, do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875.

A. B."

(11.) Such declaration shall be annexed to the award when made; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanour:

(12.) Any arbitrator, arbitrators, or umpire appointed by virtue of this Act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath:

(13.) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire (3):

(14.) Any submission to arbitration under the provisions of this Act may be made a rule of any of the Superior Courts, on the application of any party thereto:

(15.) The award of arbitrators or of an umpire under this Act shall be final and binding on all parties to the reference (4).

by the parties afterwards, make a valid appointment of an umpire at any time before the end of two months from the date of the last appointment: *Holdsworth* v. *Wilson*, 4 B. & S. 1, 32 L. J. Q. B. 289, 8 L. T. N. S. 434, 11 W. R. 733, 10 Jur. N. S. 171.

(1) See *Kellett* v. *Tranmere*, *ante*, p. 145. Where the arbitrator determines to proceed, though the time is expired, contrary to the protest on that ground of one of the parties, the fact that the party continues to attend and contest the case does not give the arbitrator power to make an award: *Ringland* v. *Lowndes*, 17 C. B. N. S. 514, 33 L. J. C. P. 337, 12 W. R. 1010, 10 Jur. N. S. 850.

(2) See the Circular of the Local Government Board of 30th September, 1875, *ante*, p. 14.

(3) The arbitrator or umpire need not fix the amount of the costs, and an action may be brought on the award without first having the costs taxed: *Holdsworth* v. *Wilson*, *supra*. As to costs, where the arbitration to ascertain the value of land taken under sections 175, 176, *ante*, see *Ex parte Rayner*, *ante*, p. 143.

An order of course to tax costs under sections 37 and 38 of the Attorneys' Act cannot be obtained in respect of costs which a local authority are ordered to pay in an arbitration under this Act: *Re Cowdell*, 52 L. J. Ch. 246, 31 W. R. 335, Weekly Notes, 1883, p. 18.

(4) As to power of arbitrator to state a special case, see *Re Corporation of Dudley*, *ante*, p. 55.

An award made in an arbitration between one of several frontagers called on to pay the expenses of paving a street under section 150, *ante*, and the urban authority, whereby the arbitrators alter the assessment in regard to all the frontagers, is not binding upon frontagers not a party to the arbitration: *Tunbridge Wells Board* v. *Ackroyd*, L. R. 5 Ex. D. 199, 49 L. J. Ex. 403, 42 L. T. N. S. 640, 28 W. R. 450, 44 J. P. 504.

An arbitrator may be called as a witness in proceedings to enforce his award, and may

Secs. 181, 182.

181 (1). All questions referable to arbitration under this Act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party before a Court of Summary Jurisdiction (2), but the Court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the Court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid.

Claims under twenty pounds may be referred to Court of Summary Jurisdiction.

BYE-LAWS (3).

182 (4). All bye-laws made by a local authority under and for the purposes of

Authentication and

be asked as to what matters were presented to him for consideration, but not as to what passed in his own mind in exercising his discretion upon them: *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418, 41 L. J. Ex. 137.

An arbitrator who has executed an instrument as and for his award is *functus officio*, and cannot of his own authority remedy any mistake which he may have made in executing it: *Mordue* v. *Palmer*, L. R. 6 Ch. 22, 40 L. J. Ch. 8, 23 L. T. N. S. 752, 19 W. R. 86.

(1) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 64.

(2) See the interpretation clause, *ante*, p. 47.

(4) The previous enactment was the Public Health Act, 1875, 11 & 12 Vict. c. 63, s. 115. It required that the bye-laws should have the signature of five or more of the members of the Local Board of Health. This requirement is omitted from the present Act.

(3) Bye-law (from Scandinavian *by*, a town, the termination in Whitby and other names, and *law*, Danish *bylov*, Swed. *bylag*, or it may be a law made *obiter* or by the *by*) means a local or private law, a law made by an incorporated body for the regulation of its own affairs or the affairs intrusted to its care. Town councils, river trustees, railway companies, &c., enact bye-laws, which are binding upon all coming within the sphere of the operation of such bodies. See Imperial Dictionary, sub verb.

For full information as to the qualities which a bye-law should have in order to be valid, see *Case of the City of London*, 8 Co. Rep. p. 121; Comyns' Digest, BY LAW (A), (B 1), and (C), and Lumley on Bye-laws. The following short statement, however, may be useful:—

General requisities to validity of bye-law.

(1.) A bye-law must be consistent with and not repugnant to the general law: 5 Co. 63. But "a bye-law cannot be said to be inconsistent with the laws of this kingdom merely because it forbids the doing of something which might lawfully have been done before, or requires something to be done which there was no previous obligation to do:" *Edmonds* v. *Waterman's Company*, 24 L. J. M. C. 124, 1 Jur. N. S. 727, *per* Lord Campbell, C.J.

(1) Must not be repugnant to law of the land.

(2.) The bye-law must provide something in addition to the general law, and therefore must not re-enact it: *R.* v. *Saddlers' Company*, 3 E. & E. 80; *Harrison* v. *Evans*, 6 Bro. P. C. 181. But this rule does not render a bye-law void where, though the matter is already prohibited by law, the bye-law superadds a penalty to meet the injury caused to the particular body affected by the offence or default: *City of London* v. *Vanacre*, 1 Salk. 142, 1 Ld. Raym. 500, Carth. 483.

(2) Must not merely re-enact general law of the land.

(3.) The bye-law must not make a provision in respect of a matter already provided for by law other than the general law has prescribed. Thus, in *Calder and Hebble Navigation Co.* v. *Pilling*, 14 M. & W. 76, a company having power to make bye-laws for the good and orderly use of the navigation and the well governing of the bargemen, &c., made a bye-law to close the navigation on Sunday, and imposing a penalty of £5, this was held an illegal bye-law.

(3) Must not make a provision other than that made by the general law of the land.

(4.) The bye-law must be certain, definite, and free from ambiguity, and the penalty must be certain.

(4) Must be certain.

The power to impose a reasonable penalty is incident to the power to make a bye-law: *Hall* v. *Nixon*, *ante*, p. 130.

(5.) The bye-law must be general and obligatory on all persons equally and indiscriminately. See *Waite* v. *Garston Board*, *post*, p. 148.

(5) Must be equally binding.

(6.) The bye-law must be *reasonable*. See for example, *Hattersley* v. *Burr*, *ante*,

(6) Must be reasonable.

Secs. 182, 183.

alteration of bye-laws.

Power to impose penalties on breach of bye-laws.

this Act shall be under their common seal; and any such bye-law may be altered or repealed by a subsequent bye-law made pursuant to the provisions of this Act: provided that no bye-law made under this Act by a local authority shall be of any effect if repugnant to the laws of England or to the provisions of this Act.

183 (1). Any local authority may, by any bye-laws made by them under this Act, impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of five pounds for each offence, and in the case of a

p. 130, and *Young* v. *Edwards*, *ante*, p. 130, and *Hall* v. *Nixon*, *ante*, p. 130, where these cases were not followed. See also *Marshall* v. *Smith*, *ante*, p. 129; *Tucker* v. *Rees*, *ante*, p. 130; and *Elwood* v. *Bullock*, 13 L. J. M. C. 330. So where, under the powers of the Local Government Act, 1858, section 34 (which corresponded with section 157 of the present Act, *ante*, p. 128) a local board made a bye-law that "No dwelling-house shall be hereafter erected without having at the rear or side thereof a good and sufficient street or roadway at least twelve feet wide, communicating with some adjoining public street or highway, in such situation as shall be approved by the Local Board, for the purpose of affording efficient means of access to the privy or ashpit belonging to such house: provided always that it shall be lawful for the Local Board, at their discretion, in special cases to modify the requirement hereinbefore contained, and to dispense with strict compliance with the terms of this bye-law on such conditions as they may deem fit and reasonable," it was held the bye-law was unreasonable, as it imposed a general and unnecessary restriction on the erection of all houses: *Waite* v. *Garston Board*, L. R. 3 Q. B. 5, 37 L. J. M. C. 19, 17 L. T. N. S. 201, 16 W. R. 78. See also *Fielding* v. *Rhyl Improvement Commissioners*, *ante*, p. 129, and *Wortley* v. *Nottingham Board*, 21 L. T. N. S. 582, 33 J. P. 806. So it seems that a bye-law that no resolution of a local board should be altered or rescinded unless as many members are present at the meeting as were present at the meeting when the resolution was adopted, is unreasonable and bad: *Mayer* v. *Burslem Board*, 39 J. P. 437.

(7.) The bye-law must be positive.

(8.) It must not be *ultra vires*. Thus a bye-law requiring all occupiers within the district to remove "all snow and other obstructions" from the footpaths before their premises, made in pursuance of section 55 of the Public Health Act, 1848, which authorised the making of bye-laws with respect to the removal by occupiers of "dust, ashes, rubbish, filth, manure, dung, and soil," was held bad, although it had been allowed by a Secretary of State, inasmuch as it was not warranted by the statute: *R.* v. *Wood*, 5 El. & B. 49, 3 C. L. R. 1134, S. C. *nom. R.* v. *Rose*, 24 L. J. M. C. 130, 1 Jur. N. S. 802; see also *Slee* v. *Bradford*, 4 Giff. 262, 9 Jur. N. S. 815, 8 L. T. N. S. 491; *Brown* v. *Holyhead Board*, *ante*, p. 126; *Tucker* v. *Rees*, *ante*, p. 130.

Bye-laws are divisible, and a bye-law may be good in part and bad in part: *Gunmakers' Co.* v. *Fell*, Willes. 390; *Fazakerley* v. *Wiltshire*, 1 Stra. 469; *R.* v. *Lundie*, 31 L. J. M. C. 137, 5 L. T. N. S. 831, 8 Jur. N. S. 640; *R.* v. *Saddlers' Co.*, 32 L. J. Q. B. 345, *Mayer* v. *Burslem Board*, *supra*. Provided the two parts be entire and distinct: *Blackpool Board* v. *Bennett*, 4 H. & N. 138; and see *per* Lush, J., in *Hall* v. *Nixon*, *ante*, p. 130.

The confirmation of a bye-law by the Local Government Board, as provided by section 184, *post*, cannot give the bye-law validity, if it is bad in other respects: *R.* v. *Wood* or *Rose*, *supra*.

A bye-law has the same effect within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large: *Hopkins* v. *Mayor, &c. of Swansea*, 4 M. & W. 621, *per* Lord Abinger, at p. 640.

Bye-laws made by any sanitary authority under the Sanitary Acts, if inconsistent with this Act, are deemed to be repealed. See section 315, *post*.

The various sets of bye-laws issued by the Local Government Board will be found *post*.

It seems that the resolution of a local board dismissing an officer is not a resolution rescinding the resolution by which he was appointed within the meaning of a bye-law with respect to the rescission of resolutions of the local board: *Ex parte Richards*, L. R. 3 Q. B. D. 368; 47 L. J. Q. B. 498; 38 L. T. N. S. 684; 26 W. R. 695.

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 11

continuing offence a further penalty not exceeding forty shillings for each day after written notice (1) of the offence from the local authority; but all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty (2).

Nothing in the provisions of any Act incorporated herewith shall authorise the imposition or recovery under any bye-laws made in pursuance of such provisions of any greater penalty than the penalties in this section specified.

Confirmation of bye-laws.

184 (3). Bye-laws made by a local authority under this Act shall not take effect unless and until they have been submitted to and confirmed by the Local Government Board, which Board is hereby empowered to allow or disallow the same as it may think proper (4); nor shall any such bye-laws be confirmed—

Unless notice of intention to apply for confirmation of the same has been given in one or more of the local newspapers circulated within the district to which such bye-laws relate, one month at least before the making of such application; and

Unless for one month at least before any such application a copy of the proposed bye-laws has been kept at the office of the local authority, and has been open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward.

The clerk of the local authority shall, on the application of any such ratepayer, furnish him with a copy of such proposed bye-laws or any part thereof, on payment of sixpence for every hundred words contained in such copy.

A bye-law required to be confirmed by the Local Government Board shall not require confirmation, allowance, or approval by any other authority.

Bye-laws to be printed, &c.

185 (5). All bye-laws made by a local authority under this Act, or for purposes the same as or similar to those of this Act under any local Act, shall be printed and hung up in the office of such authority; and a copy thereof shall be delivered to any ratepayer of the district to which such bye-laws relate, on his application for the same; (6) a copy of any bye-laws made by a rural authority shall also be transmitted to the overseers of every parish to which such bye-laws relate, to be deposited with the public documents of the parish, and to be open to the inspection of any ratepayer of the parish at all reasonable hours.

Evidence of bye-laws.

186 (7). A copy of any bye-laws made under this Act by a local authority (not being the council of a borough), signed and certified by the clerk of such authority to be a true copy and to have been duly confirmed, shall be evidence until the contrary is proved in all legal proceedings of the due making, confirmation, and existence of such bye-laws without further or other proof.

Bye-laws made under

187 (8). Bye-laws made by the council of any borough under the provisions of

(1) As to notices and service thereof, see sections 266, 267, *post*.

(2) As to recovery of penalties, see sections 251 *et seq.*, *post*.

See *Hall* v. *Nixon*, *ante*, p. 130, in which case it was held that a bye-law requiring every person intending to erect any new buildings to give notice of his intention to do so, and deposit plans and sections, and imposing a penalty on any one erecting any new building without giving such notice and depositing plans and sections, was not inconsistent with another bye-law, which empowered the urban authority to alter and pull down work done contrary to any bye-law.

(3) The previous enactments in the case of this and the next section were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 115, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 48.

(4) Confirmation by the Local Government Board does not render a bye-law valid if it is beyond the power of the local authority to make: *R.* v. *Wood* or *Rose*, *ante*, p. 148.

See the instructions as to bye-laws issued by the Local Government Board, *post*.

(5) See note (3) to section 184, *supra*.

(6) By section 306, *post*, a penalty is imposed upon any person destroying, &c., any board on which any bye-law, &c., is inscribed.

(7) This provision is new. A similar provision exists as to bye-laws made by a town council. See the note to the next section.

(8) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 46.

Secs. 187—189.

s. 90 of 5 & 6 Will. IV. c. 76, to be submitted to Local Government Board

section ninety of the Act of the sixth year of King William the Fourth, chapter seventy-six, for the prevention and suppression of certain nuisances, shall not be required to be sent to a Secretary of State, nor shall they be subject to the disallowance in that section mentioned; but all the provisions of this Act relating to bye-laws shall apply to the bye-laws so made as if they were made under this Act.

As to regulations of local authority.

188. The provisions of this Act relating to bye-laws shall not apply to any regulations which a local authority is by this Act authorised to make (1); nevertheless, any local authority may cause any regulations made by them under this Act to be published in such manner as they see fit.

Officers and Conduct of Business of Local Authorities.

Officers of Local Authorities.

Appointment of officers of urban authority.

189 (2). Every urban authority shall from time to time appoint fit and proper persons to be medical officer of health (3), surveyor, inspector of nuisances (4), clerk (5), and treasurer (5): Provided that if any such authority is empowered by any other Act in force within their district to appoint any such officer, this enactment shall be deemed to be satisfied by the employment under this Act of the officer so appointed, with such additional remuneration as they think fit, and no second appointment shall be made under this Act. Every urban authority shall also appoint or employ such assistants, collectors, and other officers and servants as may be necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed (6).

By 36 & 37 Vict. c. 33, s. 2, it is provided that "the production of a written or printed copy of any bye-laws made by the council of a borough, either under the Municipal Corporations Act of the fifth and sixth of William the Fourth, chapter seventy-three, or under any present or future general or local Act of Parliament, authenticated by the common seal of the borough shall be evidence until the contrary is proved of the due making and existence of such bye-laws, and if so stated in such copy, of the same bye-laws having been approved and confirmed by the authority whose approval or confirmation is or shall be required to the making or enforcing of such bye-laws in all legal proceedings without further proof of the making of such bye-laws, or of such approval or confirmation, or of the said common seal."

(1) See sections 125, 143, 189, 200, and 202, and Schedule I. 1. (1), *post*.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 37, and the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 10.

(3) As to the medical officer of health, see section 191, *post*; and see section 136, *ante*, as to appointment of medical and other officers in case of epidemic diseases.

(4) As to the appointment, tenure of office, duties and remuneration of the inspector of nuisances, see the regulations of the Local Government Board, *post*.

(5) By section 318, *post*, it is provided that nothing in this Act shall affect the rights or position of any clerk or treasurer the tenure of whose office is regulated by section 12 of the Public Health Act, 1872.

(6) As to what offices are tenable by the same person, see section 192, *post*.

As to the giving of security by officers intrusted with money, see section 194, *post*.

Formerly the duties and conduct of officers, &c., were settled by bye-laws, but this is now unnecessary. The regulations which have now taken the place of bye-laws need not be confirmed by the Local Government Board. See section 188, *supra*.

In order to bind the urban authority, the appointment must be under seal: *Austin* v. *Bethnal Green Vestry*, *ante*, p. 138; and see section 173 and notes thereto, *ante*, and *per* Brett, L.J., *Newington Local Board* v. *Eldridge*, *post*, p. 151.

But it is not competent to third parties to raise the question that the appointment is not under seal. It is sufficient that the officer is *de facto* in office and acting under it:

Secs. 189, 190.

Subject, in the case of officers any portion of whose salary is paid out of moneys voted by Parliament, to the powers of the Local Government Board under this Act, the urban authority may pay to the officers and servants so appointed or employed such reasonable salaries, wages, or allowances as the urban authority may think proper; and, subject as aforesaid, every such officer and servant appointed under this Act shall be removable by the urban authority at their pleasure (1).

Appointment of officers of rural authority.

190 (2). Every rural authority shall from time to time appoint fit and proper persons to be medical officer or officers of health, and inspector or inspectors of nuisances; they shall also appoint such assistants and other officers and servants as may be necessary and proper for the efficient execution of this Act (3).

Smith v. *Hirst*, 23 L. T. N. S. 665. See *Smart* v. *W. Ham Union*, 11 Ex. 867, 25 L. J. Ex. 210; *R.* v. *Greene*, 17 Q. B. 793, 21 L. J. M. C. 137; *Roberts* v. *Drewitt*, 18 C. B. N. S. 48.

The legality of the appointment of the superior officers may perhaps be questioned by means of *quo warranto* information: *R.* v. *Guardians of St. Martin-in-the-Fields*, 17 Q. B. 149; but see *Darley* v. *R.*, 12 Cl. & F. 520.

Stamp duty is not chargeable upon appointment. 38 Vict. c. 23, s. 14.

See the saving clause as to officers existing at the time of the passing of this Act, section 326, *post*.

As to compensation to officers removed from office or deprived of the whole or part of their emoluments by this Act or the Public Health Act, 1872, or any provisional order made in pursuance of these Acts, see section 309, *post*.

By rule 64 of Schedule II. (1), *post*, any member of a local board who accepts or holds any office or place of profit under the board shall cease to be a member.

An action lies for a salary which is authorised to be paid out of rates leviable by the defendants: *Hall* v. *Taylor*, 1 E. B. & E. 107, 27 L. J. Q. B. 311, 22 Jur. N. S. 877. Otherwise, except where there is a contract under seal, no action lies, but the remedy is by *mandamus: Bogg* v. *Pearse*, 10 C. B. 534, 20 L. J. C. P. 99. See also *Edwards* v. *Lowndes*, 1 E. & B. 81, 22 L. J. Q. B. 104, 17 Jur. N. S. 412; *Kendall* v. *King*, 25 L. J. C. P. 132; and *Cane* v. *Chapman*, 1 N. & P. 104.

As to power to award extra remuneration to officer for performance of work not falling within the scope of his ordinary duties, see *R.* v. *Gloucester Board*, 33 L. T. 145. And as to giving gratuities to officers out of the rates beyond their salaries, see *Ex parte Mellish*, 8 L. T. N. S. 47.

As to employment of solicitor, see *Hall* v. *Taylor*, *supra*. It would seem that if a person were appointed solicitor to a corporation, and were to bring an action against them for employing some one else, he would have to show his appointment under seal. But if he were to conduct a suit for them and to bring an action for his costs, it would not be necessary to show an appointment under seal: *Newington Local Board* v. *Eldridge*, L. R. 12 Ch. D 349, *per* Brett, L.J., at p. 360. It would seem that where the clerk of an urban authority performs professional services for them as a solicitor, he has a lien upon the papers for his costs: *Newington Local Board* v. *Elridge*, *supra*. In *Bush* v. *Martin*, 2 H. & C. 311, 33 L. J. Ex. 17, 10 Jur. N. S. 347, 8 L. T. N. S. 509, it was held that the clerk (who was an attorney) of town improvement commissioners at a fixed salary, need not deliver a signed bill as an attorney in respect of his salary.

(1) The officer may be removed though no charge has been made, nor any notice given to him, nor opportunity afforded for making a defence, and without any statement of the grounds of removal: *R.* v. *Governors of Darlington School*, 6 Q. B. 682, 14 L. J. Q. B. 67; *Teather* v. *Poor Law Commissioners*, 19 L. J. M. C. 70, 15 J. P. 36.

It seems that a resolution dismissing an officer, is not a resolution rescinding the resolution by which he was appointed within the meaning of a bye-law with respect to the rescission of resolutions by a local board: *Ex parte Richards*, *ante*, p. 148.

As to protection of officers of local authorities from personal liability, see section 265, *post*.

(2) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 10, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 6.

(3) See the notes to the preceding section. By the Divided Parishes and Poor Law

Secs. 190—192.

There may be awarded to the clerk and treasurer of the guardians of any union, in respect of the additional duties of such officers under this Act, such remuneration as the rural authority may, with the approval of the Local Government Board, determine. If the clerk of the union is unable or unwilling to undertake such additional duties, the assistant clerk of the union shall be appointed to discharge the same, with such remuneration as aforesaid.

As to medical officer of health, &c.

191 (1). A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner (2); and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union with regard to the qualification, appointment, duties, salary and tenure of office of a medical officer of health or other officer of a local authority any portion of whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act (3).

The same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities of such districts; and the Local Government Board shall by order prescribe the mode of such appointment, and the proportions in which the expenses of such appointment and the salary and charges of such officer shall be borne by such authorities (4).

Any district medical officer of a union may, with the sanction of the Local Government Board and subject to such conditions as the said Board may prescribe, be appointed a medical officer of health; and a medical officer of health may exercise any of the powers with which an inspector of nuisances is invested by this Act.

In case of illness or incapacity of the medical officer of health a local authority may appoint and pay a deputy medical officer, subject to the approval of the Local Government Board.

Offices tenable by same persons.

192 (5). The same person may be both surveyor and inspector of nuisances; but neither the person holding the office of treasurer, nor his partner, nor any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk, nor his partner, or any person in the service or employ of them or either of them, shall be eligible to hold or shall in any manner assist or officiate in the office of treasurer.

Any person offending against this enactment shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt (6).

Amendment Act, 1876, 39 & 40 Vict. c. 61, s. 17, it is provided that "if any officer seek a superannuation allowance from the guardians of any union or parish or from the overseers of any such parish under any statute applicable to such allowance, his service as a registrar of marriages or under any of the provisions of the Sanitary Acts as defined by the 'Public Health Act, 1875,' or of that Act shall not operate to prevent him from obtaining the same." Further as to superannuation of officers of unions and parishes, see 27 & 28 Vict. c. 42.

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 40; the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 10; the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 5.

(2) *I.e.*, a person registered under the Medical Acts, 1857—1876. See 21 & 22 Vict. c. 90, s. 34.

(3) See the Circular of the Local Government Board, 30th September, 1875, *ante*, p. 14; and as to the annual report and duties of medical officers, see the instructions, &c., *post*.

(4) See section 286, *post*, and the notes thereto; and see the memorandum dated February, 1876, issued by the Local Government Board, *post*.

(5) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 37.

(6) It would seem that 31 Eliz. c. 5, s. 5, applies, and that the action must be brought within one year after the offence: *Dyer* v. *Best*, L. R. 1 Ex. 152, 4 H. & C. 189.

193 (1). Officers or servants appointed or employed under this Act by the local authority shall not in anywise be concerned or interested in any bargain or contract made with such authority for any of the purposes of this Act (2).

Officers not to contract with local authority.

If any such officer or servant is so concerned or interested, or, under colour of his office or employment, exacts or accepts any fee or reward whatsoever other than his proper salary, wages and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt (3).

Officers intrusted with money to give security.

194 (4). Before any officer or servant of a local authority enters on any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local authority by whom he is appointed shall take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof (5).

Officers to account.

195 (6). Every officer and servant appointed or employed under this Act by a local authority shall, when and in such manner as may be required by such authority, make out and deliver to them a true and perfect account in writing of all moneys received by him for the purposes of this Act, stating how and to whom and for what purpose such moneys have been disposed of, and shall, together with such accounts, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him on the balance of accounts.

And every such officer or servant employed in the collection of any rate made under this Act shall, within seven days after he has received any moneys on account of any such rate, pay over the same to the treasurer, and shall, as and when the local authority may direct, deliver a list signed by him and containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them (7).

Summary proceedings

196 (8). If any officer or servant appointed or employed under this Act by a local authority—

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 38.

(2) See Schedule II. (I.) rule 64, *post*, p. 238, and the note thereto.

Where works were executed by a local board and bricks were used of which their surveyor was patentee and upon the sale of which he received a commission from the manufacturers, it was held that this did not come within the meaning of the previous enactment: *Wednesbury* v. *Stevenson*, 27 J. P. 741.

(3) See note (6), *ante*, p. 152.

(4) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 39.

(5) As to the release of a surety by reason of any alteration in the relative position of the other parties, see *Bonar* v. *McDonald*, 3 H. L. Cas. 226, 14 Jur. 1077; *Holland* v. *Lea*, 9 Ex. 430, 2 C. L. R. 532, 23 L. J. Ex. 122; *Pybus* v. *Gibb*, 6 E. & B. 902, 26 L. J. Q. B. 41; *Oswald* v. *Mayor, &c., of Berwick*, 5 H. L. Cas. 856, 25 L. J. Q. B. 383; *Skillett* v. *Fletcher*, L. R. 1 C. P. 217, 2 C. P. 469, 36 L. J. C. P. 206, 16 L. T. N. S. 426, 15 W. R. 876, and *Black* v. *Ottoman Bank*, 8 Jur. N. S. 801. As to negligence on the part of obligees in calling upon an officer to account, see *Guardians of Mansfield Union* v. *Wright*, *infra*; and as to discharge of surety where the obligees continue the officer, &c., in their employment after notice of dishonesty on his part, see *Phillips* v. *Foxall*, L. R. 7 Q. B. 666, 41 L. J. Q. B. 293, 20 W. R. 900.

The surety is not discharged by proceedings under section 196, *post*.

(6) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 39.

(7) As to whether, where security is given under section 194, negligence on the part of the local authority to call upon their officer to account, whereby he defrauds the authority, discharges his sureties, see *Guardians of Mansfield Union* v. *Wright*, L. R. 9 Q. B. D. 683.

(8) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 39.

Secs. 196—199.

against defaulting officers.

Fails to render accounts, or to produce and deliver up vouchers and receipts, or to pay over any moneys, as and when required by this Act, or

Fails within five days after written notice in that behalf from the local authority to deliver up to the local authority all books, papers, writings, property, and things in his possession or power, relating to the execution of this Act, or belonging to such authority,

the local authority may complain to any justice, and such justice shall thereupon summon the party charged to appear before a Court of Summary Jurisdiction.

On the appearance of the party charged, or on proof that the summons was personally served on him, or left at his last known place of abode or business, if it appears to the Court that he has failed to render any such accounts, or to pay over such moneys, or to produce and deliver up any such vouchers or receipts, books, papers, writings, property, or things as aforesaid in accordance with the provisions of this Act, and that he still fails or refuses so to do, the Court may commit the offender to gaol, there to remain without bail until he has rendered such accounts, paid over such moneys, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, and things in respect of which the charge was made: Provided that a person shall not be imprisoned under this section for a period exceeding six months (1).

No proceeding under this section shall be construed to relieve or discharge any surety of the offender from any liability whatever

Mode of conducting Business.

Urban authority to provide offices.

197 (2). Every urban authority shall from time to time provide and maintain such offices as may be necessary for transacting their business, and that of their officers and servants under this Act (3).

Proceedings, &c., of urban authority being the council of a borough.

198 (4). Where an urban authority are the council of a borough they shall, subject to the provisions of this Act, exercise and execute their powers, authorities, and duties under this Act according to the laws for the time being in force with respect to municipal corporations in England (5).

Meetings, &c., of urban authority not being the council of a borough.

199 (6). Every urban authority (not being the council of a borough) shall hold an annual meeting (7) and other meetings for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing their powers and duties under this Act.

Meetings of local boards shall be held and the proceedings thereat shall be conducted in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act; and any improvement commissioners may, if they think fit, adopt all or any of such rules.

(1) These proceedings are in their nature civil and not criminal, being for the purpose not of punishment but of coercion by way of distraint; the offence is a continuing one, and the limitation of six months within which summary proceedings must be taken does not apply: *Mayer* v. *Harding*, 17 L. T. N. S. 140, 32 J. P. 421; see also *R.* v. *Pratt*, L. R. 5 Q. B. 176, 29 L. J. M. C. 73, 21 L. T. N. S. 750, 18 W. R. 626, and *R.* v. *Master*, L. R. 4 Q. B. 285, 38 L. J. M. C. 73, 19 L. T. N. S. 348, 17 W. R. 442.

It would seem that it is in the discretion of the justices whether they will commit. See *R.* v. *Justices of Norfolk*, 4 B. & Ad. 238.

As to the auditing of accounts, and falsification of accounts by officer of local authority, see section 250 and notes thereto, *post*.

(2) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 35.

(3) As to purchase of land by the local authority for the purposes of the Act, see sections 175, 176 and notes thereto, *ante*.

As to the rateability of a local authority in respect of premises occupied by them, see *R.* v. *Justices of Hull*, 4 E. & B. 29 S.C. *sub. nom. R.* v. *Cooper*, 23 L. J. M. C. 183.

(4) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 12.

(5) See the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, *post*, pp. 259 *et seq.* See *Andrews* v. *Mayor, &c., of Ryde*, *ante*, p. 140.

(6) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 34.

(7) See Sched. I. (I.), sections 3 and 11, *post*, pp. 225, 226.

Power of urban authority to appoint committees.

200 (1). Every urban authority may from time to time appoint out of their own number so many persons as they may think fit, for any purposes of this Act which in the opinion of such authority would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it (2).

Power of rural authority to delegate their powers and duties to a committee.

201 (3). A rural authority may, at any meeting specially convened for the purpose, delegate for the current year of their office all their powers to a committee consisting wholly of their own members; provided that one third at least of such committee shall consist of *ex-officio* guardians, but in case an adequate number of such *ex-officio* guardians does not exist, then the number deficient shall be made up of elected guardians; and any such committee shall have the powers by this Act vested in the rural authority by which it was formed, and shall be deemed to be during such year of office as aforesaid the rural authority of the district (4).

Power of rural authority to form parochial committees.

202 (5). A rural authority (including any committee so formed as aforesaid) (6) may, at any meeting specially convened for the purpose, form for any contributory place (7) within their district a parochial committee consisting wholly of members of such authority or committee, or partly of such members and partly of such other persons liable to contribute to the rate levied for the relief of the poor in such contributory place, and qualified in such other manner (if any) as the authority forming such parochial committee may determine.

A rural authority (including any committee so formed as aforesaid) (6) may from time to time add to or diminish the number of the members, or otherwise alter the constitution of any parochial committee formed by it, or dissolve any parochial committee.

A parochial committee shall be subject to any regulations (8) and restrictions which may be imposed by the authority which formed it: Provided that no jurisdiction shall be given to a parochial committee beyond the limits of the contributory place for which it is formed, and that no powers shall be delegated to a parochial committee except powers which the rural authority could exercise within such contributory place (9).

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 36; and see the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 5.

(2) See the Circular issued by the Local Government Board, dated 30th September, 1875, *ante*, p. 14; and see section 204 and the notes thereto, *post*.

In *Bush* v. *Martin*, *ante*, p. 151, it was held that the report of a finance committee of improvement commissioners alleging a debt to be owing by the commissioners was not an acknowledgment by the commissioners so as to take the debt out of the operation of the Statute of Limitations.

(3) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 13.

(4) See also sections 202 and 204, *post*.

(5) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 13, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 7.

(6) See the preceding section.

(7) As to what are "contributory places," see section 229, *post*.

(8) See section 188, *ante*.

(9) In their second Annual Report, at p. xliii., the Local Government Board state their views as to the powers and duties of parochial committees as follows:—"As regards the powers of parochial committees, the Board say that it should be borne in mind—(1st) That such committees are merely the agents of the rural sanitary authorities who appoint them; (2nd) that no powers can be delegated to a parochial committee except such as the authority which appointed it could exercise within the parish or contributory place for which the committee is appointed. From this it follows, the Board say, that the appointment of officers cannot be delegated to a parochial committee, and it would also seem that the power to issue precepts for contributions cannot be so delegated, as it is a matter connected with the general administration of the affairs of the whole district, and because the board of guardians incur the liabilities for the whole of their district. The

Secs. 202—206.

A parochial committee shall be deemed to be the agents of the authority which formed it, and the appointment of such committee shall not relieve that authority from any obligation imposed on it by Act of Parliament or otherwise.

A parochial committee may be empowered by the authority which formed it to incur expenses to an amount not exceeding such amount as may be prescribed by such authority; it shall report its expenditure to such authority as and when directed by such authority, and the amount so reported, if legally incurred, shall be discharged by such authority.

Casual vacancies in committees may be filled.

203 (1). Any casual vacancy occurring by death, resignation, disqualification, or otherwise in any committee may be filled up within six weeks, by the authority which formed such committee, out of qualified persons.

Meetings and proceedings of committees.

204 (2). Meetings of any committee appointed under this Act shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the authority appointing the committee), in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act (3).

Inspectors may attend meetings of certain authorities.

205 (4). Inspectors of the Local Government Board may attend any meetings of a rural authority or of an urban authority (being a local board) when and as directed by the Local Government Board (5).

The local authority of the district of Oxford shall not, for the purposes of this section, be deemed to be a local board.

Local authority to report.

206 (6). Every local authority shall make an annual report, in such form and at such time as the Local Government Board may from time to time direct, of all

rural sanitary authority will be the only body responsible for the financial transactions of the district, and the auditor will therefore be unable to accept any accounts of the committee as such. In like manner the Board, in their relation with the district, can only recognise the rural sanitary authority, who alone should communicate with the Board.

"The following duties may, in the opinion of the Board, be assigned to a parochial committee :—(1) To inspect their district from time to time, with a view of ascertaining whether any works of construction are required, or any nuisances exist therein which should be abated. (2) To superintend the execution and maintenance of any works which may be required or have been provided for the special use of the district, and to give directions for any repairs or other matters requiring immediate attention in relation to such works which fall within the reasonable scope of the authority which they possess as agents of the rural sanitary authority. (3) To consider complaints of any nuisances, and the action of the medical officer of health or inspector of nuisances thereon, and to inform these officers of any nuisances requiring their attention, and to give such directions for abatement of the same, in cases of urgency, as the circumstances may seem to require. (4) To examine and certify all accounts relating to expenditure within their district. (5) To report to the rural sanitary authority from time to time the several matters requiring their attention, and the manner in which their officers and servants have discharged their duties."

(1) This section is new.

(2) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 13.

(3) See *post*, pp. 225 *et seq.*

The powers conferred upon the committee must be exercised by them acting in concert, and it is not competent to the committee to further apportion amongst themselves the powers so delegated to them: *Cook* v. *Ward*, L. R. 2 C. P. D. 255, 36 L. T. N. S. 893, 25 W. R. 593 (C. A.), 46 L. J. C. P. 554 (affirmed on appeal); and see *Richmond Waterworks Co.* v. *Richmond Vestry*, *post*.

(4) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 15.

(5) As to inquiries by the Local Government Board inspectors, see sections 293 *et seq.*, *post*.

(6) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 76.

works executed, and of all sums received and disbursements made by them under and for the purposes of this Act during the preceding year, and shall send a copy to the Local Government Board: An urban authority shall also publish a copy in some local newspaper circulating in their district (1).

Secs. 206, 207.

PART VI.

RATING AND BORROWING POWERS, &c.

Expenses of Urban Authority and Urban Rates.

Mode of defraying expenses of urban authority.

207 (2). All expenses incurred or payable by an urban authority in the execution of this Act, and not otherwise provided for, shall be charged on and defrayed out of the district fund (3) and a general district rate (3) leviable by them under this Act, subject to the following exceptions; (namely,)

That if in any district the expenses incurred by an urban authority (being the Council of a borough) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of the borough fund or borough rate (4), then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of the borough fund or borough rate (5); and

(1) No form appears to have been issued, and no time fixed for making the annual report required by this section. See the Local Taxation Returns Act, 1877, 40 & 41 Vict. c. 66, *post*.

By Circular of Local Government Board, dated 20th January, 1873, the following directions were given as to correspondence with the Board:—

"1. That no document, except returns signed by the clerk, be transmitted to the office without a covering letter from him authenticating it.

"2. That every distinct subject of communication form a distinct letter on a separate sheet of foolscap paper.

"3. That where previous communications have taken place on the same subject, the official number and the date of the last communication be quoted.

"4. That the name of the sanitary authority, and the date of the meeting next following the communication, and the address of the clerk, be placed at the head of all communications from the sanitary authority to the Board.

"5. That all communications and packages from the country which are directed to the office be, as far the arrangements of the post office will permit, transmitted through the post, and be directed under cover 'To the Local Government Board, Whitehall, London.'"

(2) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 16, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 8.

(3) See section 209, *post*.

(4) See the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, *post*, p. 259.

(5) It is a rule of construction that when a person or class of persons are entitled to a benefit, it is to be presumed that the vested interest is respected; it is not to be taken away by a subsequent statute by general words, or unless the intention so to do clearly appears. By a local Act passed in 1848, commissioners were appointed for sanitary purposes over a district lying partly within and partly without the borough of Walsall; they had power to levy an improvement rate, in which railways were to be assessed at one-fourth of their value. A railway company whose line ran through the district were assessed according to the provisions of the local Act up to the year 1872. By the Public Health Act, 1872, urban sanitary authorities were formed, and the Council of the borough became the urban authority, and the jurisdiction of the commissioners over the part of their district lying within the borough was transferred to the Council. By section 16, if the Local Government Acts were not then in force in a borough, sanitary

Secs. 207—209.

That if in any district the expenses incurred by an urban authority (being improvement commissioners) in the execution of the Sanitary Acts were at the time of the passing of this Act payable out of any rate in the nature of a general district rate leviable by them as such commissioners throughout the whole of their district, then the expenses incurred by that authority in the execution of this Act shall be charged on and defrayed out of such rate; and for the purposes of this section the Council of the borough of Folkestone shall be deemed to be improvement commissioners; and

That where at the time of the passing of this Act the expenses incurred by an urban authority in the execution of certain purposes of the Sanitary Acts were payable out of the borough fund and borough rate, and the expenses incurred by such authority in the execution of the other purposes of the said Acts were payable out of a rate or rates leviable by that authority throughout the whole of their district for paving, sewering, or other sanitary purposes, then the expenses incurred by that authority in the execution of the same or similar purposes respectively under this Act shall respectively be charged on and defrayed out of the borough fund and borough rate, and out of the rate or rates leviable as aforesaid.

Power in certain cases by provisional order to alter mode.

208 (1). Where at the time of the passing of this Act the expenses incurred by an urban authority for sanitary purposes are payable otherwise than in the manner provided by the Local Government Acts (2), the Local Government Board may, on the application of such authority, or of any ten persons rated to the relief of the poor within the district, declare by provisional order (3) that the expenses of such authority incurred in the execution of this Act shall be defrayed out of a district fund (4) and general district rate (4) to be levied by them under this Act, subject to the provisions of this Act with respect to the mode of defraying in certain cases the expenses of the repair of highways (5).

General District Rate.

District fund account.

209 (6). In the district of every urban authority whose expenses under this Act are directed to be defrayed out of the district fund and general district rate there shall be continued or established a fund called the district fund (7): a

expenses were to be defrayed out of the borough rate, provided that where an urban authority had, before 1872, power to levy rates for sanitary purposes, the expenses thereof should be defrayed out of those rates. A borough rate has no limitation in favour of railways. By the Public Health Act, 1875, s. 207, the expenses of an urban authority under the Act were to be defrayed by a general district rate, but if in any district the expenses incurred by an urban authority being the Council of a borough were in 1875 payable out of the borough rate, they should continue to be so charged. By section 211, in making a general district rate railways were to be assessed at only one-fourth of their value. A borough rate was made for Walsall in December, 1876, in order to defray amongst others sanitary expenses, in which the railway company were assessed at the full value of their line.

Held, that the rate was bad, and that a general district rate under the Public Health Act, 1875, s. 207, should have been made assessing the railway company at one-fourth of the value of their line: *Overseers of Walsall* v. *London & N. W. Ry.*, L. R. 4 App. Cas. 467, 48 L. J. M. C. 166, 41 L. T. N. S. 106, 28 W. R. 52.

(1) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 9.

(2) See Schedule V., Part I., *sub fin.*, *post*, p. 255.

(3) See as to provisional orders, sections 297, 288, *post*.

(4) See section 209, *post*.

(5) As to the expenses of the repair of highways, see sections 216, 217, *post*.

Generally see the Circular issued by the Local Government Board, dated 30th September, 1875, *ante*, p. 15.

(6) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 87.

(7) See section 207, *ante*.

separate account called "the District Fund Account" of all moneys carried under this Act to the account of that fund shall be kept by the treasurer of the urban authority; and such moneys shall be applied by the urban authority in defraying such of the expenses chargeable thereon under this Act as they may think proper (1).

Sec. 209.

(1) The district fund can only be applied in defraying expenses chargeable upon it under the Act. See *R.* v. *Stewart*, 12 A. & E. 777, and *A.-G.* v. *Mayor, &c., of Brecon*, L. R. 10 Ch. D. 204, 48 L. J. Ch. 153, 40 L. T. N. S. 52. Those expenses are;—

Expenses of—

proceedings preliminary to constitution of Local Government District, Sched. III. (8).
election of Local Board, Sched. II. (67).
sewers, sections 14—19.
maps, &c., section 20.
drains, section 24.
supply of sewage, section 30.
public conveniences, section 39.
examining drains, section 41.
proceedings to prevent pollution of streams, section 69.
closing cellar dwellings, section 75.
legal proceedings in the superior Courts for the abatement of nuisances, section 107.
disinfection, section 120.
conveyance of infected persons, section 123.
making new street, section 146.
repair of turnpike roads, section 148.
repair of streets, sections 149—151.
altering and examining gas pipes, section 153.
lighting streets, section 161.
pleasure grounds, section 164.
public clocks, section 165.
expenses of members and officers, section 265.
union of districts, section 279.
expenses as a port sanitary authority, section 290.
provisional orders, section 298.
compensation for damage, section 308.
for loss of office, section 309.
repair of burial grounds, Sched. V.

Also, expenses under the Baths and Washhouses Acts, *post*, the Labouring Classes' Lodging-houses Act, Artizans and Labourers' Dwellings Acts, &c., *post*, the Burial Acts, *post*, the Commons Act, 1876, and the Canal Boats Act, 1877.

As to the application of moneys in defraying the costs of legal or parliamentary proceedings, see *Worksop Board* v. *Marris*, 28 L. T. 266; *A.-G.* v. *Mayor of Wigan*, Kay, 268, 5 De G. M. & G. 52, 23 L. J. Ch. 429, 18 Jur. 299; *Bright* v. *North*, 2 Phill. 216, 16 L. J. Ch. 255; *A.-G.* v. *Andrews*, 2 McN. & G. 225, 20 L. J. Ch. 467, 14 Jur. 905; *A.-G.* v. *Hartlepool Commissioners*, L. R. 10 Eq. 152, 22 L. T. N. S. 510, 39 L. J. Ch. 624; and *A.-G.* v. *Mayor of Brecon*, L. R. 10 Ch. D. 204, 48 L. J. Ch. 153, 40 L. T. 52; and see the Borough Funds Act, 1872, 35 & 36 Vict. c. 91, *post*.

Where an injunction is sought for, for the purpose of restraining the improper application of funds, individual members should not be made parties, even though they were present and voted for the proposed illegal application of the funds: *A.-G.* v. *Bermondsey Vestry*, L. R. 23 Ch. D. 60, 52 L. J. Ch. 567, 48 L. T. N. S. 445, 31 W. R. 463. And see *A.-G.* v. *Tottenham Board*, 27 L. T. N. S. 440, where a Local Board having misapplied rates towards defraying the expenses of a bill in Parliament, the Court granted an injunction to restrain the further prosecution of the bill, which, however, had been abandoned before the hearing. But a member of the Board, who proved that he had opposed the scheme embodied in the bill, was held not to be personally liable, and the information was dismissed with costs as against him.

Sec. 210.

Making general district rate.

210 (1). For the purpose of defraying any expenses chargeable on the district fund which that fund is insufficient to meet, the urban authority shall from time to time, as occasion may require, make by writing under their common seal, and levy in addition to any other rate leviable by them under this Act, a rate or rates to be called "General District Rates."

Any such rate may be made and levied either prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses incurred at any time within six months before the making of the rate: in calculating the period of six months during which the rate may be made retrospectively, the time during which any appeal or other proceeding relating to such rate is pending shall be excluded (2).

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 87, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 54 (4).

(2) Past and future expenses may, it seems, be provided for in the same rate, so long as the different items are sufficiently specified in the estimate: *R.* v. *Worksop Board*, 5 B. & S. 951, 34 L. J. M. C. 220. As to levying a rate retrospectively to defray a debt incurred by improvement commissioners whose powers had been transferred to the urban authority, though more than six months had elapsed, see *Ward* v. *Lowndes*, 1 El. & El. 340, 29 L. J. Q. B. 40, 8 W. R. 81, 1 L. T. N. S. 268, 6 Jur. N. S. 247.

Mandatory proceedings to compel the making of rates.

In *Worthington* v. *Moss Side Board* or *Hulton*, L. R. 1 Q. B. 63, 6 B. & S. 943, 35 L. J. Q. B. 61, 13 L. T. N. S. 463, 14 W. R. 632, 12 Jur. N. S. 73, it was held that a *mandamus* might be granted to make a rate in order to satisfy a judgment obtained within six months before the claim for the writ, though the action in which the judgment was obtained was commenced more than six months after the right of action accrued, provided the delay is excused and shown not to have been undue. But see *Burland* v. *Kingston-upon-Hull Board*, 3 B. & S. 271, 32 L. J. Q. B. 17, 7 L. T. N. S. 316, 9 Jur. N. S. 275, 11 W. R. 33. Where in an action against them a Local Board consented to a judge's order under which judgment was signed with a stay of execution for several months, and afterwards a *mandamus* to the Board to make a rate was issued more than six months after judgment had been signed, but within six months of the time to which execution had been stayed, it was held under the previous enactment (note (1), *supra*), that it was not beyond the authority of the Board to agree that execution should be stayed for a time, and that this having been done, the period within which the rate might be made was six months from the time when execution might first have been issued: *R.* v. *Rotherham Board*, 8 El. & Bl. 906, 27 L. J. Q. B. 156, 4 Jur. N. S. 261. So under the previous enactment (note (1), *supra*) it was held that a *mandamus* might be obtained to compel a Local Board to levy a rate to pay an amount awarded upon a claim for compensation, though the damage in respect of which compensation was claimed occurred more than six months before the application for the *mandamus*, but the award was made within six months, for the time must be reckoned from the making of the award: *Ringland* v. *Lowndes*, 15 C. B. N. S. 189, 33 L. J. C. P. 25, 12 W. R. 168, 9 L. T. N. S. 479, 10 Jur. N. S. 48.

The remedy by *mandamus* is applicable only where the amount of the claim is payable out of the rates. If there is a personal remedy against the members of the Board the remedy is by action. See *Bush* v. *Beavan*, 1 H. & C. 500, 32 L. J. Ex. 54, 7 L. T. N. S. 106, 8 Jur. N. S. 1015.

Prior to the Judicature Acts the rule was that application for the costs of *mandamus* must be made within two terms of the obeying of the writ: *Reg.-Gen.*, T. T. 1867; and as to preservation of terms as a measure of time, see *Governors of Christ's Hospital* v. *Martin*, L. R. 3 Q. B. D. 16, 46 L. J. Q. B. 591, 36 L. T. N. S. 537, 25 W. R. 637. Now as to the practice as regards actions of, and prerogative writs of, *mandamus*, see Rules o the Supreme Court, 1883, Order LIII. and Order XLII. rr. 30, 31; and as to the application of certain other orders and rules, see Order LIII. r. 15. As to costs in case of delay in enforcing demand, see *R.* v. *Burleigh*, 1 L. T. N. S. 92.

Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or judge, be enforced by sequestration against the corporate property or against

Secs. 210, 211.

Public notice of intention to make any such rate, and of the time when it is intended to make the same, and of the place where a statement of the proposed rate is deposited for inspection, shall be given by the urban authority in the week immediately before the day on which the rate is intended to be made, and at least seven days previously thereto; but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given.

Assessment, &c., of general district rate.

211 (1). With respect to the assessment and levying of general district rates under this Act the following provisions shall have effect (2); (namely,)

(1.) General district rates shall be made and levied on the occupier of all kinds of property for the time being by law assessable to any rate for the relief of the poor, and shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act, subject to the following exceptions, regulations, and conditions (3); (namely,)

(*a.*) The owner, instead of the occupier, may at the option of the urban authority be rated in cases—

Where the rateable value of any premises liable to assessment under this Act does not exceed the sum of ten pounds; or

Where any premises so liable are let to weekly or monthly tenants; or

Where any premises so liable are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly:

Provided that in cases where the owner is rated instead of the occupier he shall be assessed on such reduced estimate as the urban authority

the officers thereof, or by writ of sequestration against their property. Order XLII. r. 31, *supra*.

Burial rate.

As to the "burial rate," see section 310, *post*, 21 & 22 Vict. c. 98, s. 49, re-enacted in Schedule V. (III.), *post*, p. 256, and 23 & 24 Vict. c. 64, ss. 1 and 2, *post*.

Oxford Local Board.

As to the making of rates by the Oxford Local Board, see 28 & 29 Vict. c. 108, ss. 14 *et seq.*, *post*.

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 89, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 55.

(2) In *S. Wales Ry.* v. *Swansea Board*, 7 El. & Bl. 193, speaking of the previous enactment, 11 & 12 Vict. c. 63, s. 89, Erle, J., said, "The general scheme of the enactment is that the occupiers of the classes of property most benefited by the expenditure of the district rates shall be liable to be rated at a higher rate, the occupiers of the classes less benefited at a lower rate; and the class of property most benefited is that which is occupied immediately for the purpose of residence; and the kinds of property not so occupied are not to be rated so highly."

(3) As to the making of a general district rate, see the preceding section.

The valuation list for the time being in force is now conclusive. The power which was given by section 56 of the previous enactment, 21 & 22 Vict. c. 98, of making a special valuation has not been re-enacted in the present Act.

As to the power to inspect, take copies of, and make extracts from the valuation list, see section 212, *post*.

As to the power to amend rates, see section 221, *post*.

As to the recovery of rates, &c., see sections 256 *et seq.*, *post*.

Under the previous enactment, 21 & 22 Vict. c. 98, s. 55, it was held that the guardians of a workhouse of a poor law union partly within and partly without the district of a local board were liable to be rated. The words, "all kinds of property for the time being," &c., refer to the description of the property, and not to the nature of the occupation: *Guardians of Toxteth Park* v. *Toxteth Park Board*, 1 B. & S. 167, 30 L. J. Q. C. 154, 4 L. T. N. S. 283, 7 Jur. N. S. 860, 9 W. R. 691. In *Hodgson* v. *Carlisle Board*, 8 El. & Bl. 116, 4 Jur. N. S. 160, it was held that property cannot be assessed to a general district rate unless there is some person having such an occupation as would make him liable to the poor rate in respect thereof.

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deem reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of the net annual value; and where such reduced estimate is in respect of tenements whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers (1).

(*b.*) The owner of any tithes (2), or of any tithe commutation rent-charge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water (3), or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance (4), shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof:

(*c.*) If within any urban district or part of such district any kind of property is exempted from rating by any local Act in respect of all or any of the purposes for which general district rates may be made under this Act, the same kind of property shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies (but not further or otherwise), be exempt from assessment to any general district rates under this Act unless the Local Government Board by provisional order otherwise direct (5).

(1) It is discretionary with the urban authority to rate the owner in respect of premises whether occupied or not, but when they have decided to rate him, then the assessment *must* be upon one-half the rateable value: *R.* v. *Barclay*, L. R. 8 Q. B. D. 486, 51 L. J. M. C. 47, 46 L. T. N. S. 335, 30 W. R. 672, 46 J. P. 693.

(2) See *R.* v. *Sherford*, L. R. 2 Q. B. 503, 36 L. J. M. C. 113, 16 L. T. N. S. 663, 15 W. R. 1035, 31 J. P. 629, and *Lawrence* v. *Tolleshunt Knights*, 31 L. J. M. C. 148, 10 W. R. 620, 26 J. P. 422.

(3) A wet dock comes within the description of land covered with water, and a dock railway open to the public on payment of tolls is within this proviso, but the land adjacent, including landing places, coal hoists, machinery, &c., is not part of the dock: *R.* v. *Newport Dock Co.*, 2 B. & S. 708, 31 L. J. M. C. 266, 6 L. T. N. S. 456, 9 Jur. N. S. 73. So filter beds or reservoirs are land covered with water, but not so land occupied by pipes, mains, &c., used for supply of water: *East London Waterworks Co.* v. *Leyton Sewer Authority*, L. R. 6 Q. B. 669, 40 L. J. M. C. 190; *R.* v. *Birmingham Waterworks Co.*, 1 B. & S. 84, 4 L. T. N. S. 242, 25 J. P. 308.

(4) "Railway" includes platforms, sidings, turntables, &c., but not the stations, offices and warehouses, which are auxiliary to the working of the railway: *S. Wales Ry.* v. *Swansea Board*, 4 E. & B. 189, 24 L. J. M. C. 30, 1 Jur. N. S. 326; *Midland Ry.* v. *Birmingham Corporation*, 13 L. T. N. S. 404, 30 J. P. 197; *N. E. Ry.* v. *Scarborough*, 33 J. P. 244. So a piece of land between the line and rails and a river and in respect of which wharfage dues are received, is not within the proviso, not being land used as a railway: *R.* v. *Taff Vale Ry.*, 22 J. P. 21.

A railway constructed without parliamentary powers, though afterwards sold to a parliamentary railway company and enlarged and used for public traffic, is not within the exception: *N. E. Ry.* v. *Leadgate Board*, L. R. 5 Q. B. 157, 39 L. J. M. C. 65, 22 L. T. N. S. 62, 18 W. R. 691, 34 J. P. 598. See further *R.* v. *Neath Overseers*, L. R. 6 Q. B. 707, 40 L. J. M. C. 193, and *Peto* v. *W. Ham*, 2 El. & El. 144, 28 L. J. M. C. 240, 5 Jur. N. S. 1209.

See also *Overseers of Walsall* v. *London & N. W. Ry.*, *ante*, p. 158.

(5) This proviso only applies to property exempted in respect of its *kind* and not in respect of its *locality*: *Luscombe and others* v. *Plymouth Board*, E. B. & E. 691, 27 L. J. M. C. 299, 31 L. T. 314, 6 W. R. 34, 4 Jur. N. S. 1234; *Tait* v. *Carlisle Board*, 2 El. & Bl. 492, 18 Jur. 374; and see *Guardians of Toxteth Park* v. *Toxteth Board*, *ante*, p. 161, and *Coates* v. *Kingston-upon-Hull Board*, 2 Jur. N. S. 1086.

See, further, *Overseers of Walsall* v. *London & N. W. Ry.*, *ante*, p. 158.

(2.) If at the time of making any general district rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged on any person in respect of the same while they continue to be unoccupied; and if any such premises are afterwards occupied during any part of the period for which the rate was made and before the same has been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made:

(3.) If any owner or occupier assessed or liable to any such rate ceases to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier; and in every such case if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as may be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable:

(4.) The urban authority may divide their district or any street therein into parts for all or any of the purposes of this Act, and from time to time abolish or alter any such divisions, and may make a separate assessment on any such part for all or any of the purposes for which the same is formed (1); and every such part so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act: Provided that if any expenses are incurred or to be incurred in respect of two or more parts in common the same shall be apportioned between them in a fair and equitable manner.

Inspection of poor rate books for purposes of assessment.

212 (2). For the purpose of assessing general district rates any person appointed by the urban authority may inspect, take copies of or make extracts from, any valuation list or rate for the relief of the poor within the district, or any book relating to the same.

Any officer having the custody of any such rate or book who refuses to permit such inspection, or the taking of such copies or extract, shall be liable to a penalty not exceeding five pounds (3).

Private Improvement Rate.

Power to make private improvement rates.

213 (4). Whenever an urban authority have incurred or become liable to any expenses which by this Act are or by such authority may be declared to be private improvement expenses (5), such authority may, if they think fit, make and levy on

(1) The power to divide their district and make a separate assessment is a discretionary power. If the authority do not divide their district and a rate is made, it will be laid upon the whole district, although premises rated receive no direct or immediate improvement from the works in respect of which the rate is made. It is enough if any part of the district is benefited: *Dorling* v. *Epsom Board*, 5 El. & Bl. 471, 24 L. J. M. C. 152, 1 Jur. N. S. 956.

The express power to abolish the division is new.

(2) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 56.

(3) As to the recovery of penalties, see sections 251 *et seq.*, *post*.

(4) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 90.

(5) Local authorities are empowered to declare expenses to be private improvement expenses under the following sections, *viz.*, sections 23, 36, 41, 62, 150.

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the occupier of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds per centum per annum, in such period not exceeding thirty years as the urban authority may in each case determine.

Provided that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge on and be paid by the owner for the time being of the premises so long as the same continue to be unoccupied.

Proportion of private improvement rate may be deducted from rent.

214 (1). Where the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not less than the rack rent, he shall be entitled to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rack rent he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rack rent; and if the landlord from whose rent any deduction is so made is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired (but not otherwise), he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof (2).

Provided that nothing in this section shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him.

Redemption of private improvement rates.

215 (3). At any time before the expiration of the period for which any private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the urban authority the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same:

Provided that money paid in redemption of any private improvement rate shall not be applied by the urban authority otherwise than in defraying expenses incurred by them in works of private improvement or in discharging the principal of any moneys borrowed by them to meet those expenses, whether by means of a sinking fund or otherwise.

Publication of private improvement rate is not required. See the proviso to section 222, *post*.

Where an urban authority have declared expenses to be private improvement expenses, they cannot afterwards proceed summarily in respect of them. See *Gould* v. *Bacup Board*, *ante*, p. 123.

As to the right of appeal against the decision of the authority to declare expenses private improvement expenses, see section 268, *post*.

As to recovery from the *owner* of premises, see section 257, *post*.

As to borrowing money for purposes of private improvement, see sections 233 *et seq.*, *post*.

As to the powers of rural authorities, see section 232, *post*.

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 91.

(2) Further as to agreements between landlord and tenant, see section 226, *post*.

As to rent-charges granted by the local authority in respect of moneys borrowed for purposes of improvement, see section 240, *post*.

(3) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 92. The proviso is new.

Highway Rate (1).

Costs of repairs of highways.

216 (2). In any urban district where the expenses under this Act of the urban authority are charged on and defrayed out of the district fund and general district rates, and no other mode of providing for repair of highways is directed by any local Act, the cost of repair of highways shall be defrayed as follows; (that is to say,)

(1.) Where the whole of the district is rated for works of paving, water supply, and sewerage, or for works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate (3);

(2.) Where parts of the district are not rated for works of paving, water supply, and sewerage, or for such of these purposes as are provided for in the district, the cost of repair of highways in those parts shall be defrayed out of a highway rate to be separately assessed and levied in those parts by the urban authority as surveyor of highways, and the cost of such repair in the residue of the district shall be defrayed out of the general district rate (4):

(3.) Where no public works of paving, water supply, and sewerage are established in the district, the cost of repair of highways in the district shall be defrayed out of a highway rate, to be levied throughout the whole district by the urban authority as surveyor of highways (5):

Provided that where part of a parish is included within an urban district, and the excluded part was, before the constitution of that district, liable to contribute to the highway rates for such parish, such excluded part shall (unless in the case of an urban district constituted before the passing of this Act a resolution deciding that such excluded part should be formed into a separate highway district has been passed in pursuance of the Local Government Act, 1858, Amendment Act, 1861, or unless such excluded part has been included in a highway district under the Highway Acts (6)), for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as forming part of such district (7).

Provided also, that in the case of an urban district constituted after the passing

(1) As to highways and streets, see sections 144 *et seq.*, *ante*.

(2) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 37. As to the proviso, see note (6), *infra*.

(3) As to the general district rate, see sections 209 *et seq.*, *ante*.

(4) A district was formed in 1869, consisting of one hamlet and part of two others, each hamlet repairing its own highways. A highway rate having been made for the whole district including the excluded parts of the two hamlets, it was held that this was right, for the excluded parts were for all purposes of the highway rates to be treated as forming part of the district: *R.* v. *Nield*, W. Notes, 1871, p. 121.

By 26 & 27 Vict. c. 17, s. 6, *post*, for the purposes of meetings of a highway board, local government districts or places surrounded by or adjoining a highway district are deemed within such highway district.

As to the assessment for the highway rate, see the Highway Acts, *post*.

(5) Where a curbing was laid down to a footpath 300 yards in length, but no other works of paving were done within the district, it was held that the curbing did not constitute "a public work of paving established within the district": *Oxenhope Board* v. *Mayor of Bradford*, 47 L. T. N. S. 344, 31 W. R. 322.

Under the previous enactment, note (2), *supra*, it was held that the local authority had no power to divide their district for the purposes of the highway rate (see section 211, sub-section 4, *ante*, p. 163): *Re Broughton Board*, 12 L. T. N. S. 310.

(6) By 27 & 28 Vict. c. 101, s. 1, "The Highway Acts" includes "all the above-mentioned Acts (*i.e.*, 5 & 6 Will. IV. c. 50, and 25 & 26 Vict. c. 61) and any Act passed or to be passed amending the same."

(7) The previous enactments on the subject of this proviso were the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 9, and 27 & 28 Vict. c. 101, s 5.

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of this Act a meeting of owners and ratepayers of the excluded part (to be convened and conducted in the manner provided by Schedule III. to this Act) may decide that such excluded part shall be a highway parish, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a parish maintaining its own highways; but the requisition for holding any such meeting shall be made within six months after the constitution of the urban district.

The Court of Quarter Sessions may by order direct that for any such excluded part a waywarden or waywardens shall be elected, and may invest any waywarden elected in pursuance of any such order with all or any of the powers of waywardens under the Highway Acts (1).

Certain acts not required to be done in case of highway rate made by urban authority.

217 (2). It shall not be necessary for the urban authority, in the case of any highway rate made by them, to do the following acts or any of them (3); (that is to say,)

To lay such rate before any justices, or obtain their allowance;

To annex thereto the signature of such urban authority;

To lay the same before the parishioners assembled in vestry;

To verify before any justices any accounts kept by them of such highway rates; and all such accounts shall be audited in all respects in the same way as the other accounts of the urban authority.

General Provisions as to Urban Rates.

Estimate to be prepared before making rates.

218 (4.) Every urban authority, before proceeding to make a general district rate or private improvement rate under this Act (5), shall cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing—

The several sums required for each of such purposes; and

The rateable value of the property assessable; and

The amount of rate which for those purposes it is necessary to make on each pound of such value;

and the estimate so made shall forthwith, after being approved of by the urban authority, be entered in the rate book, and be kept at their office, open to public inspection during office hours thereat; but it shall not be deemed part of the rate, nor in any respect affect the validity of the same (6).

Rates to be open to inspection.

219 (7). Any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate made previously thereto (8), and may take copies of or extracts therefrom without fee or reward; any person who, having the custody of any such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall be liable to a penalty not exceeding five pounds (9).

(1) This paragraph is new.

(2) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 37 (5).

(3) Generally as to highway rates, see the Highway Acts, *post.*

(4) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 98. But see note (6), *infra.*

(5) See sections 209—215, *ante.*

(6) The concluding clause is new. It obviates such difficulties as those raised in *R.* v. *Worksop Board*, 5 B. & S. 951, 34 L. J. M. C. 220, 10 L. T. S. N. 297, 11 Jur. N. S. 1015, 12 W. R. 710, 29 J. P. 759.

As to notice of intention to make the rate, see section 210, *ante.*

As to publication of rate, see section 222, *post.*

(7) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 100.

(8) See the preceding section.

(9) As to recovery of penalties, see sections 251 *et seq.*, *post.*

Secs. 220—223.

Description of owner or occupier in rates.

220 (1). Where the name of any owner or occupier liable to be rated under this Act is not known to the urban authority it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description.

Rates may be amended.

221 (2). An urban authority may from time to time amend any rate made in pursuance of this Act, by inserting therein the name of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appears to the urban authority that he has been under-rated or over-rated, or by making any other alteration which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate.

Provided, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal (3) therefrom as he would have had if the matter of amendment had appeared on the rate originally made, and with respect to him an amended rate shall be considered to have been made at the time when he first received notice of the amendment (4); and an amended rate shall not be payable by any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted, until seven days after such notice has been given to him.

Publication and collection of rates.

222 (5). All rates made or collected under this Act shall be published in the same manner as poor rates (6), and shall commence and be payable at such time or times, and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with any other rate or tax, as the urban authority may from time to time appoint: Provided that no publication shall be required of any private improvement rate.

Evidence of rates.

223 (7). The production of the books purporting to contain any rate or assessment made under this Act shall, without any other evidence whatever, be received as *primâ facie* evidence of the making and validity of the rates mentioned therein (8).

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 101.

(2) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 102.

(3) As to appeal against a rate, see section 269, *post*.

(4) As to notices and the service thereof, see sections 266, 267, *post*.

(5) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 103.

(6) The manner of publishing poor rates is directed by 17 Geo. II. c. 3, s. 1, *post;* and see 7 Will. IV. & 1 Vict. c. 45, s. 2, *post*.

A publication on the doors of all the churches and chapels of the Church of England in the district is enough: *Ormerod* v. *Chadwick*, 16 M. & W. 367, 16 L. J. M. C. 143; *R.* v. *Whipp*, 4 Q. B. 141, 12 L. J. M. C. 64; *Ex parte Warblington*, 18 Jur. 494.

As to the publication of the poor rate where there is no parish church, see 45 & 46 Vict. c. 20, s. 4, *post*.

In *Le Feuvre* v. *Miller*, 8 El. & Bl. 321, 26 L. J. M. C. 175, 3 Jur. N. S. 1255, 21 J. P. 436, it was held that non-publication did not make a rate void, unless the Legislature expressly directs that it shall do so, and accordingly it was held that on a summons to enforce a rate which had not been published, but had not been appealed against, the justices were right in disregarding the non-publication, and that their warrant was a protection to the officer distraining under it.

The mere production of the book containing the rate is no evidence of the due publication of a highway rate, where proceedings are taken before justices for non-payment: *Bird* v. *Adcock*, 47 L. J. M. C. 123, 26 W. R. 634.

As to the recovery of rates, see section 256, *post*.

(7) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 106.

(8) See further sections 260—262, *post*.

Secs. 224—227.

Power to make deduction from rate in certain cases.

Power to reduce or remit rates.

Saving for existing agreements.

Limit in local

224 (1). Where it appears to an urban authority that any premises were sufficiently drained before the construction of any new sewer laid down by them, they may deduct from the amount of rates otherwise chargeable in respect of such premises such a sum for such time as they may under all the circumstances of the case deem just.

225 (2). An urban authority may reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof (3).

226 (4). Nothing in this part of this Act shall alter or affect any lease, contract, or agreement made or entered into between the landlord and tenant of any premises (5).

227 (6). Any limit imposed on or in respect of any rate by any local Act of

(1) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 29.

(2) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 96.

(3) It has been held that the being excused from payment of rates is no disqualification from registration as a parliamentary voter. See *Mashiter* v. *Dunn*, 6 C. B. 30, 2 Lutw. 112, 18 L. J. C. P. 13.

As to the effect of excusal upon right to vote for election to the Local Board, see Schedule II., rule 11, *post*.

(4) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 97.

(5) In *Tidswell* v. *Whitworth*, L. R. 2 C. P. 326, 36 L. J. C. P. 103, 15 L. T. N. S. 574, 15 W. R. 427 (distinguishing *Sweet* v. *Seager*, 2 C. B. N. S. 119, 5 W. R. 560), it was held that the proportion of the expenses of sewering and paving a street incurred by a town council in executing these works upon the neglect of the owners of the adjoining premises to do so when called upon, were not a rate, assessment, or imposition payable in respect of demised premises within the meaning of these words in a covenant by a tenant in a lease to "pay and discharge all taxes, rates, assessments, and impositions whatsoever (except property tax), which during the term should become payable in respect of the demised premises." But in *Thompson* v. *Lapworth*, L. R. 3 C. P. 149, 37 L. J. C. P. 74, 17 L. T. N. S. 507, 16 W. R. 312, 32 J. P. 184, a similar charge was held to be within the meaning of a covenant to pay and discharge "all taxes, rates, duties, and assessments whatsoever which during the continuance of the demise should be taxed, assessed, or imposed on the tenant or landlord of the premises demised in respect thereof," &c. And in *Rawlins* v. *Briggs*, L. R. 3 C. P. D. 368, 47 L. J. C. P. 487, 27 W. R. 138, 42 J. P. 791, it was held upon the authority of *Tidswell* v. *Whitworth*, and distinguishing *Thompson* v. *Lapworth*, that the expense of abating a nuisance by a lessor, who had received a notice under section 94, *ante*, was not a "rate, charge, assessment, or imposition assessed or imposed on the demised premises or in respect thereof," within the meaning of those words in a covenant in a lease, but was a payment made in the performance of a duty imposed by statute. But in *Budd* v. *Marshall*, L. R. 5 C. P. D. 481, 50 L. J. C. P. 24, 42 L. T. N. S. 793, 29 W. R. 148, 44 J. P. 584, such expenses were held to come within a covenant to "bear, pay, and discharge all other taxes, rates, duties, and assessments whatsoever, whether parliamentary, parochial, or otherwise." See also *Hartley* v. *Hudson*, L. R. 4 C. P. D. 367, 48 L. J. C. P. 751.

In *Allum* v. *Dickinson*, L. R. 9 Q. B. D. 632, 52 L. J. Q. B. 190, 30 W. R. 930, the expense of paving a new street assessed under the Metropolis Management Act, 1862, 25 & 26 Vict. c. 102, s. 96, was held not a rate payable by the tenant within the meaning of a covenant by him in a lease to pay all rates and assessments taxed, rated, charged, assessed, or imposed upon the demised premises or upon or payable by the occupier or tenant thereof, for upon the true construction of the statute the cost is imposed not on the premises but upon the landlord, although power is given to recover it against the occupier. See further, *Crosse* v. *Raw*, L. R. 9 Ex. 209, 43 L. J. Ex. 144, 23 W. R. 6.

(6) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 43.

Where a local Act provided that rates might be imposed upon the occupiers of all

Parliament shall not apply to any rate required to be levied for the purpose of defraying any expenses incurred by an urban authority in the execution of this Act.

Secs. 227—229.

Act not to apply to rate for purposes of this Act.

228 (1). Nothing in this Act shall be deemed to alter or interfere with any liability existing at the time of the passing of this Act of the Universities of Oxford and Cambridge respectively to contribute towards the expenses of paving and pitching, repairing, lighting, and cleansing under the powers of any local Act under which the Oxford and Cambridge commissioners respectively act, the several streets and places within the jurisdiction of such commissioners respectively.

Quota of rates to be paid by the Universities, &c.

If any difference arises between either of the said universities and the urban authority with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to which the university is not liable under any such local Act, the same shall be settled by arbitration in manner provided by this Act (2).

All rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities, halls, and colleges in the same manner in all respects as rates, contributions, and sums of money may now be recovered from them by virtue of any such local Act.

Expenses of Rural Authority.

Expenses of rural authority.

229 (3). The expenses incurred by a rural authority in the execution of this Act shall be divided into general expenses and special expenses.

General expenses (other than those chargeable on owners and occupiers under this Act) shall be the expenses of the establishment and officers of the rural authority (4), the expenses in relation to disinfection (5), the providing conveyance for infected persons (6), and all other expenses not determined by this Act or by order of the Local Government Board to be special expenses (7).

Special expenses shall be the expenses of the construction, maintenance, and cleansing of sewers in any contributory place within the district (8), the providing

real property within the district, but by a subsequent section provided that no person should be rated in pursuance of the Act on account of any arable, meadow, or pasture land exceeding two acres, or farm-houses and buildings used exclusively for farming purposes, and it was sought under the previous enactment, *supra*, to impose a rate upon a person on account of land exceeding two acres, it was held that this could not be done, as the word ought to be construed to mean exemption: *Walton Commissioners* v. *Walford*, L. R. 10 Q. B. 180, 44 L. J. Q. B. 74, 31 L. T. N. S. 825, 23 W. R. 292, 39 J. P. 183; *Corporation of St. Helen's* v. *St. Helen's Colliery Co.*, 48 J. P. 39.

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 105, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 82.

By section 6, *ante*, the borough of Oxford is to be deemed to be a borough, and to be included in the Local Government district of Oxford, and Cambridge is to be deemed an improvement Act district. Further as to Oxford, see section 342 and the notes thereto, *post*, and the statutes relating specially to Oxford, and notes thereto, *post*.

(2) As to arbitrations under the Act, see sections 179 *et seq.*, *ante*.

(3) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 17, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 10.

(4) See section 190, *ante*. (5) See sections 120 *et seq.*, *ante*.

(6) See section 123, *ante*.

(7) As to this section, see the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 26.

Rural authorities are not "a governing body" within the meaning of that expression in the Borough Funds Act, 1872, 35 & 36 Vict. c. 91, *post*.

As to order of the Local Government Board, see section 295, *post*.

(8) See section 15, *ante*.

Secs. 229, 230.

a supply of water to any such place, and maintaining any necessary works for that purpose (1), if and so far as the expenses of such supply and works are not defrayed out of water rates or rents under this Act, the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board to be special expenses (2).

Where the rural authority make any sewers, or provide any water supply, or execute any other work under this Act for the common benefit of any two or more contributory places within their district, they may apportion the expense of constructing any such work, and of maintaining the same, in such proportions as they think just, between such contributory places, and any expense so apportioned to any such contributory place shall be deemed to be special expenses legally incurred in respect of such contributory place.

The overseers of any contributory place, if aggrieved by any such apportionment, may, within twenty-one days after notice has been given to them of the apportionment, send or deliver a memorial to the Local Government Board stating their grounds of complaint, and the said Board may make such order in the matter as to it may seem equitable, and the order so made shall be binding and conclusive on all parties concerned.

General expenses shall be payable out of a common fund to be raised out of the poor rate of the parishes in the district according to the rateable value of each contributory place in manner in this Act mentioned (3).

Special expenses shall be a separate charge on each contributory place (3).

The following areas situated in a rural district shall be contributory places for the purposes of this Act; (that is to say,)

(1.) Every parish not having any part of its area within the limits of a special drainage district formed in pursuance of the Sanitary Acts (4) or of this Act, or of an urban district; and

(2.) Every such special drainage district as aforesaid; and

(3.) In the case of a parish wholly situated in a rural district, and part of which forms or is part of any such special drainage district as aforesaid, such portion of that parish as is not comprised within such special drainage district; and

(4.) In the case of a parish a part of which is situated within an urban district, such portion of that parish as is not comprised within such urban district, or within any such special drainage district as aforesaid.

Mode of raising contributions in rural district.

230 (5). For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority, or to some person appointed by them, care being taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses (6).

Where a contributory place is part of a parish as defined by this Act (7), the overseers of such parish shall for the purposes of this Act be deemed to be the overseers of such contributory place, and where any part of a contributory place is

(1) See sections 51 *et seq.*, *ante.*

(2) See note (6), *supra.* As to the formation of parochial committees for contributory places, see section 202, *ante.* As to special drainage districts, see section 277, *post.*

(3) As to the mode of raising contributions in rural districts, see the next section.

(4) Defined *ante*, p. 47.

(5) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 18, and the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113, s. 17.

(6) See the preceding section and the notes thereto.

(7) See *ante*, p. 44.

part of a parish the overseers of such parish shall for the like purposes be deemed to be the overseers of such part of such contributory place.

The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place or part of a contributory place forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception; (namely,)

That the owner of any tithes, or of any tithe commutation rent-charge, or the occupier of any land used as arable meadow or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the rateable value thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property (1):

Provided that where the amount required by any precept or precepts from a contributory place in respect of special expenses is less than ten pounds, or is so small that a rate less than one penny in the pound would be required to raise the same, the overseers shall not assess and levy any special rate for the same, but

(1) See the notes to section 211 (I) (*b*), *ante*, p. 162.

By 32 & 33 Vict. c. 41, it is provided:

Section 3. In case the rateable value of any hereditament does not exceed twenty pounds if the hereditament is situate in the metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow him a commission not exceeding twenty-five per cent. on the amount thereof.

Section 4. The vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section three of this Act extends situate within such parish shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order, and thereupon and so long as such order shall be in force the following enactments shall have effect:—

1. The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate.
2. If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated.
3. The vestry may by resolution rescind any such order after a day to be fixed by them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect:

   Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling house shall not be included.

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shall pay the amount as if it formed part of the contribution required from them in respect of general expenses (1).

A separate rate under this section shall, as respects the powers of the overseers in relation to making, assessing, and levying such rate, and as respects the appeal against such rate, and all other incidents thereof except the purposes to which it is applicable, and such exemption as aforesaid, and except the allowance of justices, which shall not be required, be subject to the same provisions as apply in law to a rate levied for the relief of the poor; and the overseers of a parish shall have the same powers of levying such separate rate in a contributory place or part of a contributory place forming part of their parish, as they would have if such contributory place or such part thereof formed the whole of their parish.

Where a contribution for general expenses is required from a contributory place or part of a contributory place which is part of a parish, the overseers shall from time to time levy such increase of rate from the contributory place or such part thereof as may be sufficient to recoup the parish for the sum it has paid on account of the contributory place or such part thereof in respect of general expenses under this Act, and carry the same to the general account of the parish, and such increase of rate shall be raised in such contributory place or part of a contributory place by an addition to the poor rate, or by a separate rate to be assessed, made, allowed, published, collected, and levied in the same manner as a poor rate. The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect any separate rate made under this section, and receive out of such separate rate such remuneration for the additional duty as the overseers with the consent of the vestry may determine.

The overseers shall at the expiration of their term of office pay any surplus in their hands arising from any separate rate levied in pursuance of this Act, above the amount for which the rate was made, to the rural authority or to such person as they may appoint, to the credit of the contributory place within which or within part of which such rate was made, and such surplus shall go in reduction of the next call that may be made on such contributory place or such part thereof for the purpose of defraying the expenses incurred by the rural authority.

Remedy for non-payment by overseers of amount required by precept of rural authority.

231 (2). If the amount required by any precept of a rural authority to be paid by the overseers of any parish is not paid in manner directed by such precept, and within the time therein specified for that purpose, the rural authority shall have the like remedy for recovery from the overseers of such amount as is not paid as guardians have for the time being for recovery from overseers of contributions of parishes, and for that purpose the precept of the rural authority requiring the payment shall be conclusive evidence of the amount thereof (3).

As to private improvement expenses.

232 (4). Whenever a rural authority have incurred or become liable to any expenses which by this Act are, or by such authority may be declared to be private improvement expenses, such authority may make and levy a private improvement rate in the same manner as private improvement rates may be made and levied by an urban authority; and all the provisions of this Act applicable to private improvement rates leviable by an urban authority shall apply accordingly to any private improvement rate leviable by a rural authority (5).

(1) With regard to this proviso the previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 11. As to the present proviso, see the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 26.

(2) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 19.

(3) The justices have not an arbitrary discretion to grant or withhold the process: *R.* v. *Boteler*, 4 B. & S. 959, 33 L. J. M. C. 101, 9 L. T. N. S. 720, 12 W. R. 466. As to disputing the validity of the precept, though not the amount, see *Newbold* v. *Coltman*, 6 Ex. 189, 20 L. J. M. C. 149; *Pedley* v. *Davis*, 30 L. J. C. P. 374; *Waddington* v. *London Union*, El. Bl. & El. 370.

(4) The previous enactment was the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 6.

(5) See sections 213—215, and the notes thereto, as to the making, &c., of private improvement rates by urban authorities.

BORROWING POWERS.

Power to borrow on credit of rates.

233 (1). Any local authority may, with the sanction of the Local Government Board, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of the Sanitary Acts (2) or of this Act, or for the purpose of discharging any loans contracted under the Sanitary Acts or this Act, borrow or re-borrow, and take up at interest, any sums of money necessary for defraying any such costs, charges, and expenses, or for discharging any such loans as aforesaid (3).

An urban authority may borrow or re-borrow any such sums on the credit of any fund or all or any rates or rate out of which they are authorised to defray expenses incurred by them in the execution of this Act, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund or rates or rate.

A rural authority may borrow or re-borrow any such sums, if applied or intended to be applied to general expenses of such authority, on the credit of the common fund out of which such expenses are payable, and if applied or intended to be applied to special expenses of such authority, on the credit of any rate or rates out of which such expenses are payable, and for the purpose of securing the repayment of any sums so borrowed, with interest thereon, they may mortgage to the persons by or on behalf of whom such sums are advanced any such fund, rate, or rates (4).

Regulations as to exercise of borrowing powers.

234 (5). The exercise of the powers of borrowing conferred by this Act shall be subject to the following regulations; (namely,)

(1.) Money shall not be borrowed except for permanent works (including under this expression any works of which the cost ought in the opinion of the Local Government Board to be spread over a term of years):

(2.) The sum borrowed shall not at any time exceed, with the balances of all the outstanding loans contracted by the local authority under the Sanitary Acts and this Act, in the whole the assessable value for two years of the premises assessable within the district in respect of which such money may be borrowed:

(3.) Where the sum proposed to be borrowed, with such balances (if any), would exceed the assessable value for one year of such premises, the Local Government Board shall not give their sanction to such loan until one of their inspectors has held a local inquiry and reported to the said Board (6):

(4.) The money may be borrowed for such time, not exceeding sixty years, as the local authority, with the sanction of the Local Government Board, determine in each case; and subject as aforesaid, the local authority shall either pay off the moneys so borrowed by equal annual instalments of principal or of principal and interest, or they shall in every year set apart as a sinking fund, and accumulate in the way of compound interest

(1) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, . 40, the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 57, and the Sanitary Law mendment Act, 1874, 37 & 38 Vict. c. 89, s. 36.

(2) Defined *ante*, p. 47.

(3) See as to the borrowing powers of local authorities under this Act the remarks in e Circular issued by the Local Government Board, dated 30th September, 1875, *nte*, p. 15.

As to the power of the Local Government Board to borrow to defray expenses of erforming duty of defaulting authority, see sections 301, 302, *post*.

(4) As to the re-borrowing of money by rural authorities, see also the Poor Law Loans ct, 1871, 34 & 35 Vict. c. 11.

(5) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. 98, s. 57, the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 40, the Sanitary Law mendment Act, 1874, 37 & 38 Vict. c. 89, s. 36, and the Sewage Utilization Act, 1865, & 29 Vict. c. 75, s. 6.

(6) As to inquiries by the Board, see sections 293 *et seq.*, *post*.

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by investing the same in the purchase of Exchequer bills or other Government securities, such sum as will with accumulations in the way of compound interest be sufficient, after payment of all expenses, to pay off the moneys so borrowed within the period sanctioned (1).

(5.) A local authority may at any time apply the whole or any part of a sinking fund set apart under this Act in or towards the discharge of the moneys for the repayment of which the fund has been established: Provided that they pay into the fund in each year and accumulate until the whole of the moneys borrowed are discharged, a sum equivalent to the interest which would have been produced by the sinking fund or the part of the sinking fund so applied (2):

(6.) Where money is borrowed for the purpose of discharging a previous loan, the time for repayment of the money so borrowed shall not extend beyond the unexpired portion of the period for which the original loan was sanctioned, unless with the sanction of the Local Government Board, and shall in no case be extended beyond the period of sixty years from the date of the original loan.

Where any urban authority borrow any money for the purpose of defraying private improvement expenses (3), or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of such authority, as between the ratepayers of the district, to make good so far as they can, the money so borrowed, as occasion requires, either out of private improvement rates (4), or out of a rate levied in such part of the district as aforesaid.

Power to borrow on credit of sewage land and plant.

235 (5). Where any local authority are possessed of any land, works, or other property for the purposes of disposal of sewage pursuant to this Act, they may borrow any moneys on the credit of such lands, works, or other property, and may mortgage such lands, works, or other property to any person advancing such moneys, in the same manner in all respects as if they were the absolute owner, both at law and in equity, of the lands, works, or other property so mortgaged. The moneys so borrowed shall be applied for purposes for which moneys may be borrowed under this Act; but it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for any misapplication thereof (6).

The powers of borrowing conferred by this section shall, where the sums borrowed do not exceed three-fourths of the purchase-money of such lands (but not otherwise), be deemed to be distinct from and in addition to the general borrowing powers conferred on a local authority by this Act. Any local authority may pay out of any rates leviable by them for purposes of this Act the interest on any moneys borrowed by such authority in pursuance of this section.

Form of mortgage.

236 (7). Every mortgage authorised to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall be sealed with the common seal of the local authority, and may be made according to the form contained in Schedule IV. (8) to this Act, or to the like effect (9).

(1) See the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 15.

See the saving as to the validity of loans under the Sanitary Acts made repayable within a less period than that limited by the provisional order authorising the loan, section 321, *post;* and see also section 343, *post.*

See the tables issued by the Local Government Board, *post.*

(2) See the Local Loans Act, 1875, 38 & 39 Vict. c. 83, s. 15, *post.*

(3) As to granting a rent-charge in respect of advances made for private improvements, see section 240, *post.*

(4) See sections 213—215, *ante*, and section 232, *ante.*

(5) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 41.

(6) As to joint boards, port sanitary authorities, local boards of health of main sewerage districts, and joint sewerage boards, see section 244, *post.*

(7) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 111.

(8) *Post*, p. 249.

(9) As to the register and transfer of mortgages, see the two succeeding sections.

Secs. 237—239.

Register of mortgages.

237 (1). There shall be kept at the office of the local authority a register of the mortgages on each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names and description of the parties thereto, as stated in the deed. Every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds (2).

Transfer of mortgages.

238 (3). Any mortgagee or other person entitled to any mortgage under this Act may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in Schedule IV. to this Act (4), or to the like effect (5).

There shall be kept at the office of the local authority a register of the transfers of mortgage charged on each rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom, if executed elsewhere, the same shall be produced to the clerk of the local authority, who shall, on payment of a sum not exceeding five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and until such entry is made the local authority shall not be in any manner responsible to the transferee (6).

On the registration of any transfer the transferee, his executors or administrators, shall be entitled to the full benefit of the original mortgage and the principal and interest secured thereby; and any transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the last transferee, his executors or administrators, shall be entitled to release or discharge any such mortgage or any money secured thereby.

If the clerk of the local authority wilfully neglects or refuses to make in the register any entry by this section required to be made, he shall be liable to a penalty not exceeding twenty pounds (7).

Receiver may be appointed in certain cases.

239 (8). If at the expiration of six months from the time when any principal money or interest has become due on any mortgage of rates made under this Act, and after demand in writing, the same is not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a Court of Summary Jurisdiction; and such Court may, after hearing the parties, appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and of collection, are fully paid (9).

On such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 111.

(2) As to the recovery of penalties, see sections 251 *et seq.*, *post*.

(3) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 112. See notes (5) and (7), *infra*. (4) *Post*, p. 250.

(5) In *Webb* v. *Herne Bay Commissioners*, L. R. 5 Q. B. 642, 39 L. J. Q. B. 221, 22 L. T. N. S. 745, 19 W. R. 241, it was held that assuming an issue of debentures by commissioners to have been illegal, yet, as they had issued the debentures knowing that they might be assigned, they were estopped from alleging that the debentures had been illegally issued, and that a *mandamus* lay to compel the commissioners to apply their funds in payment of the interest.

(6) This last clause is new.

(7) This clause is new.

As to the recovery of penalties, see sections 251 *et seq.*, *post*.

(8) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 114.

(9) As to appointment of a receiver in case of the lapse of local board, see Schedule II., Part II., rule 1, *post*, p. 242.

Secs. 239—243.

much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them:

Provided that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application is made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum.

Rent-charge may be granted in respect of advances made for private improvements.

240 (1). Where any person has advanced money for any expenses which by this Act are, or by the local authority may be declared to be private improvement expenses (2), the local authority, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the form in Schedule IV. (3) to this Act to such person of a yearly rent-charge issuable out of the premises, in respect whereof such advance has been made, or out of such part thereof, to be specified in such grant, as the local authority may think proper and sufficient.

Such rent-charge shall be personal estate, and shall begin to accrue from the day of completion of the works on which the money advanced has been expended, and shall be payable by equal half-yearly payments during a term not exceeding thirty years, in such manner that the whole of the sum advanced, with the costs of preparing the said grant, together with interest thereon respectively, at a rate not exceeding six pounds per centum per annum on the sum from time to time remaining unpaid, shall be repaid at the end of the said term.

The provisions of this Act with respect to deduction from the rent of a proportion of private improvement rates, and with respect to redemption of private improvement rates, shall, *mutatis mutandis*, apply to rent-charges granted under this section.

Rent-charges to be registered.

241 (4). Rent-charges issued in pursuance of this Act and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the provisions of this Act (5).

Power of Public Works Loan Commissioners to lend to local authority.

242 (6). The Public Works Loan Commissioners may, if they see fit, on the application of any local authority, make any loan to such authority for any of the purposes of this Act on the security of any fund or rate applicable to any of the purposes of this Act, without requiring any further or other security (7).

Power of Public Works Loan Commissioners to lend to local authority on recommendation of Local Government Board.

243 (8). The Public Works Loan Commissioners, may on the application of any local authority, and on the recommendation of the Local Government Board, make any loan to such authority in pursuance of any powers of borrowing conferred by this Act, whether for works already executed or yet to be executed, on the security of any fund or rate applicable to any of the purposes of this Act, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum, or such other rate as may, in the judgment of the Commissioners of the Treasury, be necessary, in order to enable the loan to be made without loss to the Exchequer (9):

(1) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 58.

(2) As to private improvement expenses and rates, see sections 213—215, *ante;* and as to making good money borrowed for private improvement expenses, see the concluding clause of section 234, *ante.*

(3) Form K, *post*, p. 250.

(4) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 59.

(5) See sections 237, 238, *ante*, p. 175.

(6) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 108, and the Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75, s. 12.

(7) See the next section.

(8) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 44, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 36.

(9) See the Public Works Loans Act, 1875, 38 & 39 Vict. c. 89, *post:* and the

Provided,—

(1.) That in determining the time when a loan under this section shall be repayable, the Local Government Board shall have regard to the probable duration and continuing utility of the works in respect of which the same is required:

(2.) That this section shall not extend to any loan required for the purpose of defraying expenses incurred by the Local Government Board in the performance of the duty of a defaulting local authority after the passing of the Public Health Act, 1872 (1).

In the case of a loan made before the passing of the Public Health Act, 1872, to any local authority in pursuance of any powers conferred by the Sanitary Acts (2), the Public Works Loan Commissioners may reduce the interest payable thereon to the rate of not less than three and a half per centum per annum.

Borrowing powers of joint boards and certain other authori ies.

244 (3). Joint boards (4) and port sanitary authorities (5) under this Act, and the local board of health of any main sewerage district and any joint sewerage board (6) constituted under any of the Sanitary Acts and existing at the time of the passing of this Act shall, for the purposes of their constitution, have like powers of borrowing on the credit of any fund or rate applicable by them to purposes of this Act (7) or on the credit of sewage land and plant (8) as are by this Act conferred on local authorities, and in the exercise of those powers shall be subject to the like restrictions; and the Public Works Loan Commissioners may make any loan to any of the above-mentioned authorities which they may make to a local authority under this Act (9).

Public Works Loans (Money) Act, 1876, 39 & 40 Vict. c. 31, *post.* By the Public Works Loans Act, 1881, 44 & 45 Vict. c. 38, it is provided as follows:—

Section 7. Where the Public Works Loan Commissioners have either before or after the passing of this Act, in pursuance of the Public Works Loans Act, 1875, or of any enactment repealed by that Act, taken possession of any mortgaged property, and after the passing of this Act, advance any sum for the completion, repair, improvement, or security of that property, the rate of interest on such sum shall, notwithstanding anything in section twenty-two of the Public Works Loans Act, 1875, or any like enactment repealed by that Act, be not less than five per cent. per annum.

Section 8. The Local Government Board may make orders as to the expenses incurred by them or by any officer appointed by them in making or conducting any examination in pursuance of section thirty-six of the Public Works Loans Act, 1875, for the purpose of ascertaining that any loan or part of a loan advanced by the Public Works Loan Commissioners, either before or after the passing of this Act, on the security of a rate has been applied to the purpose for which the same was advanced.

See section 9, *post.*

By the Public Works Loans Act, 1882, 45 & 46 Vict. c. 62, it is provided as follows:—

Section 8. Where after the passing of this Act any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the said advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account, and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made.

Section 9 repeals section thirteen of the Public Works Loans Act, 1875.

As to the requisitions made by the Commissioners before making a loan, see *post.*

(1) See section 301, *post.*
(2) Defined *ante*, p. 47.
(3) This provision is new.
(4) See sections 279—284, *post.*
(5) See sections 287—291, *post.*
(6) See section 323, *post.*
(7) See section 233, *ante.*
(8) See section 235, *ante.*
(9) See section 243, *ante.*

Secs. 245—247.

AUDIT.

Audit of Accounts of Local Authorities.

Accounts of local authorities.

245 (1). Accounts of the receipts and expenditure under this Act of every local authority shall be made up in such form and to such day in every year as the Local Government Board may appoint (2).

Audit where urban authority are a town council.

246 (3). Where an urban authority are the council of a borough the accounts of the receipts and expenditure under this Act of such authority shall be audited and examined by the auditors of the borough, and shall be published in like manner, and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts (4).

Each of such auditors shall in respect of each audit be paid such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as such authority from time to time appoint. Any order of such authority for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under section forty-four of the Act of the first year of Her Majesty, chapter seventy-eight, with respect to orders of the council of a borough for payments out of the borough funds (5).

Audit where urban authority are not a town council.

247 (6). Where an urban authority are not the council of a borough the following regulations with respect to audit shall be observed (7); (namely,)

(1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor (*for the union in which the district of such authority or the greater part thereof is situate, unless such auditor is a member of the authority whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the Local Government Board:*

(2.) *There shall be paid to such auditor in respect of each audit under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as such authority from time*

(1) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 49.

(2) See the Circular and Order of the Local Government Board of 22nd March, 1880, *post*. And as to the accounts, &c., of improvement commissioners, see section 247 (10), *post*, p. 180.

See the Local Taxation Returns Act, 1877, 40 & 41 Vict. c. 66, *post*.

As to the annual report by local authorities, see section 206, *ante*.

As to annual account under Artizans, &c., Dwellings Act, 1879, 42 & 43 Vict. c. 64, see *post*.

As to the audit of the accounts of officers of local authorities, see section 250, *post*.

(3) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 60.

(4) See the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, *post*.

As to the audit where the urban authority are not a town council, see the next section; as to audit of accounts of rural authority, see section 248, *post*; and as to audit of accounts of officers, see section 250, *post*.

(5) This Act is repealed by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 5, *post*. See now section 141 of this latter Act, *post*.

(6) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 60.

(7) As to audit of accounts of burial board, see 15 & 16 Vict. c. 85, s. 18, and 23 & 24 Vict. c. 64, s. 3, *post*; and as to audit of accounts under Artizans and Labourers' Dwellings Acts, see 38 & 39 Vict. c. 36, s. 23, *post*.

to time appoint, together with his expenses of travelling to and from the place of audit (1)):

(3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice (2) of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever:

(4.) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers, and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding five pounds:

(5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury:

(6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances:

(7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment (3), and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been, but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made:

(1) The portion of the section printed in italics has been repealed by the District Auditors Act, 1879, 42 & 43 Vict. c. 6. As to district auditors, their remuneration, &c., see this Act, *post*.

(2) This length of notice was fixed by the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 38. The notice required by the previous enactment (note (6) *ante*, p. 178) was twenty days. The fourteen days must be reckoned exclusively of the day on which the notice is given and the day on which the audit is held: *R.* v. *Justices of Shropshire*, 8 A. & E. 173.

(3) See *A.-G.* v. *Tottenham Board*, 27 L. T. N. S. 440, *ante*, p. 159.

Secs. 247, 248.

(8) Any person aggrieved by disallowance made may apply to the Court of Queen's Bench for a writ of *certiorari* to remove the disallowance into the said Court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said Court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act, as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any person so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors (1):

(9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision (2); and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings, as are not recovered by him from such person (3):

(10.) Within fourteen days after the completion of the audit, the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

Where the provisions as to audit of any local Act constituting a board of improvement commissioners are repugnant to or inconsistent with those of this Act, the audit of the accounts of such improvement commissioners shall be conducted in all respects in accordance with the provisions of this Act (4).

Audit of accounts of rural authority.

248 (5). The accounts under this Act of every rural authority shall be audited by the same persons and in every respect in the same manner as the accounts of guardians are audited under the Acts for the relief of the poor for the time being in force.

The accounts of the overseers collecting or paying any money for the purposes of this Act shall be audited in the same manner as the accounts of overseers collecting or paying any money for the purposes of the Acts relating to the relief of the poor for the time being in force (6).

An auditor shall, with respect to the accounts audited under this section, have the like powers and be subject to the like obligations in every respect as in the

(1) As to poor law audit, auditors, disallowances, &c., see 7 & 8 Vict. c. 101, ss. 32, 33, 35 and 36, *post;* 11 & 12 Vict. c. 91, ss. 4, 5, 7, 8, 9, 10, *post;* 12 & 13 Vict. c. 103, ss. 8, 9, 11; 29 & 30 Vict. c. 113, s. 5, *post;* 31 & 32 Vict. c. 122, s. 24, *post;* 39 & 40 Vict. c. 61, s. 38, *post;* and 42 & 43 Vict. c. 6, *post.*

(2) See 7 & 8 Vict. c. 101, s. 32, *post,* and 12 & 13 Vict. c. 103, s. 9, *post.*

(3) If there has been no appeal, the certificate of the auditor is final, and the justices have no discretion, but must enforce it: *R.* v. *Finnis,* 1 El. & El. 935, 28 L. J. M. C. 201, 33 L. T. 146, 23 J. P. 692; *R.* v. *Linford,* 7 El. & Bl. 950; *R.* v. *Justices of Denbighshire,* 33 L. T. 145. But in *R.* v. *Fordham,* L. R. 8 Q. B. 501, 42 L. J. M. C. 153, 38 J. P. 87, it was held that the certificate of the auditor was only *primâ facie* evidence of non-payment, and it was open to the person surcharged to show that he had paid, if he could do so without contradicting the certificate.

(4) This is new, and is in accordance with the decision in *Gibson* v. *Bell,* 39 J. P. 421.

(5) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 49.

(6) See the statutes relating to poor law audit referred to note (1), *supra.*

case of an audit under the Acts relating to the relief of the poor, and any person aggrieved by the decision of the auditor shall have the like rights and remedies as in the case of such last-mentioned audit.

Taxation of bill of solicitor or attorney.

249 (1). On the application of any local authority whose accounts are required by this Act to be audited to the clerk of the peace of the county in which the district of such authority is wholly or in part situated, the said clerk or his deputy shall tax any bill due to any solicitor or attorney in respect of legal business performed on behalf of such authority; and the allowance of any sum on such taxation shall be *primâ facie* evidence of the reasonableness of the amount, but not of the legality of the charge.

The clerk of the peace shall be allowed for such taxation a remuneration after the rate to be fixed by the master of the Crown Office, and declared by an order of the Local Government Board (2).

If any such bill is not taxed by the clerk of the peace, or some other duly authorised taxing officer, before being presented to the auditors or auditor, the decision of the auditors or auditor upon the reasonableness and the legality of the charge shall be final (3).

Auditor to audit accounts of officers.

250 (4). The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents, and consequences as in the case of such last-mentioned accounts (5).

PART VII.

LEGAL PROCEEDINGS.

Prosecution of Offences and Recovery of Penalties, &c.

Summary proceedings for offences, penalties, &c.

251 (6). All offences under this Act, and all penalties, forfeitures, costs, and expenses under this Act directed to be recovered in a summary manner, or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts (7) before a Court of Summary Jurisdiction (8). The Court of Summary Jurisdiction, when hearing and determining an information or complaint under this Act, shall be constituted of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions, or of some magistrate or officer for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace sitting at some court or other place appointed for the administration of justice (9).

(1) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 50, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 39.

(2) The Local Government Board have ordered that the clerk of the peace of every county or place in England and Wales shall be allowed after the rate of 4*d.* per sheet or folio of seventy-two words for the taxation of every bill due to any solicitor in respect of legal business performed on behalf of any local authority whose accounts are required by (this) Act to be audited.—*London Gazette*, 24th April, 1877.

(3) A *certiorari* to remove the allowance or disallowance by the auditor of a law bill is confined to cases in which the bill has been previously taxed. See *R.* v. *Hunt* or *Napton*, 6 El. & Bl. 408, 25 L. J. Q. B. 296, 27 L. T. 124, 2 Jur. N. S. 1138, 20 J. P. 581.

(4) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 38.

(5) See 23 & 24 Vict. c. 51, ss. 1, 2, 3, 4, 6, *post*, and 40 & 41 Vict. c. 66, s. 1, *post*.

(6) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 129.

(7) Defined *ante*, p. 47. (8) Defined *ante*, p. 47.

(9) As to penalties imposed by bye-laws made under the Act, see *Cullen* v. *Trimble*,

Secs. 252, 253.

General provisions as to summary proceedings.

252 (1). Any complaint or information made or laid in pursuance of this Act shall be made or laid within six months from the time when the matter of such complaint or information respectively arose (2).

The description of any offence under this Act in the words of this Act shall be sufficient in law.

Any exception, exemption, proviso, excuse or qualification whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; and, if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant.

Restriction on recovery of penalties.

253 (3). Proceedings for the recovery of any penalty under this Act shall not, except as in this Act is expressly provided, be had or taken by any person other than by a party aggrieved, or by the the local authority of the district in which the offence is committed, without the consent in writing of the Attorney-General (4): Provided that such consent shall not be required to proceedings

L. R. 7 Q. B. 416; 41 L. J. M. C. 132, 26 L. T. N. S. 691, 20 W. R. 701; *R.* v. *Walker*, L. R. 10 Q. B. 355, 33 L. T. N. S. 167, 40 J. P. 230.

The statute having given a particular remedy, an action will not lie for the recovery of penalties, &c., except where such remedy is specially given: *Vestry St. Pancras* v. *Batterbury*, 2 C. B. N. S. 477, 26 L. J. C. P. 243, 3 Jur. N. S. 1106; *Mayor, &c., Blackburn* v. *Parkinson*, 1 El. & El. 71, 28 L. J. M. C. 7, 32 L. T. 91.

By 30 & 31 Vict. c. 106, s. 27, "Where a union extends into several distinct jurisdictions, every matter, act, charge or complaint by which the guardians thereof are affected or in which they have any interest, shall for the purpose of jurisdiction be deemed to arise or exist equally throughout the union."

By section 258, *post*, justices may act, though as members of the local authority, &c., they are liable to contribute to the expenses, &c. In *R.* v. *Gibbon*, L. R. 6 Q. B. D. 168, it was held that a justice, who was an alderman of a corporation, which was the authority for the execution of a local improvement Act, could not issue a summons upon the information of an officer on behalf of the corporation, for the justice was virtually a prosecutor, and that the hearing of such summons could not be proceeded with even before justices who were not connected with the corporation. But this case was disapproved in *R.* v. *Handsley*, L. R. 8 Q. B. D. 383, 51 L. J. M. C. 137, 30 W. R. 368, 46 J. P. 119.

By section 262, *post*, proceedings are not to be quashed for want of form, or removed into the Superior Court, except by special case.

As to appeals to Quarter Sessions, see section 269, *post*.

As to recovery of demands below £50 in the County Court, see section 261, *post*.

(1) This clause is new. The limitation was the same under the previous Acts by virtue of section 11 of the Summary Jurisdiction Act, 11 & 12 Vict. c. 43.

(2) As to when the six months begin to run, see *Eddleston* v. *Francis*, 7 C. B. N. S. 568, and cases cited *ante*, p. 123; and see *Brutton* v. *Vestry of St. George*, L. R. 13 Eq. 339, 41 L. J. Ch. 134, 25 L. T. N. S. 552, 20 W. R. 84. In *Morant* v. *Taylor*, L. R. 1 Ex. D. 188, 45 L. J. M. C. 78, 34 L. T. N. S. 139, 40 J. P. 501, it was held that justices could not under the powers given by a local Act order the demolition of a building erected contrary to the requirements of a corporation, the complaint having been made more than six months after the completion of the building.

The limitation of six months does not apply to enforcing a charge created under section 257: *Tottenham Board* v. *Rowell*, L. R. 15 Ch. D. 378, 50 L. J. Ch. 99, 43 L. T. N. S. 616, 29 W. R. 36.

As to when the six months begins to run in the case of expenses under section 150, see *Simcox* v. *Handsworth Board*, and cases cited *ante*, p. 123.

As to continuing offences, see *Higgins* v. *Northwich Union*, *ante*, p. 90.

(3) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 133.

(4) Where an information is laid on behalf of a local authority, it is not necessary that the person laying it should be appointed under seal, or that the consent of the Attorney-General should be obtained: *Harring* v. *Stockton*, 31 J. P. 420

which are by the provisions of this Act relating to nuisances or offensive trades authorised to be taken by a local authority in respect of any act or default committed or taking place without their district, or in respect of any house, building, manufactory or place situated without their district.

Secs. 253, 254.

254 (1). Where the application of a penalty under this Act is not otherwise provided for, one half thereof shall go to the informer, and the remainder to the local authority of the district in which the offence was committed: Provided, that if the local authority are the informer they shall be entitled to the whole of the penalty recovered; and all penalties or sums recovered by them on account of any penalty shall be paid over to their treasurer, and shall by him be carried to the account of the fund applicable by such authority to the general purposes of this Act (2).

Application of penalties.

Under the previous enactment (note (4), *supra*) it was held that a ratepayer and inhabitant entitled to vote for members of a local board and as one of the public accustomed to use a certain pier was not a party aggrieved so as to sue a proprietor and director of the pier company, who, as a member of the local board, had voted on a resolution affecting the pier company: *Boyce* v. *Higgins*, 14 C. B. 1, 23 L. J. C. P. 5, 18 Jur. 333; and in *Hollis* v. *Marshall*, 2 H. & N. 755, 27 L. J. Ex. 235, 30 L. T. N. S. 334, 6 W. R. 365, it was held that a defeated candidate or a ratepayer in the district is not a party aggrieved where a disqualified person is returned at the election and takes part in a meeting of the local board. So, where the clerk to a board, fearing that he would be dismissed by reason of a complaint made to the board by a person acting as chairman of the board after disqualification, resigned his office and sued the chairman for acting without qualification, it was held that he was not a party aggrieved: *Rochfort* v. *Atherley*, L. R. 1 Ex. D. 511; *Smith* v. *Fieldhouse*, 35 L. T. N. S. 602. But in *Verdin* v. *Wray*, L. R. 2 Q. B. D. 608, 46 L. J. M. C. 170, 35 L. T. N. S. 942, 25 W. R. 274, it was held that a candidate at an election is a party aggrieved by the fabrication of a voting paper. See Schedule II. r. 69, *post*, p. 240.

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 133, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 47.

(2) See sections 207, &c., and 229, *ante*.

The Crown has power, under 22 Vict. c. 32, to remit in whole or in part any penalty, although the same may be in whole or in part payable to some party other than the Crown.

Remission of penalties by Crown.

Justices or other Courts having cognizance of the matter cannot, in pursuance of any power of mitigating penalties conferred by any local or private Act, mitigate a penalty imposed by a public Act below the minimum penalty mentioned in the Act. 27 & 28 Vict. c. 110.

Justices, &c., cannot mitigate below limit fixed by Act.

By the Small Penalties Act, 1865, 28 & 29 Vict. c 127, it is provided as follows:—

"Small Penalties Act, 1865."

Section 4. Where upon summary conviction any offender may be adjudged to pay a penalty not exceeding £5, such offender, in case of non-payment thereof, may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the following scale, unless the penalty shall be sooner paid:

For any penalty—	The imprisonment not to exceed—
Not exceeding 10*s*.	Seven days.
Exceeding 10*s*. and not exceeding £1	Fourteen days.
Exceeding £1 but not exceeding £2	One month.
Exceeding £2 but not exceeding £5...	Two months.

Section 5. Nothing in this Act contained shall affect the power of imposing hard labour, in addition to imprisonment, in cases where hard labour might, on non-payment of the penalty, have been so imposed if this Act had not passed.

Section 6. This Act shall apply to penalties including costs recoverable in a summary manner in pursuance of any Act of Parliament, whether passed before or after the commencement of this Act, and all provisions of any Act of Parliament authorising in the case of non-payment of a penalty not exceeding £5 a longer term of imprisonment than is provided by this Act, shall be repealed.

And by section 3 it is provided that the word "penalty" in this Act shall include any sum of money recoverable in a summary manner.

Secs. 255, 256.

Proceedings in certain cases against nuisances.

255 (1). Where any nuisance under this Act appears to be wholly or partially caused by the acts or defaults of two or more persons, it shall be lawful for the local authority or other complainant to institute proceedings against any one of such persons, or to include all or any two or more of such persons in one proceeding; and any one or more of such persons may be ordered to abate such nuisance, so far as the same appears to the Court having cognizance of the case to be caused by his or their acts or defaults, or may be prohibited from continuing any acts or defaults which, in the opinion of such Court, contribute to such nuisance, or may be fined or otherwise punished, notwithstanding that the acts or defaults of any one of such persons would not separately have caused a nuisance; and the costs may be distributed as to such Court may appear fair and reasonable (2).

Proceedings against several persons included in one complaint shall not abate by reason of the death of any among the persons so included, but all such proceedings may be carried on as if the deceased person had not been originally so included.

Whenever in any proceeding under the provisions of this Act relating to nuisances, whether written or otherwise, it becomes necessary to mention or refer to the owner or occupier of any premises, it shall be sufficient to designate him as the "owner" or "occupier" of such premises, without name or further description (3).

Nothing in this section shall prevent persons proceeded against from recovering contribution in any case in which they would now be entitled to contribution by law (4).

Summary proceedings for recovery of rates.

256 (5). If any person assessed to any rate made under this Act by any urban authority (6) fail to pay the same when due, and for the space of fourteen days after the same has been lawfully demanded in writing (7), or if any person quits or is about to quit any premises without payment of any such rate then due from him in respect of such premises, and refuses to pay the same after lawful demand thereof in writing, any justice may summon the defaulter to appear before a Court of Summary Jurisdiction (8) to show cause why the rate in arrear should not be paid; and if the defaulter fails to appear, or if no sufficient cause for non-payment is shown, the Court may make an order for payment of the same, and, in default of compliance with such order, may by warrant cause the same to be levied by distress of the goods and chattels of the defaulter (9).

The costs of the levy of arrears of any rate may be included in the warrant for such levy.

(1) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, ss. 33, 34, and 39. As to the present section, see the Circular issued by the Local Government Board, dated 30th September, 1875, *ante*, p. 17.

(2) Further as to abatement of nuisances, see sections 91—106, *ante*.

(3) As to notices and service thereof, see sections 266, 267, *post*.

(4) As a general rule there is no contribution between wrongdoers. See *Merryweather* v. *Nixan*, 2 Smith's Leading Cases, and the notes.

(5) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 103, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 54 (3).

(6) See sections 209—217, *ante*. (7) See section 267, *post*.

(8) Defined *ante*, p. 47.

(9) The provision that an *order* must be made for payment of the rate before a distress can issue is new. In *Sweetman* v. *Guest*, L. R. 3 Q. B. 262, 37 L. J. M. C. 59, 18 L. T. N. S. 52, it was held that the limitation of six months fixed by 11 & 12 Vict. c. 43, s. 11, did not apply to the case of a distress warrant, which was distinct from an order for payment. It would seem, therefore, that now the complaint or information to obtain an order for payment must be laid within six months. See section 252, and notes thereto, *ante*.

Where the rate is good upon its face, the justices have no power to decide as to the validity of the rate, which must be the subject of an appeal to the Sessions: *R.* v. *Newman*, 29 L. J. M. C. 117, 6 Jur. N. S. 293; *Luton* v. *Davis*, 2 El. & El. 678, 29 L. J. M. C. 173, 2 L. T. N. S. 172, 6 Jur. N. S. 580, 8 W. R. 411. See also *R.* v. *Justices of Essex*, 36 L. T. N. S. 554; *Hutchins* v. *Chambers*, 1 Burr. 580. As to appeal to Sessions, see section

257 (1). Where any local authority have incurred expenses for the repayment whereof the owner (2) of the premises for or in respect of which the same are incurred is made liable under this Act or by any agreement with the local authority, such expenses may be recovered, together with interest at a rate not exceeding five pounds per centum per annum, from the date of service of a demand for the same till payment thereof, from any person who is the owner (2) of such premises when the works are completed (3) for which such expenses have been incurred, and until recovery of such expenses and interest the same shall be a charge on the premises in respect of which they were incurred (4). In all summary proceedings by a local

Sec. 257.

Recovery of expenses by local authority from owners.

269, *post*. And justices cannot be required to state a special case where an appeal lies to Sessions: *R.* v. *Newman*, *ante*, p. 184.

As to restraining a local board from levying where, through an error, the time had gone by for appealing, unless the board would give an opportunity of stating a case, see *Ashworth* v. *Hebden Board*, *ante*, p. 124.

As to the recovery of the rate in the County Court, see section 261, *post*.

In bankruptcy or liquidation, rates due at the date of the order of adjudication, and which became due and payable within twelve months before such time, are paid in priority to all other debts: 32 & 33 Vict. c. 71, ss. 32, 125 (7).

In *Re W. Hartlepool Iron Co. (Limited), Ex parte W. Hartlepool Improvement Commissioners*, 34 L. T. N. S. 568, it was held that the liquidators of a limited company, which had been assessed to an improvement rate in respect of premises in its occupation, were not bound to pay the rate in full, though they had entered into possession of the premises for the purposes of the winding-up, but that the commissioners must prove in the winding-up for such sum as they might be entitled to.

By 25 & 26 Vict. c. 82, s. 1, it is provided that, "Where any number of local rates and taxes, whether of the same or of different kinds, are due from the same person, the rates and taxes so due may be included in the same information, complaint, summons, order, warrant or other document required by law to be laid before justices or to be issued by justices; and every such document as aforesaid shall, as respects each rate or tax comprised in it, be construed as a separate document, and its invalidity as respects any one rate or tax shall not affect its validity as respects any other rate or tax comprised in it. No costs shall be allowed in respect of several informations, complaints, summonses, orders, warrants, or other such documents as aforesaid in cases where, in the opinion of the said justices or Court having jurisdiction over the said costs, one information, complaint, summons, order, warrant, or other document as aforesaid, might have sufficed, regard being had to the provisions of this Act.

(1) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, ss. 62, 63, and the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 23. See the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 146.

(2) See the interpretation clause, *ante*, p. 45. Under the previous enactment (note (1), *supra*), it was held that service of demand upon the person *de facto* receiving the rent was service on the "owner": *Peek* v. *Waterloo, &c., Board*, *ante*, p. 45.

(3) Expenses of paving, &c., a street, under section 150, *ante*, cannot be recovered from anyone who, though the owner of premises when notice was first given under that section by the urban authority, has ceased to be owner before the completion of the works: *R.* v. *Swindon Board*, L. R. 4 Q. B. D. 305, 48 L. J. M. C. 119, 40 L. T. N. S. 424, 27 W. R. 732. See *Corporation of Sunderland* v. *Alcock*, *infra*.

(4) Under the previous enactment (note (1), *supra*), it was held that this remedy for recovery of expenses of paving, &c., a street (see section 150, *ante*) is in addition to the summary remedy before justices or in the County Court, and not an alternative remedy, and that the limitation of six months did not apply; nor were a local board precluded by their election to treat the expenses as private improvement expenses from enforcing a charge, but it is enforceable only in respect of instalments in arrear for the time being: *Tottenham Board* v. *Rowell*, L. R. 15 Ch. D. 378, 50 L. J. Ch. 99, 43 L. T. N. S. 616, 29 W. R. 36; and see *Corporation of Sunderland* v. *Alcock*, 51 L. J. Ch. 546, 46 L. T. N. S. 377, 30 W. R. 655. See the concluding clause of the section, *post*, p. 186.

The charge is a charge not on the interest of any particular owner, but on the "pre-

Secs. 257—259.

authority for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand (1).

Where such expenses have been settled and apportioned by the surveyor of the local authority as payable by such owner, such apportionment shall be binding and conclusive on such owner, unless within three months from service of notice on him by the local authority or their surveyor of the amount settled by the surveyor to be due from such owner, he shall by written notice dispute the same (2).

The local authority may, by order, declare any such expenses to be payable by annual instalments within a period not exceeding thirty years, with interest at a rate not exceeding five pounds per centum per annum, until the whole amount is paid; and any such instalments and interest, or any part thereof, may be recovered in a summary manner from the owner or occupier for the time being of such premises, and may be deducted from the rent of such premises, in the same proportions as are allowed in the case of private improvement rates under this Act (3).

Justices may act though members of local authority or liable to contribute.

258 (4). No justice of the peace shall be deemed incapable of acting in cases arising under this Act by reason of his being a member of any local authority, or by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others to contribute to, or to be benefited by any rate or fund, out of which any expenses incurred by such authority are under this Act to be defrayed (5).

Appearance of local authorities in legal proceedings.

259 (6). Any local authority may appear before any Court, or in any legal proceeding by their clerk, or by any officer or member authorised generally or in respect of any special proceeding by resolution of such authority, and their clerk,

mises" or the total ownership, that is, on the respective interests of the owner when the works are completed, and every subsequent owner for the time being, and in proportion to the value of their interests: *Corporation of Sunderland* v. *Alcock*, *supra*; *Birmingham Corporation* v. *Baker*, L. R. 17 Ch. D. 782, 46 J. P. 52.

(1) See *Wilson* v. *Mayor of Bolton*, *Simcox* v. *Handsworth Board*, *Grece* v. *Hunt*, and *Jacomb* v. *Dodgson*, *ante*, p. 123.

As to service of notices, see section 267, *post*.

(2) See *R.* v. *Local Government Board*, *post*, p. 192, and *Shanklin Board* v. *Miller*, L. R. 5 C. P. D. 272, 49 L. J. C. P. 512, 42 L. T. N. S. 738, 29 W. R. 63, 44 J. P. 635. But though the apportionment cannot be disputed, it is still open to the person sought to be charged to dispute his liability, as, under section 150, *ante*, by showing that the street is a highway repairable by the inhabitants at large: *Hesketh* v. *Atherton Board*, *ante*, p. 124.

If the matter is disputed, it must be settled by arbitration. See section 150, *ante*. And as to arbitration, see sections 179—181, *ante*. The award of the arbitrator is not binding upon persons not parties to the arbitration: *Tunbridge Board* v. *Ackroyd*, *ante*, p. 146.

(3) See *Tottenham Board* v. *Rowell*, *ante*, p. 185, and *Birmingham Corporation* v. *Baker*, *supra*.

As to recovery in a summary manner, see sections 251 *et seq.*, *ante*.

As to proportion of improvement expenses to be deducted, see section 214, *ante*.

(4) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 132, and the Nuisances Removal Act, 1866, 29 & 30 Vict. c. 41, s. 2. The language of the Justices of the Peace Act, 1867, 30 & 31 Vict. c. 115, has been used in the present section.

(5) But if the justice have such an interest in the matter as may give him a real bias, he cannot act: *R.* v. *Meyer*, L. R. 1 Q. B. D. 173, 34 L. T. N. S. 247; unless the objection be waived: *Wakfield Board* v. *West Riding & Grimsby Ry.*, L. R. 1 Q. B. 84, 35 L. J. Q. B 84, 13 L. T. N. S. 590, 12 Jur. N. S. 160. In *R.* v. *Lee*, L. R. 9 Q. B. D. 394, 30 W. R. 750, it was held that a justice, who, as a member of the sanitary committee of a corporation, was present at a meeting at which a resolution was passed directing the town clerk to institute a prosecution for exposing meat unfit for food, was disqualified from adjudicating upon the information, and, having done so, that the conviction was wrong and must be quashed. See further the notes to section 251, *ante*.

(6) The previous enactment was the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 48.

or any officer or member so authorised, shall be at liberty to institute and carry on any proceeding which the local authority is authorised to institute and carry on under this Act (1).

Name of local authority need not be proved.

260 (2). In any proceeding instituted by or against a local authority under this Act it shall not be necessary for the plaintiff to prove the corporate name of the local authority or the constitution or limits of their district: Provided that this section shall not abridge or prejudice the right of any defendant to take or avail himself of any objection which he might have taken or availed himself of if this Act had not been passed.

Demands below £50 may be recovered in County Courts.

261 (3). Proceedings for the recovery of demands below fifty pounds, which local authorities are empowered to recover in a summary manner, may, at the option of the local authority, be taken in the County Court as if such demands were debts within the cognizance of such Courts (4).

Proceedings not to be quashed for want of form.

262 (5). No rate, order, conviction, or thing made or done or relating to the execution of this Act shall be vacated, quashed, or set aside for want of form, or (unless otherwise expressly provided by this Act) be removed or removable by *certiorari*, or any other writ or process whatsoever, into any of the superior Courts (6): Provided that nothing in this section shall prevent the removal of any case stated for the opinion of a superior Court, or of any rate, order, conviction, or thing to which such special case relates (7).

(1) In *Ex parte Leamington Board*, 5 L. T. N. S. 637, 26 J. P. 84, a rule calling upon justices to show cause why they should not hear certain informations laid by the board, they having refused to hear the inspector of police and required the attendance of the clerk to the board, was refused; but Cockburn, C.J., said he saw no reason why the justices should not hear the police inspector if they thought fit to do so.

(2) This section is new.

(3) The previous enactment was the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 24. The limit in point of amount fixed by that Act was £20.

(4) Under the previous enactment (note (3), *supra*), it was held that the limitation of six months mentioned in section 11 of 11 & 12 Vict. c. 43 (see now section 252, *ante*) applied as well to proceedings in County Courts as to proceedings before justices: *Tottenham Board* v. *Rowell*, L. R. 1 Ex. D. 514 (C. A.), 46 L. J. Ex. 432, 35 L. T. N. S. 887, 25 W. R. 135; *West Ham Board* v. *Maddams*, L. R. 1 Ex. D. 516 n., 33 L. T. N. S. 809.

(5) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 137, and the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 39.

(6) But this will not prevent a conviction by a justice under disqualification from being removed by *certiorari* to be quashed. See *R.* v. *Lee*, *ante*, p. 186, also *R.* v. *Wood*, 5 El. & Bl. 49, S. C. *nom. R.* v. *Rose*, 24 L. J. M. C. 130, 1 Jur. N. S. 802, and *R.* v. *Gosse*, 30 L. J. M. C. 41, 6 Jur. N. S. 1369.

There is no appeal from the decision of the Queen's Bench Division upon a rule for a certiorari to bring up a summary conviction: *R.* v. *Fletcher*, L. R. 2 Q. B. D. 43 (C. A.), 46 L. J. M. C. 4, 35 L. T. N. S. 538, 25 W. R. 149.

(7) As to this proviso, see the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 17.

As to the procedure upon the statement of a special case by justices, see 20 & 21 Vict. c. 43.

The application for a rule requiring justices to state a special case, must be made to the Queen's Bench Division: *Re Justices of Leeds*, *Ex parte Longbottom*, L. R. 1 Q. B. D. 51.

Where the conditions required by 20 & 21 Vict. c. 43, have not been complied with, the Queen's Bench Division have no jurisdiction to hear the case, and the respondent may apply to strike the case out of the paper. The respondent may be granted the costs of his application: *Great Northern Committee* v. *Inett*, L. R. 2 Q. B. D. 284, 46 L. J. Q. B. 237, 25 W. R. 584, 41 J. P. 710.

Justices have no power to state a case on refusing to make an order authorising a local authority to enter premises under section 305, *post*, as this is not a determination

Secs. 263, 264.

False evidence punishable as perjury.

Notice of action against local authority, &c.

263 (1). Any person who on any examination on oath (2), under any of the provisions of this Act, wilfully and corruptly gives false evidence, shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury.

264 (3). A writ or process shall not be sued out against or served on any local authority, or any member thereof, or any officer of a local authority, or person acting in his aid, for anything done, or intended to be done, or omitted to be done under the provisions of this Act, until the expiration of one month after notice in writing has been served on such local authority, member, officer, or person, clearly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause (4); and on the trial

of a complaint within 20 & 21 Vict. c. 43, s. 2: *Diss Urban Authority* v. *Aldrich*, L. R. 2 Q. B. D. 179, 46 L. J. M. C. 182, 36 L. T. N. S. 663, 41 J. P. 549.

The respondent who appears to a case stated which there is no jurisdiction to hear, may be granted the costs of so doing: *Great Northern Committee* v. *Inett*, *ante*, p. 187.

As to power of arbitrator to state a special case, see *ante*, p. 144.

As to appeals to the Local Government Board and to Quarter Sessions, see sections 268, 269, *post*.

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 147.

(2) See *ante*, p. 104.

(3) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 139. But see *Stringer* v. *Barker*, *infra*.

(4) It is not in general necessary to give notice of action before suing on a specific contract. Where, for example, a local board of health contracted by a deed for the execution of certain works, it was held that in an action on the contract notice of action was not necessary under the previous enactment (note (3), *supra*): *Davies* v. *Mayor of Swansea*, 8 Ex. 808, 22 L. J. Ex. 297. Again, where a local Act directed that the guardians, &c., of a parish should be sued in the name of their vestry clerk, and required notice to be given of any action for anything done in pursuance of the Act, it was held that notice was not necessary in an action for work and labour: *Fletcher* v. *Greenwell*, 4 Dowl. 166. On the other hand, the necessity for giving notice is not confined to actions of tort. Thus, where the owners of land abutting on a lane had paid a local board the expenses of paving, &c., pursuant to section 150, *ante*, under a mistake of fact common to themselves and the board (*viz.*, that the lane was not a highway repairable by the inhabitants at large), it was held in an action to recover back the moneys so paid by mistake that notice of action was necessary, and that the action must be brought within six months from the time of payment, as the cause of action was something done or omitted under the Act: *Midland Ry.* v. *Withington Board*, L. R. 11 Q. B. D. 788, 52 L. J. Q. B. 689, 47 J. P. 789; and so notice of action must be given to a collector of turnpike tolls before an action *ex contractu* can be brought against him to recover back money illegally but *bonâ fide* received: *Waterhouse* v. *Keen*, 4 B. & C. 200. So in an action against surveyors of highways to recover back the money paid under an invalid rate: *Selmes* v. *Judge*, L. R. 6 Q. B. 724, 24 L. T. N. S. 904, 19 W. R. 110; or in an action for money had and received brought against a railway company to recover the amount of excessive charges: *Kent* v. *Gt. Western Ry. Co.*, 3 C. B. 714. The question must turn on the construction of the words which require notice of action to be given, so that where this is made necessary "in an action for anything done in pursuance of the Act, or in the execution of the powers or authorities given by it," notice of action is generally only necessary where the matter in respect of which the action is brought is something "done in pursuance of the Act, &c." Therefore, though a Railway Act contained a protection clause in the above words, this does not make notice necessary where the company are sued for negligence as carriers; *Carpue* v. *London & Brighton Ry. Co.*, 5 Q. B. 747; *Palmer* v. *Grand Junction Ry. Co.*, 4 M. & W. 749. And a contractor under a contract with the local authority under this Act is not entitled to notice of action in an action for negligence in constructing a sewer and filling in a drain, though he would have been so entitled under the previous enactment (note (3), *supra*), for the words of the present Act have been purposely restricted so as to exclude contractors: *Stringer* v. *Barker*, W. Notes, 1879, p. 127. A person employed by a building owner to erect a building adjoining the house of another is not within the meaning of the 108th section of the

of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served; and unless such notice is proved the jury shall find for the defendant.

Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122), which requires a month's notice of action to be given before suit or process is sued out against any district surveyor, or other person, for anything done under the provisions of the Act: *Williams* v. *Golding*, L. R. 1 C. P. 69, 35 L. J. C. P. 1, 14 L. T. N. S. 403, 14 W. R. 60. And where an action was brought against a contractor who was engaged under a district board in constructing a sewer, and employed men with horses and carts, and one of the men went home to his dinner leaving his horse unattended in the street before his door, and an injury was caused by the horse running away, it was held that the contractor was not entitled to notice under 25 & 26 Vict. c. 102, s. 106, as the injury was not a thing done, or intended to be done, under the powers of the Act, but was something collateral: *Whatman* v. *Pearson*, L. R. 3 C. P. 422. Omission to do something that ought to be done in order to the complete performance of a duty imposed, or the continuing to leave such duty unperformed, amounts to an act "done or intended to be done" within the meaning of such a clause: *Wilson* v. *Mayor and Corporation of Halifax*, *ante*, p. 119. In an action against a local board claiming an injunction and damages, the claim for damages being merely subsidiary to the injunction, no notice of action is necessary under this section: *Flower* v. *Leyton Local Board*, L. R. 5 Ch. D. 347, 46 L. J. Ch. 621, 36 L. T. N. S. 760, 25 W. R. 545, 41 J. P. 548. It seems that notice is not required in the case of proceedings to obtain compensation for damage done by a local authority in the exercise of their powers under the Act. See *Delany* v. *Metropolitan Board of Works*, L. R. 2 C. P. 532, 3 C. P. 111, 37 L. J. C. P. 59, 17 L. T. N. S. 262, 16 W. R. 137.

Notice of action is not necessary in an action for the recovery of land: *Foat* v. *Mayor of Margate*, L. R. 11 Q. B. D. 299, 47 J. P. 535, S. C. 52 L. J. Q. B. 711, *sub. nom. Holder* v. *Mayor of Margate*.

In order to entitle a party to notice of action for anything done in pursuance of a statute, he must have acted under a *bonâ fide* belief in the existence of circumstances which if they really had existed would have amounted to a justification. The question is, "Did the defendant honestly believe in the existence of those facts which if they had existed would have afforded a justification for the act done under the statute?" *Roberts* v. *Orchard*, 2 H. & C. 769, 33 L. J. Ex. 65; *Griffiths* v. *Taylor*, L. R. 2 C. P. 194, 46 L. J. C. L. 152. But the supposed state of facts must be such as, if true, would, according to the true construction of the statute, entitle the person acting under it to notice; a misapprehension of the law (that is, of what the statute enables him to do) will not so entitle him: *Griffiths* v. *Taylor*, *supra*. But when a party acts under a reasonable and *bonâ fide* belief that he is acting in pursuance of a statute according to which he is entitled to notice, he may still have that right, although the specific act was not authorised by the statute: *Hughes* v. *Buckland*, 15 M. & W. 346; *Allen* v. *Preece*, 10 Ex. 43; *Hardwick* v. *Moss*, 7 H. & N. 136, 31 L. J. Ex. 205. Improvement commissioners under a local Act sued for the negligence of their servants are entitled to notice of action: *Mason* v. *Birkenhead Improvement Commissioners*, 6 H. & N. 72, L. J. 29 Ex. 407. Where the bailiff of a County Court under a warrant against the goods of *A.* takes those of *B.*, he is entitled to notice of action: *Burling* v. *Harley*, 3 H. & N. 271, L. J. 7 Ex. 258; and it is not necessary that a person should be aware of the existence of the statute entitling him to notice: *Read* v. *Coker*, 13 C. B. 850; see further on the subject, *O'Byrne* v. *Hartington*, I. R. 11 C. L. 445. It will be gathered from a perusal of the cases cited that the rule may be shortly expressed as follows, namely: where a person acting in pursuance of a statute does an act not authorised by the statute through mistake of fact, he is entitled to notice, if he *bonâ fide* believed in the existence of such facts as would have justified him in the act; but where the mistake is one of law as to the construction of the statute, he is not so entitled, even though the mistake be *bonâ fide*. See *Agnew* v. *Jobson*, 47 L. J. M. C. 67. The notice should be a formal one, and not a mere letter: *Lewis* v. *Smith*, Holt N. P. 27. It must not be conditional, but should distinctly state that an action is to be brought. Therefore, a letter from a solicitor, stating that his instructions are to commence legal proceedings if no satisfactory

Sec. 264. Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards, and shall be tried in the county or place where the cause of action occurred, and not elsewhere (1).

Any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff, his attorney or agent, at any time within one month after service of such notice, and, in case the same be not accepted, may plead such tender in bar; and in case amends have not been tendered as aforesaid, or in case the amends tendered are insufficient, the defendant may, by leave of the Court, at any time before trial, pay into court under plea such sum of money as he may think proper; and if upon issue joined, or upon any plea pleaded for the whole action, the jury find generally for the defendant, or if the plaintiff be nonsuited or judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly.

arrangement is made is not sufficient. The notice must be plain and intelligible, setting forth the substantial cause of action intended to be relied upon with sufficient clearness, as well as the time and place of the act complained of, so that the intended defendant may not be misled: *Freeman* v. *Line*, 2 Chitt. 673; *Gimbert* v. *Coyney*, McL. & Y. 469. The object of the notice being to give an opportunity of tendering amends, the notice ought to state fully the extent of the claim intended to be made by the action. See, for instance, *Stringer* v. *Martyr*, 6 Esp. 134. In *Smith* v. *West Derby Local Board*, L. R. 3 C. P. D. 423, 47 L. J. C. P. 607, 38 L. T. N. S. 716, 27 W. R. 137, 42 J. P. 615, where the defendants were both the highway and sewer authorities for their district, and a notice of action stated that it was intended to "enter a plaint against them for injury and damage caused through the defendants by matters or things done or omitted by them and their labourers and servants, to wit, that they did by themselves, their labourers and servants, negligently, carelessly, and improperly leave a certain portion of the highway in an insufficient and improper state of repair, whereby, &c., it was held that this was a sufficient intimation to the defendants that they were to be charged with an act of misfeasance, and not merely with a neglect of duty to repair the road. See *ante*, p. 53.

The notice must state that the action will be commenced at the expiration of the period of time limited by the Act: *Norris* v. *Smith*, 10 Ad. & El. 188.

For the general law relating to the liability of a public body for damages caused by negligence in the exercise of their powers, see *Mersey Docks Trustees* v. *Gibbs*, L. R. 1 H. L. 93, 35 L. J. Ex. 225, 14 L. T. N. S. 677, 14 W. R. 872, 12 Jur. N. S. 571; and as to the liability of contractors, see *Daniel* v. *Metropolitan Ry.*, L. R. 5 H. L. 45, 40 L. J. C. P. 121, 24 L. T. N. S. 815, 20 W. R. 37; *Hyams* v. *Webster*, 8 B. & S. 272, L. R. 2 Q. B. 264, 36 L. J. Q. B. 166, 16 L. T. N. S. 118, 15 W. R. 619; and see also *Hammond* v. *St. Pancras Vestry*, L. R. 9 C. P. 316, 43 L. J. C. P. 157, 30 L. T. N. S. 296, 22 W. R. 826; *Bolingbroke* v. *Swindon Board*, L. R. 9 C. P. 575, 43 L. J. C. P. 287, 30 L. T. N. S. 723, 23 W. R. 47; and cases cited *ante*, pp. 53, 78, 114.

(1) It was decided that the previous enactment (note (3), *ante*, p. 188, did not deprive the Court of their common law power to change the venue where in their judgments the ends of justice required it: *Itchin Bridge Co.* v. *Southampton Board*, 8 El. & Bl. 801, 27 L. J. Q. B. 128, 3 Jur. N. S. 1261, 30 L. T. 151, 6 W. R. 75.

But an action brought against a local board as surveyors of highways for an act done by them under the Highway Acts must be commenced within three months; *Burton* v. *Corporation of Salford*, *ante*, p. 114.

By the Rules of the Supreme Court, Order 36, r. 1, it is provided: "There shall be no local venue for the trial of any action, except where otherwise provided by statute. Every action in every division shall, unless the Court or a judge otherwise orders, be tried in the county or place named on the statement of claim, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant or his solicitor, within six days after appearance. Where no place of trial is named, the place of trial shall, unless the Court or a judge shall otherwise order, be the county of Middlesex."

This rule derives its authority from section 16 of the Judicature Act of 1875, 38 & 39 Vict. c. 77, which received the Royal assent on the 11th August, 1875.

Secs. 265, 266.

Protection of local authority and their officers from personal liability.

265 (1). No matter or thing done, and no contract entered into by any local authority, or joint board, or port sanitary authority, and no matter or thing done by any member of any such authority, or by any officer of such authority, or other person whomsoever acting under the direction of such authority, shall, if the matter or thing were done, or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever (2); and any expense incurred by any such authority, member, officer, or other person acting as last aforesaid, shall be borne and repaid out of the fund or rate applicable by such authority to the general purposes of this Act (3).

Provided that nothing in this section shall exempt any member of any such authority from liability to be surcharged with the amount of any payment which may be disallowed by the auditor in the accounts of such authority, and which such member authorised or joined in authorising (4).

Notices.

Notices, &c may be printed or written.

266 (5). Notices, orders, and other such documents under this Act may be in writing or print, or partly in writing and partly in print; and if the same require authentication by the local authority, the signature thereof by the clerk to the local authority or their surveyor or inspector of nuisances shall be sufficient authentication.

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 140; the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 42; and the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 28.

(2) But the local authority will be liable for damages arising from their negligence or the negligence of their servants: *Southampton Bridge Co.* v. *Southampton Board*, 8 El. & Bl. 801, 28 L. J. Q. B. 41, 4 Jur. N. S. 1298; *Cowley* v. *Mayor of Sunderland*, 6 H. & N. 565, 30 L. J. Ex. 127; *Ruck* v. *Williams*, 3 H. & N. 308, 27 L. J. Ex. 357; and see *Jersey Docks Trustees* v. *Gibbs*, *ante*, p. 190; *White* v. *Hindley*, *ante*, p. 53; and see the cases cited *ante*, pp. 53, 54, 114.

But the local authority is not liable for the negligence of an independent person employed by them to do a work not dangerous in itself: *Daniel* v. *Metropolitan Ry.*, and the cases cited *ante*, p. 190. Nor is a local authority liable for the act of their officer done beyond the scope of his authority and without their knowledge: *Lord Bolingbroke* v. *Swindon Board*, *ante*, p. 190. But if the damage arises out of the works themselves, or if the works are really being executed by the local authority, they are liable: *Scott* v. *Corporation of Manchester*, 2 H. & N. 204; *Hole* v. *Sittingbourne Ry.*, 7 H. & N. 488, 30 L. J. Ex. 81; *Blake* v. *Thirst*, 2 H. & C. 20, 32 L. J. Ex. 188.

As to the personal liability of a member of a local board upon an order given by him, see *Lakeman* v. *Mountstephen*, L. R. 7 H. L. 17, 43 L. J. Q. B. 188, 30 L. T. N. S. 437, 27 W. R. 617; but see, also, *Bailey* v. *Cuckson*, 32 L. T. 124, 7 W. R. 16, where in an action against certain members of a local board for plaintiff's expenses as a witness before a parliamentary committee, the defendants were held not liable, it appearing that the instructions to the plaintiff were given and the business before the committee had been carried on by the local board. And as to the personal liability of a member of a local board for an illegal act committed by the surveyor of the board under his order, see *Mill* v. *Hawker*, L. R. 10 Ex. 32, 44 L. J. Ex. 49, 33 L. T. N. S. 177, 23 W. R. 348.

As to compensation in case of damage by reason of the exercise of the powers of the Act, see section 308, *post*, p. 211.

(3) As to taking the land of a local board under an *elegit*, see *Worral Waterworks Co.* v. *Lloyd*, L. R. 1 C. P. 719; and as to a *fi. fa.* see *Saunders* v. *Slack*, 11 L. T. N. S. 484; and as to enforcing judgment by *mandamus* to pay out of the rates, see *ante*.

(4) See section 247 (7) *ante*.

(5) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 61, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 40.

Secs. 267, 268.

Service of notices.

267 (1). Notices, orders, and any other documents required or authorised to be served under this Act may be served by delivering the same to or at the residence of the person to whom they are respectively addressed, or where addressed to the owner (2) or occupier of premises by delivering the same or a true copy thereof to some person on the premises (3), or if there is no person on the premises who can be so served by fixing the same on some conspicuous part of the premises; they may also be served by post by a prepaid letter, and if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the notice, order, or other document was properly addressed and put into the post.

Any notice by this Act required to be given to the owner or occupier of any premises may be addressed by the description of the "owner" or "occupier" of the premises (naming them) in respect of which the notice is given, without further name or description (4).

Appeal.

Appeal in certain cases to Local Government Board.

268 (5). Where any person deems himself aggrieved by the decision of the local authority in any case in which the local authority are empowered to recover in a summary manner any expenses incurred by them, or to declare such expenses to be private improvement expenses (6), he may, within twenty-one days after notice of such decision, address a memorial to the Local Government Board, stating the grounds of his complaint, and shall deliver a copy thereof to the local authority; the Local Government Board may make such order in the matter as to the said Board may seem equitable, and the order so made shall be binding and conclusive on all parties (7).

(1) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 163, s. 150, the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 61, and the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 31.

(2) Defined *ante*, p. 45. (3) Defined *ante*, p. 44.

(4) See further sections 220 and 255, *ante*.

The section is not imperative, and a service made in any other manner which the law will recognise as effectual for any purpose is sufficient. A notice addressed to and served upon a merchant at his place of business by delivering it and reading and explaining it to his clerk is a good notice: *Mason* v. *Bibby*, 2 H. & C. 881, 33 L. J. Ex. 105, 9 L. T. N. S. 692, 10 Jur. N. S. 519, 12 W. R. 382; *Peek* v. *Waterloo Board*, 2 H. & C. 709, 33 L. J. M. C. 11, 9 L. T. N. S. 338, 9 Jur. N. S. 1344, 12 W. R. 252.

(5) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 120. The previous enactment made the decision of the Local Government Board binding on the local authority only, and the time for appeal was within seven instead of twenty-one days. The provision requiring the delivery of a copy to the local authority is also new.

(6) As to summary recovery of expenses, see section 251, *ante*. As to private improvement expenses, see sections 213, 214, and 257, *ante*.

(7) As to whether prohibition will lie to the Local Government Board, see *R.* v. *Local Government Board*, L. R. 10 Q. B. D. 309, 52 L. J. M. C. 4, 48 L. T. N. S. 173, 31 W. R. 72, 47 J. P. 228.

This section, although the word "appeal" is not used in it, does in fact, as the heading indicates, give an appeal, and the decision of the Local Government Board is a judicial decision. It would seem that they are not bound to hear the parties orally, but they are bound to let the party who presented the memorial know what is the answer of the local authority against whom he has complained, and give him an opportunity of answering their answer. See the judgment of Brett, L.J., in *R.* v. *Local Government Board*, *supra*. See *Ex parte Wake*, *ante*, p. 123.

There is no decision under section 150, *ante*, against which an appeal can be made until the local authority have made the demand referred to in section 257, *ante*. And the Local Government Board may, upon the appeal being made, inquire not only into whether the expenses incurred by them should be recovered summarily or

Secs. 268, 269.

Any proceedings that may have been commenced for the recovery of such expenses by the local authority shall, on the delivery to them of such copy as aforesaid, be stayed; and the Local Government Board may, if it thinks fit, by its order, direct the local authority to pay to the person so proceeded against such sum as the said Board may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him (1).

Appeal to Quarter Sessions.

269 (2). Where any person deems himself aggrieved by any rate made under the provisions of this Act, or by any order, conviction, judgment, or determination of or by any matter or thing done by any Court of Summary Jurisdiction, such person may appeal therefrom (3), subject to the conditions and regulations following:—

(1.) The appeal shall be made to the next Court of Quarter Sessions for the county, division, or place in which the cause of appeal has arisen, holden not less than twenty-one days after the demand of the rate or the decision of the Court from which the appeal is made:

(2.) The appellant shall, within fourteen days after the cause of appeal has arisen, give notice to the other party and to the authority or Court of Summary Jurisdiction by whose act he deems himself aggrieved, of his intention to appeal, and of the ground thereof (4):

(3.) The appellant shall, immediately after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the Court thereon, and to pay such costs as may be awarded by the Court, or give such other security by deposit of money or otherwise as the justice may allow (5):

be declared private improvement expenses, but also whether the work was unnecessary, and whether the total cost was unreasonable, and into every circumstance which can reasonably determine the question whether it is inequitable or not that a particular sum should be paid. *Ibid.*

It would seem that the Local Government Board, if they think it right or equitable, may inquire into other grounds of complaint beyond those mentioned in the memorial. *Ibid.*

The decision of the Local Government Board is final and conclusive. See *Wallingford* v. *Willes*, 33 L. J. M. C. 233, 10 L. T. N. S. 784, 10 Jur. N. S. 906.

As to appeal by the overseers of a contributory place, see section 229, *ante;* against auditor's allowances and surcharges, see section 247, *ante;* against resolution for constitution of local government district, see section 274, *ante.*

As to complaint to the Board of the default of a local authority in performing their duties, see section 299, *post.*

(1) The order may be enforced by *mandamus*, and it would seem that disobedience to the order might be the subject of an indictment. See *R.* v. *Walker*, L. R. 10 Q. B. 355, 44 L. J. M. C. 169, 33 L. T. N. S. 167, 40 J. P. 230.

(2) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 135, 136, and the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 40. See the circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 17.

(3) In *R.* v. *Newman*, 29 L. J. M. C. 117, it was held under the previous enactment (note (2), *supra*) that where magistrates ordered a rate to be paid they had no jurisdiction to state a case under 20 & 21 Vict. c. 43, but the proper course for the party dissatisfied with the decision to pursue was to appeal to Quarter Session. See also *Luton Board* v. *Davis*, 2 El. & El. 678, 29 L. J. M. C. 173, 2 L. T. N. S. 172, 8 W. R. 411, 6 Jur. N. S. 580.

Where the rate itself has not been appealed against it is doubtful whether an appeal lies against an order of the Court of Summary Jurisdiction for payment of the rate: *Ricardo* v. *Maidenhead Board*, 2 H. & N. 257.

(4) The time runs from the date of the decision, and not from the service of the order of justices: *R.* v. *Barnet Sanitary Authority*, L. R. 1 Q. B. D. 558, 45 L. J. M. C. 105, 35 L. T. N. S. 362, 41 J. P. 6.

(5) As to the liability of the solicitor to the clerk of the peace for fees for entering, &c., the appeal, see *Langridge* v. *Lynch*, 34 L. T. N. S. 695.

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(4.) Where the appellant is in custody the justice may, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody (1):

(5.) On appeals under this Act against any rate the Court of Appeal shall have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any Court of Quarter Sessions with respect to amending or quashing any rate or assessment, or awarding costs, on appeals with respect to rates for the relief of the poor; and the costs awarded by the said Court under this Act may be recovered in the same manner in all respects as costs awarded on the last mentioned appeals: Provided that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the Court of Appeal think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made (2):

(6.) In the case of other appeals the Court of Appeal may, if it thinks fit, adjourn the appeal, and on the hearing thereof may confirm, reverse, or modify the decision of the Court of Summary Jurisdiction, or remit the matter to the Court of Summary Jurisdiction with the opinion of the Court of Appeal thereon, or make such other order in the matter as the Court thinks just. The Court of Appeal may also make such order as to costs to be paid by either party as the Court thinks just (3):

(7.) The decision of the Court of Appeal shall be binding on all parties: Provided that the Court of Appeal may, if such Court thinks fit, state the facts specially for the determination of a superior Court (4).

(1) See the Circular dated 30th September, 1875, *ante*, p. 17.

(2) As to the power of justices to amend a poor rate upon appeal, see 17 Geo. II. c. 38, s. 6, and 41 Geo. III. c. 23, ss. 1, 6. As to the power to award costs, see 17 Geo. II. c. 38, s. 4, and 41 Geo. III. c. 23, s. 8.

(3) See the Circular dated 30th September, 1875, *ante*, p. 17.

Where the Sessions give the appellant his costs, 11 & 12 Vict. c. 43, s. 27, and 12 & 13 Vict. c. 45, s. 5, must be followed: *Ex parte Austin*, 13 L. T. N. S. 443, 29 J. P. 760.

(4) Further, by 12 & 13 Vict. c. 45, s. 11, it is enacted "that at any time after notice given of appeal to any Court of General or Quarter Sessions of the Peace against any judgment, order, rate, or other matter (except an order of bastardy or a proceeding under or by virtue of any of the statutes relating to Her Majesty's Revenue of Excise or Customs, Stamps, Taxes, or Post Office), for which the remedy is by such appeal, it shall be lawful for the parties by consent, and by order of any judge of one of the superior Courts of Common Law at Westminster, to state the facts of the case in the form of a special case for the opinion of such superior Court, and to agree that a judgment in conformity with the decision of such Court, and for such costs as such Court shall adjudge may be entered on motion by either party at the Sessions next, or next but one, after such decision shall have been given, and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the Court of General or Quarter Sessions upon an appeal duly entered and continued."

Where the Sessions reserve a case for the opinion of a superior Court under this sub-section, it falls within the provisions of section 45 of the Judicature Act, 1873, as an appeal from an inferior Court, and no appeal can be brought from the decision of the Divisional Court upon it unless special leave to appeal is granted: *R.* v. *Swindon Board*, 49 L. J. Q. B. 522, 42 L. T. N. S. 614, 28 W. R. 804, 44 J. P. 505. But it is otherwise where the Court of Queen's Bench, in the exercise of its original common law jurisdiction, affirms or quashes an order of Sessions, for there an appeal lies to the Court of Appeal, although no leave to appeal be given: *R.* v. *Savin*, L. R. 6 Q. B. D. 309, 29 W. R. 638; and see *Overseers of Walsall* v. *London & N. W. Ry.*, L. R. 4 App. Cas. 30, 48 L. J. Q. B. 65, 39 L. T. N. S. 433, 27 W. R. 189, 43 J. P. 108.

PART VIII.

Alteration of Areas and Union of Districts.

Alteration of Areas.

270 (1). The following enactments shall be made as to alteration of areas:—

Powers of Local Government Board in relation to alteration of areas.

(1.) The Local Government Board, by provisional order (2), may dissolve any local government district (3), and may merge any such district in some other urban or rural district or districts; or it may by provisional order declare the whole or any portion of a local government or a rural district immediately adjoining a local government district to be included in such last mentioned district; or it may by provisional order declare any portion of a local government district immediately adjoining a rural district to be included in such rural district; and thereupon the included area shall, for the purposes of this Act, be deemed to form part of the district in which it is included by such order; and the remaining part (if any) of the local government district or rural district affected by such order shall continue subject to the like jurisdiction as it would have been subject to if such order had not been made unless and until the Local Government Board by provisional order otherwise directs (4):

(2.) In the case of a borough comprising within its area the whole of an Improvement Act district, or having an area co-extensive with such district, the Local Government Board by provisional order may dissolve such district and transfer to the council of the borough all or any of the jurisdiction and powers of the improvement commissioners of such district remaining vested in them at the time of the passing of this Act (5).

(3.) The Local Government Board may, by order, dissolve any special drainage district constituted either before or after the passing of this Act in which a loan for the execution of works has not been raised, and merge it in the parish or parishes in which it is situated, and the Local Government Board may, by provisional order, dissolve any such district in which a loan has been raised for the execution of works, and merge it in the parish or parishes in which it is situated (6).

271 (7). The Local Government Board may, by provisional order (8), declare any rural district (9), or any portion of any rural district or districts, to be a local government district (10); and from and after the commencement of the order (11),

Local Government Board may by pro-

(1) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 22.

(2) See sections 297—298, *post*.

(3) Defined *ante*, p. 43.

(4) As to the power of the Local Government Board, in case of the lapse of a local board, to dissolve the district, see Schedule II., Part II., r. 2, *post*, p. 243; and see section 275, *post*.

As to the formation of united districts, see sections 279 *et seq.*, *post*.

As to rendering the new authority subject to the liabilities attaching to an authority which has been merged in the new, see *A.-G.* v. *Birmingham, Tame, and Rea Board*, *ante*, p. 51.

(5) See further, sections 6 and 10, *ante*, and sections 310 and 322, *post*.

(6) As to special drainage districts, see section 277, *post*. As to main sewerage districts and joint sewerage boards, see section 323, *post*.

(7) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 24, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 15.

(8) See sections 297, 298, *post*.

(9) See rural district described, section 9, *ante*.

(10) Defined *ante*, p. 43.

(11) Defined in section 275, *post*.

Secs. 271, 272.

visional order constitute local government district.

Local Government Board may by order constitute local government district in pursuance of a resolution of owners and ratepayers.

the district or portion of the district or districts therein referred to shall become a local government district, and shall be subject to the jurisdiction of a local board, to be elected in manner provided by Schedule II. to this Act (1).

The Local Government Board may, by any order constituting a local government district under this section, divide such districts into wards for the election of members of the local board.

272 (2). The owners (3) and ratepayers of any place situated in any rural district (4) or districts, and having a known and defined boundary (5), may by a resolution passed in manner provided by Schedule III. to this Act (6), declare that it is expedient that such place should be constituted a local government district (7); and the Local Government Board may, if it thinks fit, by order made not less than six weeks after the receipt of a copy of such resolution by the said Board, declare such place to be a local government district, and from and after the commencement of such order (8) such place shall become a local government district, and be subject to the jurisdiction of a local board to be elected in manner provided by Schedule II. to this Act (9).

A petition may be presented to the Local Government Board from any place (10) so situated as aforesaid, and not having a known and defined boundary, to settle its boundary for the purposes of this Act; the petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the persons rated to the relief of the poor and resident within such boundaries, and shall be supported by such evidence as the Local Government Board may require. The Local Government Board may, after local inquiry as to the genuineness of the petition, and as to the propriety of the proposed boundaries, either dismiss the petition altogether or make order as to the boundaries of the place, and may also make order as to the costs of the proceedings in relation thereto, and the persons by whom such costs are to be borne (11).

Any place the boundaries of which have been settled in pursuance of the

(1) *Post*, pp. 227—242.

(2) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, ss 12—18, and the Local Government Amendment Act, 1863, 26 & 27 Vict. c. 17, s. 2.

(3) Defined *ante*, p. 45.

(4) Described by section 9, *ante*.

(5) It is not necessary that the district should be a legal district having a legal boundary of the whole enclosed area; it is sufficient if the place has an actual known and defined boundary, or one that is physical, visible and notorious, so that there may be no mistake as to the limits within which the Act is to apply: *R.* v. *Local Government Board*, L. R. 8 Q. B. 227, 21 W. R. 445, *sub. nom. R.* v. *Grasmere Local Board*, 42 L. J. Q. B. 131.

A district formed for ecclesiastical purposes under 6 & 7 Vict. c. 37, consisting of parts of two townships, each separately maintaining its own poor and highways, is "a place having a known and defined boundary": *R.* v. *Northowram and Clayton Ratepayers*, L. R. 1 Q. B. 110, 35 L. J. Q. B. 90, 7 B. & S. 110, 30 J. P. 181.

A parish including within its area a corporate borough is a place which may be constituted a local government district; but a parliamentary borough, which includes the parish and part of another parish, may not: *R.* v. *Hardy*, L. R. 4 Q. B. 117, 38 L. J. Q. B. 9, 19 L. T. N. S. 352, 17 W. R. 173, 9 B. & S. 926.

(6) See *post*, p. 243. (7) Defined *ante*, p. 43.

(8) See section 275, *post*, as to the meaning of "commencement of the order."

(9) See *post*, pp. 227—242.

As to powers of the Local Government in reference to Local Improvement Acts and the districts or areas where they are in force, see section 303, *post*.

(10) As to the meaning of the word "place," see further, *Smith* v. *Redding*, L. R. 1 Q. B. 489, 35 L. J. M. C. 202, *per* Blackburn, J., and *London & S. W. Ry.* v. *Blackmore*, L. R. H. L. Cas. 615, 39 L. J. Ch. 713, *per* Lord Hatherley, C.

(11) As to the settlement of boundaries, see further section 278, *post*.

As to enforcing the order, see section 294, *post*.

foregoing provisions shall thenceforth, for the purposes of this Act, be deemed to be a place with a known and defined boundary (1).

Secs. 272—275.

Objection to resolution.

273 (2). Where not less than one-twentieth of the owners (3) and ratepayers of any place (such twentieth to be one-twentieth in number of the owners and ratepayers of the place taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the place (4)) in which a resolution has been passed declaring that it is expedient that such place should be constituted a local government district, are desirous that such district should not be constituted, or that any part of such place should be excluded therefrom, they may present a petition to the Local Government Board objecting to such resolution, and specifying the grounds of their objection.

Such petition shall be subscribed by the owners and ratepayers presenting the same, and shall be presented within six weeks from the date of the passing of the resolution objected to, and shall where the exclusion of part of the place is prayed for, state the part of the place proposed to be excluded, accompanied with an explanatory plan (5).

The Local Government Board may after local inquiry make order with respect to the matter in question, and such order shall be binding on the place in respect of which it is made (6).

Appeal to Local Government Board in case of alleged invalidity of vote.

274 (7). Any owner (8) or ratepayer who disputes the validity of the vote for the adoption of the resolution may appeal, within six weeks from the declaration of the decision of the meeting (9), to the Local Government Board, setting forth the grounds on which he disputes the validity of the vote; and the Local Government Board may, on such appeal, after local inquiry (10), make such order as to the said Board seems fit as to the validity or invalidity of the vote, and any other questions arising on the appeal (11).

But no objection shall be made, at any trial or in any legal proceeding, to the validity of the vote for the adoption of the resolution, or to any order made in pursuance thereof, or to any proceedings on which such order was founded, unless the objector gives fourteen days' notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six months from the date of the constitution of the district (2).

General provisions as to orders.

275. Every order made by the Local Government Board under this part of this

(1) See the first paragraph of the section.

(2) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 17, and the Local Government Amendment Act, 1863, 26 & 27 Vict. c. 17, s. 3.

(3) Defined *ante*, p. 45. An owner, who has concurred in the resolution, is, it would seem, precluded from afterwards appealing against it: *Harrup* v. *Bayley*, 6 El. & Bl. 218, 25 L. J. M. C. 107.

(4) See *Baker* v. *Marsh*, 4 El. & Bl. 144, 24 L. J. Q. B. 1, 24 L. T. 72, 3 W. R. 13.

(5) As to communications with the Local Government Board, see *ante*, p. 157.

(6) As to the commencement of the order, see section 275, *infra*.

As to local inquiries and costs, see sections 293—296, *post*.

(7) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, ss. 18, 21.

(8) Defined *ante*, p. 45.

(9) See Schedule III. (6) *post*.

(10) See sections 293 *et seq.*, *post*.

(11) Under the previous enactment (note (7), *supra*) the decision of the Secretary of State upon the corresponding appeal was final and conclusive: *Ex parte Bird*, 1 El. & El. 931, 28 L. J. Q. B. 223. See now section 295, *post*.

(12) Under the previous enactment (note (7) *supra*), the Court of Queen's Bench refused to entertain an objection to the legality of an order of the Secretary of State (who corresponded to the Local Government Board) after the expiration of the time mentioned in the order: *Re District of Todmorden*, 1 B. & S. 412, 30 L. J. Q. B. 305, 4 L. T. N. S. 509.

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Act shall specify a day on which such order shall come into operation (in this Act referred to as the commencement of the order); and from and after the commencement of the order all the powers, rights, duties, capacities, liabilities, obligations and property which under this Act are exerciseable by or attaching to or vested in the local authority having, under this Act, jurisdiction in any district or part of a district which is by such order included in some other district, shall (so far as the same relate to the district or part of a district so included) pass to and vest in the local authority of such other district: Provided that in the case of the constitution of a new local government district, all the powers, rights, duties, capacities, liabilities, obligations and property which under this Act are exerciseable by or attaching to or vested in any local authority or authorities having, under this Act, jurisdiction in the area so constituted a local government district, shall continue to be exerciseable by, attached to, and vested in such authority or authorities, until the day of the first meeting of the local board for the district so constituted (1).

Any order made in pursuance of this part of this Act may, if necessary, provide for the settlement of any differences, or the adjustment of any accounts or apportionment of any liabilities arising between districts, parishes, or other places in consequence of the exercise of any powers conferred by this part of this Act, and may direct the persons by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and where any local government district is diminished or increased in extent under this part of this Act, the order shall prescribe the number of members to be elected for the district when altered (2).

The Local Government Board may include in the same order provisions for the dissolution of one district, and for the inclusion of the whole or any part of such district in any other district or districts.

Local Government Board may invest rural authority with powers of urban authority.

276 (3). The Local Government Board may, on the application of the authority of any rural district (4), or of persons rated to the relief of the poor, the assessment of whose hereditaments amounts at the least to one-tenth of the net rateable value of such district, or of any contributory place (5) therein, by order (6) to be published in the *London Gazette* or in such other manner as the Local Government Board may direct, declare any provisions of this Act in force in urban districts to be in force in such rural district or contributory place, and may invest such authority with all or any of the powers, rights, duties, capacities, liabilities, and obligations of an urban authority under this Act, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during, at, and in which such powers, rights, duties, liabilities, capacities, and obligations are to be exercised and attach: Provided that an order of the Local Government Board made on the application of one-tenth of the persons rated to the relief of the poor in any contributory place shall not invest the rural authority with any new powers beyond the limits of such contributory place (7).

Power of rural authority to form special

277 (8). It shall be lawful for a rural authority, by resolution to be approved by the Local Government Board, but not otherwise, to constitute any portion of the area within their jurisdiction a special drainage district (9), for the purpose of

(1) See Schedule I. (12), *post*, p. 226. As to the transfer of liabilities, see *Sinnott* v. *Whitechapel Board*, 3 C. B. N. S. 674, 22 Jur. 263, and *A.-G.* v. *Birmingham, Tame, and Rea Drainage Board*, *ante*, p. 51.

(2) As to the settlement of differences arising out of the transfer of powers or property see section 304, *post*.

(3) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 23.

(4) As to communications with the Local Government Board, see *ante*, p. 157.

(5) Defined in section 229, *ante*, p. 169.

(6) See section 295, *post*.

(7) As to this section, see the Circular issued by the Local Government Board, dated September 30th, 1875, *ante*, p. 27.

(8) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79 s. 25.

(9) See section 229, *ante*.

charging thereon exclusively the expenses of works of sewerage, water supply, or of other works, which by this Act are or by order of the Local Government Board may be declared to be special expenses, and thereupon such area shall become a separate contributory place (1).

drainage districts.

278 (2). On the application (3) of any urban authority (being a local board or improvement commissioners), the Local Government Board may, by order after local inquiry (4), settle any dispute as to the boundaries of the district of such authority (5); such order shall be published in some local newspaper circulating in the district to which it relates, and from and after its commencement (6) shall be conclusive on the question determined by it.

Power to settle disputes as to boundaries of districts.

Union of Districts.

279 (7). Where, on the application (8) of the local authorities of any urban or rural districts, or of any of such authorities, it appears to the Local Government Board that it would be for the advantage of such districts, or any of them, or any parts thereof, or of any contributory places (9) in any rural district or districts, to be formed into a united district for all or any of the purposes following; (that is to say,)

Formation of united district.

(1.) The procuring a common supply of water; or

(2.) The making a main sewer or carrying into effect a system of sewerage for the use of all such districts or contributory places; or

(3.) For any other purposes of this Act;

the Local Government Board may by provisional order (10) form such districts or contributory places into a united district.

All costs, charges, and expenses of and incidental to the formation of a united district shall, in the event of the united district being formed, be a first charge on the rates leviable in the united district in pursuance of this Act (11).

280 (12). The governing body of a united district shall be a joint board, consisting of such *ex officio* members and of such number of elective members as the Local Government Board may by the provisional order forming the district determine.

Governing body of united district.

A joint board shall be a body corporate by such name as may be determined by the provisional order, having a perpetual succession and a common seal, with power to hold lands for the purposes of its constitution, without any license in mortmain (13).

(1) See section 229, *ante.*

As to main drainage districts and joint sewerage boards, see section 323, *post.*

(2) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 25.

(3) As to communications with the Board, see *ante*, p. 157.

(4) As to inquiries, see sections, 293 *et seq.*, *post.*

(5) As to the conclusiveness of the order, see section 295, *post.*

(6) See section 275, *ante.*

(7) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, ss. 26, 27. See also the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113, ss. 10—14.

(8) As to communications with the Local Government Board, see *ante*, p. 157.

(9) See the description of "contributory places" in section 229, *ante.*

(10) See sections 297, 298, *post.*

(11) As to the expenses of the joint board, see section 283, *post.*

As to combination of local authorities in providing a hospital, see section 131, *ante;* for the purpose of executing, &c., works, see section 285, *post.* As to agreements between adjoining districts in reference to water supply, see section 61, *ante;* and sewerage, see section 28, *ante.*

As to union of districts for the purpose of appointing a medical officer of health, see section 286, *post.*

As to merger of districts and alteration of areas, see section 270, *ante.*

(12) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 28.

(13) Compare section 7, *ante.*

Secs. 281—284.

Contents of provisional order forming united district.

281 (1). The provisional order forming a united district under this Act (2) shall define the purposes for which such united district is formed, and the powers (3), rights, duties, capacities, liabilities, and obligations under this Act which the joint board is authorised to exercise or perform, or is made subject to, and shall contain regulations as to the qualification and mode of election of elective members of the joint board, as to their continuance in office, as to casual vacancies in the joint board, as to their meetings and officers, and any other matter or thing, including the adjustment of present and future liabilities and property with respect to which the Local Government Board may think fit to make any regulations for the better carrying into effect the provisions of this Act with respect to united districts.

Upon the constitution of a joint board the local authorities having jurisdiction in the component districts or contributory places shall cease to exercise therein any powers, or to perform any duties, or to be subject to any liabilities or obligations, which the joint board is authorised to exercise or perform or is made subject to; nevertheless, the joint board may delegate to the local authority of any component district the exercise of any of its powers or the performance of any of its duties (4).

Meetings and proceedings of joint boards.

282 (5). Meetings of any joint board shall be held, and the proceedings thereat shall be conducted (so far as such meetings and proceedings are not regulated by the order forming the joint board) in accordance with the rules as to meetings and proceedings contained in Schedule I. to this Act (6).

Expenses of joint board.

283 (7). Any expenses incurred by a joint board in pursuance of this Act, unless otherwise determined by the provisional order, shall be defrayed out of a common fund, to be contributed by the component districts or contributory places in proportion to the rateable value of the property in each district or contributory place, such value to be ascertained according to the valuation list in force for the time being (8).

Payment of contributions to joint board.

284 (9). For the purpose of obtaining payment from component districts of the sums to be contributed by them, the joint board shall issue their precept to the local authority of each component district, stating the sum to be contributed by such authority, and requiring such authority, within a time limited by the precept, to pay the sums therein mentioned to the joint board, or to such person as the joint board may direct.

Any sum mentioned in a precept addressed by a joint board to a local authority as aforesaid shall be a debt due from that authority, and may be recovered accordingly, such contribution in the case of a rural authority being deemed to be general expenses.

If any local authority makes default in complying with the precept addressed to it, the joint board may, instead of instituting proceedings for the recovery of a debt, or in addition to such proceedings as to any part of a debt which may for the time being be unpaid, proceed in a summary manner as in this Act mentioned (10) to raise within the district of the defaulting authority such sum as may be sufficient to pay the sum due.

For the purpose of obtaining payment from contributory places (11) of the sums

(1) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 29.

(2) See section 279 and notes thereto, *ante*.

(3) As to the borrowing powers of a united district, see section 244, *ante*.

(4) See *Cook* v. *Ward*, *ante*, p. 156.

(5) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 28.

(6) See *post*, pp. 225—227.

(7) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 30.

(8) See 25 & 26 Vict. c. 103, *post*.

(9) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 31.

(10) See section 292, *post*.

(11) "Contributory places" are described in section 229, *ante*.

to be contributed by them, the joint board shall have the same powers of issuing precepts and of recovering the amounts named therein as if such contributory places formed a rural district, and the joint board were the authority thereof (1).

Power to execute works in adjoining districts, and to combine for execution of works.

285 (2). Any local authority may, with the consent of the local authority of any adjoining district, execute and do in such adjoining district all or any of such works and things as they may execute and do within their own district, and on such terms as to payment or otherwise as may be agreed on between them and the local authority of the adjoining district; moreover two or more local authorities may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts or any part thereof (3). All moneys which any local authority may agree to contribute for defraying expenses incurred under this section shall be deemed to be expenses incurred by them in the execution of works within their district.

Districts may be united for appointing a medical officer of health.

286 (4). Where it appears to the Local Government Board, on any representation made to it (5), that the appointment of a medical officer of health (6) for two or more districts situated wholly or partially in the same county would diminish expense, or otherwise be for the advantage of such districts, the Local Government Board may by order (7) unite such districts for the purpose of appointing a medical officer of health, and may make regulations as to the mode of his appointment and removal by representatives of the authorities of the constituent districts, and as to the meetings from time to time of such representatives, and the proportion in which the expenses of the appointment and of the salary and expenses of such officer are to be borne by such authorities, and as to any other matters (including the necessary expenses of such representatives) which, in the opinion of the said Board, require regulation for the purposes of this section; and no other medical officer of health shall be appointed for any constituent district, except as an assistant to the officer appointed for the united districts:

Provided that no urban district containing a population of twenty-five thousand and upwards, or (in the case of a borough) having a separate Court of Quarter Sessions, shall be included in any union of districts formed under this section without the consent of the local authority of such district or borough.

Not less than twenty-eight days' notice that it is proposed to make an order under this section shall be given by the Local Government Board to the local authority of any district proposed to be included in the union, and if within twenty-one days after such notice has been given to any such authority they give notice to the Local Government Board that they object to the proposal, the Local Government Board may include their district in the union by a provisional order (8), but not otherwise.

There may be assigned by the Local Government Board to the district medical officer of any union comprising or coincident with any constituent district such duties in rendering local assistance to the medical officer of health appointed for the united districts as the said Board may think fit; and such district medical officer shall receive, in respect of any duties so assigned to him, such additional

(1) See sections 229, 230, and 231, *ante*.

(2) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, ss. 27, 28, and the Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75, s. 9.

(3) See also sections 16 and 32—34, *ante*, as to sewage works and sewers, and note that by section 28, *ante*, the consent of the Local Government Board is required to an agreement as to communication of sewers; as to communication of drains, see section 22, *ante*; as to cleansing ditches, &c., on or near the boundaries of districts, see section [illegible], *ante*; and as to abatement of nuisances outside the district, see sections 108 and [illegible]8, *ante*.

(4) This section is new. See the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 18.

(5) As to communications with the Local Government Board, see *ante*, p. 157.

(6) See sections 189, 191, and the notes thereto, *ante*.

(7) See section 295, *post*.

(8) See sections 297, 298, *post*.

Secs. 286—288.

remuneration to be paid by the local authority or authorities of the district or districts within which his duties under this section are performed as those authorities may, with the approval of the Local Government Board, determine.

PORT SANITARY AUTHORITY.

Constitution of port sanitary authority.

287 (1). The Local Government Board may, by provisional order (2), permanently constitute any local authority whose district or part of whose district forms part of or abuts on any part of a port (3) in England, or the waters of such port, or any conservators, commissioners, or other persons having authority in or over such port or any part thereof (which local authority, conservators, commissioners or other persons are in this Act referred to as a "riparian authority"), the sanitary authority of the whole of such port or of any part thereof (in this Act referred to as the "port sanitary authority").

The Local Government Board may also by provisional order (2) permanently constitute a port sanitary authority for the whole or any part of a port, by combining any two or more riparian authorities having jurisdiction within such port, or any part thereof, and may prescribe the mode of their joint action; or by forming a joint board (4) consisting of representative members of any two or more riparian authorities, in the same manner as is by this Act provided with respect to the formation of a united district. Moreover, the Local Government Board may by provisional order (2) permanently constitute a port sanitary authority for any two or more ports, by forming a joint board consisting of representative members of all or any of the riparian authorities having jurisdiction within such ports, or any part thereof.

In any case in which the Local Government Board are by this section authorised permanently to constitute by provisional order a port sanitary authority, the said Board may, if it thinks fit, until such order has been made and confirmed by Parliament, temporarily constitute by order (5) any such authority, and may from time to time renew any such last-mentioned order, and may by any order so made or renewed make any such provisions as it is by this section empowered to make by provisional order (6).

Any order constituting a port sanitary authority may assign to such authority any powers, rights, duties, capacities, liabilities and obligations under this Act, and direct the mode in which the expenses of such authority are to be paid; and where such order constitutes a joint board the port sanitary authority, it may contain regulations with respect to any matters for which regulations may be made by a provisional order forming a united district under this Act (7).

A port shall mean a port as established for the purposes of the laws relating to the Customs of the United Kingdom.

Jurisdiction of port sanitary authority.

288 (8). The order of the Local Government Board constituting a port sanitary authority shall be deemed to give such authority jurisdiction over all waters within the limits of such port, and also over the whole or such portions of the district within the jurisdiction of any riparian authority as may be specified in the order (9).

(1) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 20, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, ss. 12, 14.

See, also, the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 18.

(2) See sections 297, 298, *post*.

(3) See the concluding clause of this section.

(4) As to the formation of joint boards, see sections 279—281, *ante*.

(5) See section 295, *post*.

(6) See section 325, *post*.

(7) As to the expenses of port sanitary authorities, see section 290, *post;* and as to their borrowing powers, see section 244, *ante*.

(8) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 21.

(9) See section 279, *ante*.

Secs. 289—292.

Delegation of powers by port sanitary authority.

289 (1). A port sanitary authority may, with the sanction of the Local Government Board, delegate to any riparian authority within or bordering on their district the exercise of any powers conferred on such port sanitary authority by the order of the Local Government Board, but, except in so far as such delegation may extend, no other authority shall exercise any powers conferred on a port sanitary authority by the order of the Local Government Board within the district of such port sanitary authority.

Expenses of port sanitary authority.

290 (2). Any expenses incurred by a port sanitary authority constituted temporarily in carrying into effect any purposes of this Act shall be defrayed out of a common fund to be contributed by the riparian authorities in such proportions as the Local Government Board thinks just.

Such port sanitary authority, if itself a local authority under this Act independently of its character of a port sanitary authority, shall raise the proportion of expenses due in respect of its own district in the same manner as if such expenses had been incurred by it in the ordinary manner for the purposes of this Act (3).

For the purpose of obtaining payment from the contributory riparian authorities of the sums to be contributed by them, such port sanitary authority shall issue their precept to each such authority, requiring such authority, within a time limited by the precept, to pay the amount therein mentioned to such port sanitary authority, or to such person as such port sanitary authority may direct (4).

Any contribution payable by a riparian authority to such port sanitary authority shall be a debt due from them, and may be recovered accordingly (5), such contribution in the case of a rural authority being deemed general expenses of that authority (6). If any riparian authority makes default in complying with the precept addressed to it by such port sanitary authority, such port sanitary authority may, instead of instituting proceedings for the recovery of the debt, or in addition to such proceedings, as to any part of the debt which may for the time being be unpaid, proceed in the summary manner in this Act mentioned to raise within the district of the defaulting authority such sum as may be sufficient to pay the debt due.

Where several riparian authorities are combined in the district of one port sanitary authority the Local Government Board may by order (7) declare that some one or more of such authorities shall be exempt from contributing to the expenses incurred by such authorities.

Provision as to port of London.

291 (8). The mayor, aldermen, and commons of the City of London shall be the port sanitary authority of the port of London, and shall pay out of their corporate funds all their expenses as such port sanitary authority.

Proceedings for raising a sum for payment of debt within district of a defaulting authority.

292 (9). Where any port sanitary authority, joint board, or other authority are authorised, in pursuance of this Act, to proceed in a summary manner to raise within the district of a defaulting authority such sum as may be sufficient to pay any debt due to them, the authority so authorised for the purpose of raising such sum shall, within the district of the defaulting authority, have, so far as relates to the raising such sum, the same powers as if they were the defaulting authority, and as if such sum were expenses properly incurred by the defaulting authority within the district of such authority (10).

(1) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 20.
(2) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 21.
(3) As to expenses of urban authorities, see section 207, *ante;* and as to those of rural authorities, see sections 229, 230, *ante.*
(4) See section 292, *infra.*
(5) *I.e.*, by action. See *Richardson* v. *Willis*, L. R. 8 Ex. 69, 42 L. J. Ex. 68, 28 L. T. N. S. 71.
(6) See section 229, *ante.*
(7) See section 295, *post.*
(8) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 20.
(9) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 54.
(10) See sections 207—250, *ante*, section 256, *ante*, and sections 283, 284, *ante.*

Secs. 292—295.

Where the defaulting authority have power to raise any moneys due for their expenses by levy of a rate from individual ratepayers, the authority so authorised as aforesaid shall have power to levy such a rate by any officer appointed by them, and the officer so appointed shall have the same powers, and the rate shall be levied in the same manner and be subject to the same incidents in all respects as if it were being levied by the officer of the defaulting authority for the payment of the expenses of that authority; and where the defaulting authority have power to raise moneys due for their expenses by issuing precepts, or otherwise requiring payments from any other authorities, the authority so authorised as aforesaid shall have the same power as the defaulting authority would have of issuing precepts, or otherwise requiring payment from such other authorities.

Any precepts issued by the authority so authorised as aforesaid for raising the sum due to them may be enforced in the same manner in all respects as if they had been issued by the defaulting authority.

The authority so authorised as aforesaid may, in making an estimate of the sum to be raised for the purpose of paying the debt due to them, add such sums as they think sufficient, not exceeding ten per cent. on the debt due, and may defray thereout all costs, charges, and expenses (including compensation to any persons they may employ) to be incurred by such authority by reason of the default of the defaulting authority; and the authority so authorised as aforesaid shall apply all moneys raised by them in payment of the debt due to them, and such costs, charges, and expenses as aforesaid, and shall render the balance, if any, remaining in their hands after such application to the defaulting authority.

PART IX.

Local Government Board.

Inquiries by Board.

Power of Board to direct inquiries.

293 (1). The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval, or consent is required by this Act.

Orders as to costs of inquiries.

294 (2). The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein (3).

Orders of Board under this Act.

295 (4). All orders made by the Local Government Board in pursuance of this

(1) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 79; and see 21 & 22 Vict. c. 97, s. 3, and 34 & 35 Vict. c. 70, s. 2.

(2) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 81, and the Sanitary Loans Act, 1869, 32 & 33 Vict. c. 100, s. 9.

(3) By 1 & 2 Vict. c. 110, s. 18, it is enacted that "all decrees and orders of Courts of Equity and rules of Courts of Common Law, . . . whereby any sum of money, or any costs, charges, or expenses, shall be payable to any person, shall have the effect of judgments in the superior Courts of Common Law, and the persons to whom any such moneys or costs, charges or expenses shall be payable, shall be deemed judgment creditors within the meaning of this Act; . . . and all remedies hereby given to judgment creditors are in like manner given to persons to whom any moneys or costs, charges or expenses are by such orders or rules respectively directed to be paid."

(4) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 81, and the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 48.

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ct shall be binding and conclusive in respect of the matters to which they refer, nd shall be published in such manner as that Board may direct (1).

Power of inspectors of Local Government Board.

296 (2). Inspectors of the Local Government Board shall, for the puposes of ny inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and atters required to be inspected, similar powers to those which poor law inspectors ave under the Acts relating to the relief of the poor for the purposes of those cts (3).

Provisional Orders by Board.

As to provisional orders made by Local Government Board.

297 (4). With respect to provisional orders authorised to be made by the Local overnment Board under this Act (5), the following enactments shall be ade (6):—

(1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates:

(1) Query whether an order plainly *ultra vires* would be valid. See *Frewin* v. *Lewis*, 9 im. 66, 4 Myl. & Cr. 249; and see *Ex parte Bird*, 1 El. & El. 931, 28 L. J. Q. B. 223, 3 L. T. 162, 5 Jur. N. S. 1009, *ante*, p. 197.

(2) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, . 15.

(3) As to the power to appoint inspectors, see the Local Government Board Act, 1871, 4 & 35 Vict. c. 70, s. 3, *post*.

By the Poor Law Board Act, 1847, 10 & 11 Vict. c. 109, s. 21, it is enacted as follows:—

"The said inspectors may summon before them such persons as they may think ecessary for the purpose of being examined before them upon any matter concerning he administration of the laws relating to the relief of the poor, or any other matter laced by law under the control or regulation of the commissioners, or for the purpose f producing and verifying upon oath any books, contracts, agreements, accounts, ritings, or copies of the same in anywise relating to such matter, and not relating o or involving any question of title to any lands, tenements, or hereditaments not eing the property of any parish or union, and may examine any person whom they hall so summon, or who shall voluntarily come before them to be examined, upon ny such matter upon oath, which each of the said inspectors shall be empowered to dminister, or instead of administering an oath, the inspector may require the party xamined to make and subscribe a declaration of the truth of the matter respecting hich he shall have been or shall be so examined, and all summonses made by any ch inspector for any such purpose as aforesaid shall be obeyed by all persons as such summons had been the summons and order of the commissioners, and the n-observance thereof shall be punishable in like manner, and that the costs and xpenses of such person so summoned shall be paid in such cases and in such manner the costs and expenses of persons summoned under the authority of the first cited Act are now payable: Provided always that no person shall be required in edience to any such summons to go or travel more than ten miles from his place abode."

(4) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, 45.

(5) See sections 161, 176, 211, 270, 271, 279, 287, *ante*, sections 303, 304, 339, *posst*, d Schedule II. (6), *post*. As to provisional orders under the Artizans and Labourers' wellings Improvement Act, 1875, see *post*.

(6) See the instructions of the Local Government Board as to applications for provinal orders and their Circular, *post*, and see the Standing Orders of the Houses of Parliaent having reference to provisional orders, *post*.

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(2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the subject matter is one to which a local inquiry is applicable (1), shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid (2), and at which all persons interested shall be permitted to attend and make objections:

(3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament:

(4.) If while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills (3):

(5.) Any Act confirming any provisional order made in pursuance of any of the

(1) As to local inquiries, see section 293, *ante*.

(2) See sub-section (1), *supra*. Under the previous enactment the kind of public notice required was not specified.

(3) By 34 & 35 Vict. c. 3, s. 2, a select committee on bills confirming provisional orders is empowered to award costs in like manner and under the same conditions as 28 & 29 Vict. c. 27.

This latter Act provides as follows:—

"Section 1. When the committee on a private bill shall decide that the preamble is not proved, or shall insert in such bill any provision for the protection of any petitioner, or strike out or alter any provision of such bill for the protection of any petitioner, and further unanimously report with respect to any or all of the petitioners against the bill that such petitioner or petitioners has or have been unreasonably or vexatiously subjected to expense in defending his or their rights proposed to be interfered with by the bill, such petitioner or petitioners shall be entitled to recover from the promoters of such bill his or their costs in relation thereto, or such portion thereof as the committee may think fit, such costs to be taxed by the taxing officer of the House as hereinafter mentioned, or the committee may award such a sum for costs as they shall think fit with the consent of the parties affected.

"Section 2. When the committee on a private bill shall decide that the preamble is proved, and further unanimously report that the promoters of the bill have been vexatiously subjected to expense in the promotion of the said bill by the opposition of any petitioner or petitioners against the same, then the promoters shall be entitled to recover from the petitioners, or such of them as the committee shall think fit, such portion of their costs of the promotion of the bill as the committee may think fit, such costs to be taxed by the taxing officer of the House; the committee shall state what portion of the costs, or what sum for costs, they shall so think fit to award, together with the names of the parties liable to pay the same, and the names of the parties entitled to recover the same: Provided always that no landowner who *bonâ fide*, at his own sole risk and charge, opposes a bill which proposes to take any portion of the said petitioner's property for the purposes of the said bill, shall be liable to any costs in respect of his opposition to such bill."

Sections 3 and 7 of the same Act provide for the taxation and recovery of the costs, and section 8 for payment of such costs out of the deposit made by the promoters; and by section 10 the expression "private bill" shall extend to and include any bill for a local and personal Act.

By 34 & 35 Vict. c. 83, s. 1, any committee of the House of Commons may administer an oath to the witness examined before such committee, or an affirmation may be made by any witness who conscientiously objects to take an oath.

As to the costs of any local authority in promoting or opposing a provisional order, see the next section.

Sanitary Acts (1) or of this Act, and any Order in Council (2) made in pursuance of any of the Sanitary Acts may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament:

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(6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the Bill confirming the order is pending in either House of Parliament:

(7.) The making of a provisional order shall be *primâ facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with (3):

(8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

Costs of provisional orders.

298 (4). The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly (5); and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs (6).

Power of Board to enforce Performance of Duty by defaulting Local Authority.

Proceedings on complaint to Board of default of local authority.

299 (7). Where complaint (8) is made to the Local Government Board that a local authority has made default in providing their district with sufficient sewers, or in the maintenance of existing sewers, or in providing their district with a supply of water, in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a local authority has made default in enforcing any provisions of this Act which it is their duty to enforce, the Local Government Board, if satisfied, after due inquiry, that the authority has been

(1) Defined *ante*, p. 47.

(2) See further, section 339.

(3) A provisional order made in pursuance of the provisions of this section cannot be moved into the Queen's Bench Divisional by *certiorari* in order to be quashed as illegal: *Frewen* v. *Hastings Board*, 6 B. & S. 401, 34 L. J. Q. B. 159, 12 L. T. N. S. 346, 11 Jur. N. S. 670, 29 J. P. 711. But see *Telford* v. *Metropolitan Board of Works* as to restraining by injunction a local authority from applying for a provisional order, when the application would be contrary to equity.

(4) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 47.

(5) *In re Morley*, L. R. 20 Eq. 17, 32 L. T. N. S. 524, it was held by Jessel, M.R., that the costs of an application to the Board of Trade for a provisional order under the Tramways Act, 1870, must be taxed on the Chancery and not the Parliamentary scale. And see the observations in the judgment on the subject of provisional orders and the costs.

As to the mode of meeting expenses incurred by local authority under the Act, see sections 207 *et seq.*, and sections 229, 230.

See also note (4), *ante*, p. 206.

(6) As to loans, see sections 233—243, *ante*, and the Local Loans and Public Works Loans Acts, 1875, *post*.

(7) The previous enactments were the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 49; the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 20; the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113, s. 2; and the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 8.

(8) As to communications with the Board, see *ante*, p. 157.

Secs. 299—301.

guilty of the alleged default, shall make an order (1) limiting a time for the performance of their duty in the matter of such complaint. If such duty is not performed by the time limited in the order, such order may be enforced by writ of *mandamus*, or the Local Government Board may appoint some person to perform such duty, and shall by order (1) direct that the expenses (2) of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such expenses and costs may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court (3).

Any person appointed under this section to perform the duty of a defaulting local authority shall, in the performance and for the purposes of such duty, be invested with all the powers of such authority other than (save as hereinafter provided) the powers of levying rates; and the Local Government Board may from time to time by order change any person so appointed.

Further provision for recovery of expenses.

300 (4). Any sum specified in an order (1) of the Local Government Board for payment of the expenses (2) of performing the duty of a defaulting local authority, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by such authority, and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or of their officers, or out of any rate applicable to the payment of any expenses properly incurred by such authority, which rate is in this part of this Act referred to as "the local rate." If the defaulting authority refuses to pay any such sum, with costs, as aforesaid, for a period of fourteen days after demand, the Local Government Board may by order (1) empower any person to levy, by and out of the local rate, such sum (the amount to be specified in the order) as may, in the opinion of the Local Government Board, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the non-payment of such debt.

Any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority would have in the case of expenses legally payable out of a local rate to be raised by such authority (5); and the said person or persons, after repaying all sums of money so due in respect of the order, shall pay the surplus, if any, (the amount to be ascertained by the Local Government Board,) to or to the order of the defaulting authority.

Power of Board to borrow to defray expenses of per-

301 (6). The Local Government Board may from time to time certify the amount of expenses (7) that have been incurred, or an estimate of the expenses about to be incurred, by any person appointed by the said Board under this Act to perform the duty of a defaulting local authority; also, the amount of any loan required to

(1) See section 295, *ante*. (2) See section 302, *post*.

(3) In *R.* v. *Cockerell*, L. R. 6 Q. B. 252, 40 L. J. M. C. 153, 19 W. R. 1133, it was held under 29 & 30 Vict. c. 90, s. 49 (note (7) *ante*, p. 207), that an order made upon a sewer authority by the Secretary of State requiring "the said authority to do its duty and to begin to set about the works for the purpose within one month from the date of this order and proceed therewith until completion," and a further order made after the expiration of the month, the sewer authority having done nothing, appointing one J. B. "to perform the said duty of the sewer authority in respect to sewage as he shall be directed by me," were valid.

See also *Glossop* v. *Heston Board*, *ante*, p. 53; *R.* v. *Godmanchester Local Board*, *ante*, p. 47; and *A. G.* v. *Dorking Union*, *ante*, p. 56.

As to raising a sum for payment of debt within the district of defaulting authority see section 292, *ante*.

(4) The previous enactment was the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 8.

(5) See sections 207 *et seq.*, *ante*, and sections 229, 230, *ante*.

(6) The previous enactment was the Sanitary Loans Act, 1869, 32 & 33 Vict. c. 100, ss. 4 and 5.

(7) See the last clause of the next section.

be raised for the purpose of defraying any expenses that have been so incurred, or are estimated as about to be incurred; and the certificate of the said Board shall be conclusive as to all matters to which it relates (1).

Secs. 301—303.

forming duty of defaulting authority.

Whenever the Local Government Board so certifies a loan to be required, the Public Works Loan Commissioners may advance to the Local Government Board, or to any person appointed as aforesaid, the amount of the loan so certified to be required on the security of the local rate, without requiring any other security; and the Local Government Board, or the person so appointed, may, by an instrument duly executed, charge the local rate with the repayment of the principal and interest due in respect of such loan, and every such charge shall have the same effect as if the defaulting local authority were empowered to raise such loan on the security of the local rate, and had duly executed an instrument charging the same on the local rate.

Recovery of principal and interest.

302 (2). Any principal money or interest for the time being due in respect of any loan under this Act made for payment of the expenses incurred or to be incurred in the performance of the duty of a defaulting local authority shall be taken to be a debt due from such authority, and, in addition to any other remedies, may be recovered in the manner in which a debt due from a defaulting authority may be recovered in pursuance of the provisions of this part of this Act (3).

The surplus (if any) of any such loan, after payment of the expenses aforesaid, shall, on the amount thereof being certified by the Local Government Board, be paid to or to the order of the defaulting authority.

"Expenses," for the purposes of the provisions of this part of this Act relating to defaulting local authorities, shall include all sums payable under those provisions by or by the order of the Local Government Board, or the person appointed by that Board.

Powers of Board in relation to Local Acts, &c.

Power to repeal and alter local Acts.

303 (4). The Local Government Board may, on the application of the local authority of any district, by provisional order (5), wholly or partially repeal, alter or amend any local Act, other than an Act for the conservancy of rivers, which is in force in any area comprising the whole or part of any such district, and not conferring powers or privileges on any persons or person for their or his own pecuniary benefit, which relates to the same subject matters as this Act.

Any such provisional order may provide for the extension of the provisions of the local Act referred to therein beyond the district or districts within the limits of such Act, or for the exclusion of the whole or a portion of any such district from the application of such Act; and may provide what local authority shall have jurisdiction for the purposes of this Act in any area which is by such order included in or excluded from such district (6).

(1) See section 243 (2), *ante*.

(2) The previous enactment was the Sanitary Loans Act, 1869, 32 & 33 Vict. c. 100, s. 6, 7, 10.

(3) See the preceding section.

(4) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 77; the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 33; the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 18 and s. 16. The last clause from "and may provide, &c.," to the end is new.

(5) See sections 297, 298, *ante*.

(6) See the saving clause as to proceedings where a local Act is in force providing for purposes the same as or similar to the purposes of this Act, section 340, *post*.

As to the power of the Local Government Board to alter areas, see section 270, *ante*. Further, as to the relation between this Act and local Acts, see *Taylor* v. *Oldham Corporation*, *ante*, p. 46.

Secs. 304, 305.

Settlement of differences arising out of transfer of powers or property to local authority.

304 (1). On the application (2) of any authority from whom or to whom any powers, rights, duties, capacities, liabilities, obligations, and property, or any of them, are at any time transferred, or alleged or claimed to be transferred in pursuance of this Act (3) or any provisional order made thereunder, or on the application of any person affected by such transfer, the Local Government Board may by order (4) settle any doubt or difference, and adjust any accounts arising out of or incidental to such powers, rights, duties, capacities, liabilities, obligations, or property, or to the transfer thereof, and direct the parties by whom and to whom any moneys found to be due are to be paid, and the mode of raising such moneys; and any provisions contained in any order so made shall be deemed to have been made in pursuance of and to be within the powers conferred by this section, subject to this proviso, that where any such order directs any rate to be made, or other act or thing to be done, which the party required to make or do would not, apart from the provisions of this Act, have been enabled to make or do by law, such order shall be provisional only until it has been confirmed by Parliament (5).

Any settlement or adjustment under this section may be included in any provisional order which gives rise to the same.

PART X.

Miscellaneous and Temporary Provisions.

Miscellaneous.

Entry on lands for purposes of Act.

305 (6). Whenever it becomes necessary for a local authority or any of their officers to enter, examine, or lay open any lands or premises for the purpose of making plans, surveying, measuring, taking levels, making, keeping in repair, or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries (7), and the owner or occupier of such lands or premises refuses to permit the same to be entered upon, examined, or laid open for the purposes aforesaid or any of them, the local authority may, after written notice (8) to such owner or occupier, apply to a Court of Summary Jurisdiction (9) for an order authorising the local authority to enter, examine, and lay open the said lands and premises for the purposes aforesaid or any of them.

If no sufficient cause is shown against the application the Court may make an

(1) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 39, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 17.

(2) As to communications with the Board, see *ante*, p. 157.

(3) See sections 275, 310, and 29 & 30 Vict. c. 90, s. 44, re-enacted in Schedule V., Part III., *post*, p. 257.

(4) See section 295, *ante*.

(5) As to provisional orders, see sections 297, 298, *ante*, and section 323, *post*.

(6) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 143, and the Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75, s. 5. The words "making" and "keeping in repair" in line 3 of the section are new, and the hours are extended from ten and four to nine and six.

(7) See section 41, *ante*, as to entry on premises to examine drains, &c.; section 58, *ante*, to examine water meters; section 85, *ante*, to inspect common lodging house; sections 98, 102, *ante*, for purpose of abating nuisance; section 119, *ante*, to search for unsound meat, &c.

See also sections 105, 106, and 137, *ante*.

(8) As to notices and service thereof, see sections 266, 267, *ante*.

(9) Defined *ante*, p. 47; as to summary proceedings, see sections 251 *et seq.*, *ante*.

order accordingly, and on such order being made the local authority or any of their officers may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter, examine, or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: Provided that, except in case of emergency, no entry shall be made or works commenced under this section unless at least twenty-four hours' notice (1) of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered (2).

Penalty on obstructing execution of Act.

306 (3). Any person who wilfully obstructs any member of the local authority or any person duly employed in the execution of this Act, or who destroys, pulls down, injures, or defaces any board on which any bye-law, notice, or other matter is inscribed, shall, if the same was put up by authority of the Local Government Board or of the local authority, be liable for every such offence to a penalty not exceeding five pounds (4).

Where the occupier of any premises prevents the owner thereof from obeying or carrying into effect any provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing, require such occupier to permit the execution of any works required to be executed, provided that the same appear to such justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within twenty-four hours after the making of the order such occupier fails to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day during the continuance of such non-compliance.

If the occupier of any premises, when requested by or on behalf of the local authority to state the name of the owner of the premises occupied by him, refuses or wilfully omits to disclose or wilfully mis-states the same, he shall (unless he shows cause to the satisfaction of the Court for his refusal) be liable to a penalty not exceeding five pounds.

Penalty on damaging works, &c., of local authority.

307. Any person who wilfully damages any works or property belonging to any local authority shall, in cases where no other penalty is provided by this Act, be liable to a penalty not exceeding five pounds (5).

Compensation in case of damage by local authority.

308 (6). Where any person sustains any damage by reason of the exercise of any of the powers of this Act, in relation to any matter as to which he is not himself in default (7), full compensation shall be made to such person by the local authority exercising such powers (8); and any dispute as to the fact of damage or

(1) As to notices and service thereof, see sections 266, 267, *ante*.

(2) Justices have no power to state a case on refusing to make an order under this section, and it is not the determination of a complaint within 20 & 21 Vict. c. 43, s. 2: *Wiss Sanitary Authority* v. *Aldrich*, L. R. 2 Q. B. D. 179, 46 L. J. Q. B. 183, 36 L. T. N. S. 53, 41 J. P. 549.

This section does not apply to proceedings under section 16, *ante: Lamacraft* v. *Thomas's Sanitary Authority*, 42 L. T. N. S. 365, 44 J. P. 441.

(3) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 148; the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, ss. 36, 37.

(4) Penalties are also imposed for obstructing the execution of the Act by sections 98, 103, 118, 119, 124, 130, and 140; penalties for wilfully damaging works, &c., are also imposed by sections 60 and 307.

As to bye-laws, see section 185, *ante*.

As to the recovery of penalties, see sections 251 *et seq.*, *ante*.

(5) As to the recovery of penalties, see sections 251 *et seq.*, *ante;* and as to malicious injuries to property generally, see 24 & 25 Vict. c. 97.

(6) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 144, and the Sewage Utilization Act, 1865, 28 & 29 Vict. c. 75, s. 8.

(7) See *Re Corporation of Dudley*, *ante*, p. 55, where it was held that there could be no compensation for risk of percolation, as any percolation could only be caused by wrongful workings by the person seeking compensation.

(8) There is no redress for an injury done in the exercise and in pursuance of powers In what cases

Sec. 308. amount of compensation shall be settled by arbitration in manner provided by this Act, or if the compensation claimed does not exceed the sum of twenty

damages the subject of compensation, and in what cases of action or injunction.

conferred by Parliament, except where Parliament makes provision, as here, for compensation. See *British Plate Glass Co.* v. *Meredith*, 4 T. R. 794; *Ferrar* v. *Commissioners of Sewers*, L. R. 4 Ex. 1, 227, 38 L. J. Ex. 102, 17 W. R. 709; *Dixon* v. *Metropolitan Board of Works*, 7 Q. B. D. 418, 50 L. J. Q. B. 772, 45 L. T. N. S. 312, 30 W. R. 83, 46 J. P. 4; *Nutter* v. *Accrington Board*, *ante*, p. 46.

Compensation cannot be obtained under this section, unless the injury is such as, had the acts which caused the injury not been authorised by the statute, would have given the claimant a right of action: *Ricket* v. *Metropolitan Ry.*, L. R. 2 Eng. & Ir. App. 175, 36 L. J. Q. B. 205, 16 L. T. N. S. 542, 15 W. R. 937; *New River Co.* v. *Johnson*, 2 El. & El. 435, 29 L. J. M. C. 93; *R.* v. *Metropolitan Board of Works*, 3 B. & S. 710, 32 L. J. Q. B. 105; *Hall* v. *Mayor, &c. Bristol*, L. R. 2 C. P. 322, 36 L. J. C. P. 110, 15 L. T. N. S. 572, 15 W. R. 404. But where the injury is caused by acts not authorised by the statute, it is not the subject of compensation, but is ground of action: *R.* v. *Darlington Board*, 6 B. & S. 562, 35 L. J. Q. B. 45, 10 L. T. N. S. 603, 13 W. R. 789, 10 Jur. N. S. 1196. Or, in a proper case, an injunction may be obtained to restrain the commission of the wrong, as where a local board are interfering with a water-course in a way not authorised by Parliament they will be restrained from so doing: *Grand Junction Canal Co.* v. *Shugar*, *ante*, p. 73. So, where the damage is caused by reason of the works, though authorised by statute, being *negligently* done, the remedy is by action. See *Brine* v. *Great W. Ry.*, 2 B. & S. 402, *per* Crompton, J., adopted in *Mersey Docks' Trustees* v. *Gibbs*, L. R. 1 Eng. & Ir. App. 112, *per* Lord Hatherley, in *Grand Junction Canal Co.* v. *Shugar*, *supra*; and see *Hall* v. *Mayor of Battley*, *ante*, p. 58. See also *Clothier* v. *Webster*, 31 L. J. C. P. 316, 6 L. T. N. S. 461; *Coe* v. *Wise*, L. R. 1 Q. B. 711 (negligence of agents).

What the subject of compensation.

Compensation must be for prospective as well as actual injury: *Re Corporation of Dudley*, *ante*, p. 55; *Stone* v. *Mayor of Yeovil*, L. R. 2 C. P. D. 99, 46 L. J. C. P. 137, 36 L. T. N. S. 279, 25 W. R. 240; *Uttley* v. *Todmorden Board*, 44 L. J. C. P. 19, 31 L. T. N. S. 445.

In ascertaining the compensation by reason of the construction of a sewer through the claimant's land, it was held that the arbitrator might consider that the claimant would be prevented from building on the land over the sewer, that the sewer was insufficiently built, and the annoyance arising from opening of manholes and from stenches proceeding from the sewer: *Uttley* v. *Todmorden Board*, *supra*. The owner of a house adjoining a street is entitled to compensation, where his entrance to it is obstructed by reason of works performed by a local board under section 150, *ante*: *R.* v. *Wallasey*, *ante*, p. 122; and see *Beckett* v. *Midland Ry.*, L. R. 3 C. P. 82, 37 L. J. C. P. 11, 17 L. T. N. S. 499, 16 W. R. 221. But claims for remote and consequential damage, as for inconvenience, loss of trade by the temporary obstruction of access to premises by the erection of a hoarding to allow of the reconstruction of a sewer, is not the subject of compensation. See *Herring* v. *Metropolitan Board of Works*, 19 C. B. N. S. 510, 34 L. J. M. C. 224 (decided under Metropolis Local Management Act, 18 & 19 Vict. c. 120, ss. 135, 225); and see *Ricket* v. *Metropolitan Ry.*, *supra*, and *Bigg* v. *Corporation of London*, L. R. 15 Eq. 376. The removal by a riparian proprietor of shoals which are merely casual obstructions is not actionable, and is not the subject of compensation within the Lands Clauses Consolidation Act, 1845, *post*: *Rhodes* v. *Airedale Drainage Commissioners*, *ante*, p. 144. But the injury caused by the *permanent* loss of access to a river or public highway is the subject of compensation: *Metropolitan Board of Works* v. *McCarthy*, L. R. 7 Eng. & Ir. App. 243; *Ricket* v. *Metropolitan Ry.*, *supra*. See also *Caledonian Ry.* v. *Walker's Trustees*, L. R. 7 App. Cas. 259. The obstruction of a public right has been held not to be within section 68 of the Lands Clauses Consolidation Act, 1845, *post*: *R.* v. *Metropolitan Board of Works*, 38 L. J. Q. B. 201.

As to the principles of valuing land for compensation, see *Mordue* v. *Dean, &c. of Durham*, L. R. 8 C. P. 343; as to mines, see *Jacomb* v. *Corporation of Huddersfield*, L. R. 10 Ch. 92; as to compensation to lessee as against the reversioner, see *Great W. Ry.* v. *Smith*, L. R. 2 Ch. D. 235, 45 L. J. Ch. 235.

pounds, the same may at the option of either party be ascertained by and recovered before a Court of Summary Jurisdiction (1).

Secs. 308, 309.

Compensation in certain cases to officers.

309 (2). If any officer of any trustees, commissioners, or other body of persons intrusted with the execution of any local Act, whether acting exclusively under the local Act, or partly under the local Act and partly under the Local Government Acts (3), or any officer of any sanitary authority under the Sanitary Acts (4) by this Act repealed, or of any local authority under this Act, is, by or in pursuance of the Public Health Act, 1872, or of this Act, or of any provisional order made in pursuance of either of those Acts, removed from his office, or deprived of the whole or part of the emoluments of his office, and does not afterwards receive remuneration to an equal amount in respect of some office or employment under or by the authority of any district under this Act, the Local Government Board may by order award to such officer such compensation as the said Board may think just; and such compensation may be by way of annuity or otherwise, and shall be paid by the local authority of the district in which such officer held his office out of any rates applicable to the general purposes of this Act within that district (5).

As to whether property injuriously affected should be purchased, or compensation merely made for the injury done, see *Bush* v. *Trowbridge Waterworks Co.*, L. R. 10 Ch. 459, 44 L. J. Ch. 645, 33 L. T. N. S. 137, 23 W. R. 641, 39 J. P. 660; *Rodericks* v. *Aston*, L. R. 5 Ch. D. 328, 46 L. J. Ch. 802, 36 L. T. N. S. 328, 41 J. P. 516; *Macey* v. *Metropolitan Board of Works*, 33 L. J. Ch. 377, 10 L. T. N. S. 66, 10 Jur. N. S. 333; *Stone* v. *Corporation of Yeovil*, *supra*.

See further the Lands Clauses Consolidation Act, 1845, s. 68, and notes, *post*.

As to protection of members and officers of local authority from personal liability, see section 265 and notes thereto, *ante*.

(1) Under the previous enactment, note (6), *ante*, p. 211, only the amount of compensation, and not the fact of damage was to be referred. See *Bradley* v. *Southampton Board*, 4 El. & Bl. 1014, 24 L. J. Q. B. 239.

Where the local authority dispute their liability, the remedy is by *mandamus*: *R.* v. *Burslem Board*, 1 El. & El. 1077, 28 L. J. Q. B. 345, 29 *ib.* 242, 5 Jur. N. S. 1394, 6 *ib.* 696, 2 L. T. N. S. 667; *R.* v. *Wallasey Board*, *ante*, p. 122. But where a claim was made for compensation, and arbitration notices given, but the local authority refused to acknowledge any liability or to appoint an arbitrator, and the reference proceeded before the arbitrator appointed by the claimant without the local authority becoming in any way party to the proceeding, it was held on a motion to set aside the award for want of jurisdiction in the arbitrator, that it was not sufficient, in order to oust the jurisdiction of the arbitrator, to simply deny liability, but some *primâ facie* ground for asserting non-liability should be shown: *Burgess* v. *Northwich Board*, *ante*, p. 145. And it has now been decided that a person claiming compensation is entitled to have the amount determined by compensation under this section, though there may be a dispute as to the liability of the local authority: *Pearsall* v. *Brierley Board*, *ante*, p. 144, affirmed on appeal to House of Lords, W. Notes, 1884, p. 73.

As to arbitrations under the Act, see sections 179—181, and notes thereto, *ante*; and as to power of arbitrator to state a special case, see further *Rhodes* v. *Airedale Drainage Commissioners*, *ante*, p. 144.

As to summary proceedings, see sections 251 *et seq.*, *ante*. "Court of Summary Jurisdiction" is defined *ante*, p. 47.

Compelling payment of compensation.

A *mandamus* will lie to compel a local authority to levy a rate to satisfy damages: *Rowell* v. *Hartlepool*, 34 L. T. 232. The lands held by a local authority may be taken under an *elegit*: *Worrall Waterworks Co.* v. *Lloyd*, L. R. 1 C. P. 719. As to levying execution against goods, see *Saunders* v. *Slack*, 11 L. T. N. S. 484.

(2) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 33, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 18.

(3) See Schedule V., Part I., *sub fin.*, *post*, p. 225.

(4) Defined *ante*, p. 47.

(5) As to compensation to officers, see *R.* v. *Local Government Board*, L. R. 9 Q. B. 148, 43 L. J. Q. B. 49, and *R.* v. *Poor Law Board*, L. R. 6 Q. B. 785, 41 L. J. M. C. 16. As

Secs. 310, 311.

Provision where Improvement Act district or local government district becomes a borough.

310 (1). Where after the passing of this Act a district or part of a district under the jurisdiction of improvement commissioners (2), or a district or part of a district under the jurisdiction of a local board, is constituted or included in a borough, all the powers, rights, duties, capacities, liabilities, obligations, and property exerciseable by, attaching to, or vested in such improvement commissioners or local board (as the case may be) under this Act, or under any local Act for purposes the same as or similar to those of this Act, or under any general Act of Parliament, within or for the benefit of such district or part of a district, shall pass to and be exerciseable by and vested in the council of such borough (3).

The transfer by virtue of the Public Health Act, 1872, of the powers, rights, duties, capacities, liabilities, obligations, and property of any local board or improvement commissioners to an urban sanitary authority, shall be deemed to have included all powers, rights, duties, capacities, liabilities, obligations, and property exerciseable by, attaching to, or vested in such local board or improvement commissioners as a burial board under any general Act of Parliament (4).

Power of local boards to change name.

311 (5). Any local board constituted either before or after the passing of this Act may, with the sanction of the Local Government Board, change their name. Every such change of name shall be published in such manner as the Local Government Board may direct. No such change of name shall affect any rights or obligations of the local board, or render defective any legal proceedings instituted by or against the local board; and any legal proceedings may be continued or commenced against the local board by their new name which might have been continued or commenced against the local board by their former name (6).

to what are "emoluments," see *R.* v. *Postmaster-General*, L. R. 3 Q. B. D. 428, 47 L. J. Q. B 435, 38 L. T. N. S. 89, 26 W. R. 322; and *R.* v. *Norwich Corporation*, 8 A. & E. 633.

See section 295 as to orders of the Board under this Act.

(1) See the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 49, re-enacted in Schedule V., Part III., *post*, p. 256; the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 21; and the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 44, re-enacted in Schedule V., Part III., *post*, p. 257. The last paragraph is new.

(2) Defined *ante*, p. 214.

(3) "Council of such borough" means the mayor, aldermen, and burgesses acting by the council, and the effect of the section is to vest all the property of the board (including property acquired by them by purchase after the passing of the Act) at once in the corporation without the necessity of any conveyance, &c. Accordingly the Bank of England are bound, without requiring any transfer, to register in the name of the corporation stock previously standing in the bank's books in the name of the local board: *Corporation of Hyde* v. *Bank of England*, L. R. 21 Ch. D. 176, 51 L. J. Ch. 747, 46 L. T. N. S. 910, 30 W. R. 790.

(4) See the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 19.

As to transfer to town council of a borough of jurisdiction and powers of improvement commissioners whose district does not extend beyond the limits of the borough, see section 270 (2), *ante*, p. 195.

As to transfer of powers, &c., of certain trustees to a town council, see 20 & 21 Vict. c. 50,

See the saving clause as to persons possessing navigation powers, &c., section 330, *post*, p. 220.

As to the liability of new commissioners on a contract made by the commissioners from whom the powers are transferred, see *Sinnott* v. *Whitechapel Commissioners*, *ante*, p. 198; and see also *A.-G.* v. *Corporation of Birmingham*, *ante*, p. 51.

If the district of the improvement commissioners or local board is smaller than the borough, it would seem that the transferred powers, &c., can only be exercised by the council within the area of such district: *R.* v. *Overseers of Walsall*, *ante*, p. 158.

(5) This section is new.

(6) As to the name of the local authority, see section 7, *ante*.

In proceedings by or against a local authority their name need not be proved: section 260, *ante*.

Secs. 312—316.

As to election of certain improvement commissioners, &c.

312 (1). The retirement and mode of election of members of any authority invested by any local Act with powers of town government and rating, whose retirement and mode of election were at the time of the passing of this Act regulated by the Local Government Acts (2), shall be regulated in all respects by the rules for election of local boards contained in Schedule II. to this Act; but this enactment shall not affect the qualification fixed for members of such authority by the local Act under which such authority are constituted, or the qualification and tenure of office of any *ex-officio* members of such authority.

Substitution in other Acts of provisions of this Act for provisions of repealed Act.

313. Where in any Act, or order made by one of Her Majesty's Principal Secretaries of State, or by the Local Government Board, and in force at the time of the passing of this Act, or in any document, any provisions of any of the Sanitary Acts which are repealed by this Act are mentioned or referred to, such Act, order, or document shall be read as if the provisions of this Act applicable to purposes the same as or similar to those of the repealed provisions were therein mentioned or referred to instead of such repealed provisions and were substituted for the same; nevertheless those substituted provisions shall have effect, subject to any modification or restriction in such Act, order, or document expressed in relation to the repealed provisions therein mentioned or referred to (3).

Bye-laws as to hop-pickers.

314 (4). Any local authority may, if they think fit, make bye-laws for securing the decent lodging and accommodation of persons engaged in hop-picking within the district of such authority (5).

As to bye-laws inconsistent with this Act.

315. Any bye-law made by any sanitary authority under the Sanitary Acts (6) which is inconsistent with any of the provisions of this Act shall, so far as it is inconsistent therewith, be deemed to be repealed (7).

As to construction of incorporated Acts.

316 (8). In the construction of the provisions of any Act incorporated with this Act the term "the special Act" includes this Act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any order confirmed by Parliament and authorising the purchase of lands otherwise than by agreement under this Act; the term "the limits of the special Act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of

(1) The previous enactment was the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 2.

(2) Defined *ante*. In other cases, as to the power to repeal and alter local Acts, see section 303, *ante*.

See the saving clause for certain local boards, section 339, *post*.

(3) See the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 19.

A list of the Sanitary Acts repealed by this Act is given in Schedule V., Part I., *post*, p. 255.

See also the saving clause, s. 326, *post*.

(4) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 45.

(5) See the Circular letter dated 30th April, 1876, amongst the Circulars of the Local Government Board, &c., *post*, and the model bye-laws, *post*. As to prevention of introduction of small pox through hop-pickers from metropolis, see Circular28th July, 1881 ,*post*.

By the Public Health (Fruit Pickers' Lodgings) Act, 1882, 45 & 46 Vict. c. 23, which, by s. 1, is to be construed as one with the present Act, it is provided as follows:—

Power to make bye-laws for fruit-pickers.

"Section 2. Section three hundred and fourteen of the Public Health Act, 1875, which enables any local authority to make bye-laws for securing the decent lodging and accommodation of persons engaged in hop-picking within the district of such authority, shall be deemed to extend to and authorise the making of bye-laws for securing the decent lodging and accommodation of persons engaged in the picking of fruit and vegetables."

As to the making, &c., of bye-laws, see sections 182 *et seq.*, *ante*.

As to legal proceedings, see sections 251 *et seq.*, *ante*.

(6) Defined *ante*, p. 47.

(7) See also the saving clause, section 326, *post*, as to bye-laws.

As to the making, &c., of bye-laws, see sections 182 *et seq.*, *ante*.

(8) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 7.

Secs. 316—320.

the undertaking," "the commissioners," or "the undertakers," as the case may be (1).

All penalties incurred under the provisions of any Act incorporated with this Act shall be recovered and applied in the same way as penalties incurred under this Act (2).

Construction of schedules.

317. The schedules to this Act shall be read and have effect as part of this Act. The forms contained in Schedule IV. to this Act, or forms to the like effect, varied as circumstances may require, may be used and shall be sufficient for all purposes.

Temporary Provisions.

As to clerk and treasurer of certain authorities.

318. Nothing in this Act shall affect the rights or position of any clerk or treasurer the tenure of whose office is regulated by section twelve of the Public Health Act, 1872 (3).

As to special district rates.

319. Nothing in this Act shall affect the making and levying of any special district rates, or the discharge of sums borrowed on the credit of any special district rates, or any right or remedy for the recovery of the same, under any provision of the Local Government Act in force at the time of the passing of this Act (4).

Division of expenses

320 (5). Where under the provisions of any local Act in that behalf any

(1) As to incorporation of part of Waterworks Clauses Act, 1847, and the Waterworks Clauses Act, 1863, see section 57, *ante;* of parts of Towns Improvement Clauses Act, 1847, see sections 160, 169, *ante;* of part of Markets and Fairs Clauses Act, 1847, see section 167, *ante;* of Towns Police Clauses Act, 1847, see section 171, *ante;* and of part of the Lands Clauses Acts, 1845, 1860, and 1869, see section 176, *ante.*

(2) As to legal proceedings, see sections 251 *et seq.*, *ante.*

(3) *I.e.*, 35 & 36 Vict. c. 79, s. 12, which enacted as follows:—"Where the council of a borough or improvement commissioners having been previously to the passing of this Act a local board have appointed in their capacity of local board a different person as clerk or treasurer from the person who is their clerk or treasurer in their capacity of council or improvement commissioners, the clerk or treasurer so appointed by them shall continue to hold his office upon the terms upon which he held the same at the passing of this Act, but on such clerk or treasurer vacating the office it shall be discontinued as a separate office, and the person for the time acting as clerk or treasurer to such council or improvement commissioners in their capacity of council or improvement commissioners shall perform the duties of clerk or treasurer under the Sanitary Acts, with such additional remuneration as the council or improvement commissioners may determine. The clerk and treasurer of the union shall be the clerk and treasurer of the rural sanitary authority having jurisdiction in such union, but there may be awarded to such clerk and treasurer, in respect of their additional duties under the Sanitary Acts, such remuneration as the rural sanitary authority may with the approval of the Local Government Board determine."

As to the continuance in office, &c., of the officers and servants of authorities, &c., existing at the time of the passing of this Act, see the saving clause, section 326, *post.*

As to the appointment under this Act of officers, &c., of local authorities, see sections 189 *et seq.*, *ante.*

(4) These rates were authorised by the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 86. This was repealed by the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 54, saving, however, in respect of charges upon them already created, which were still to be provided for by the levying of such rates. By the Local Government Act (1858) Amendment Act, 1861, 24 & 25 Vict. c. 61, s. 12, special district rates were allowed to be levied as part of the general district rates, and by section 13 debts due on special district rates might with the consent of the Secretary of State, the creditors, owners, and ratepayers be repaid by means of a loan on the general district rates.

(5) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 8.

expenses directed by this Act to be paid in the case of a council of a borough out of the borough fund or borough rate were, before the passing of the Public Health Act, 1872, divided between landlord and tenant in moieties or otherwise, the Local Government Board may, on the application (1) either of landlord or tenant, by order make provision for the continuance of such division of expenses during the continuance of any contract existing between them at the passing of the last-mentioned Act.

between landlord and tenant in certain cases.

321 (2). Where by any sanction to a loan given or by any provisional order made under the Sanitary Acts, it is directed that the sums borrowed shall be repaid within a limited period of years from the date of the borrowing thereof, any security which has been given for a sum so borrowed shall not be invalid by reason of the sum having been made repayable within a period less than the period so limited.

Validity of certain securities.

322 (3). Where by any local Act powers are conferred on any turnpike trustees for any purposes the same as or similar to any of the purposes of the Sanitary Acts or of this Act, such trustees shall not be deemed to be an urban authority under this Act, but all their powers and obligations under such local Act for such purposes shall be transferred to the local authority within whose district the area to which such local Act applies is contained (4).

As to certain turnpike trustees.

323 (5). Where any district has been constituted in pursuance of the provisions of the Public Health Act, 1848, for the purposes of main sewerage only (6), or where a district has been formed subject to the jurisdiction of a joint sewerage board in pursuance of the Sewage Utilization Act, 1867 (7), the Local Government Board may by provisional order (8) dissolve such district, or may constitute such district a united district subject to the jurisdiction of a joint board in manner provided by this Act (9), without application previous to the making of any such order; and until an order has been made by the Local Government Board under this section, the authority of any such district shall continue to be the authority thereof, and their members shall be elected as if this Act had not passed: Provided that the provisions of this Act applicable to purposes the same as or similar to those of any enactments of the Sanitary Acts (10) which are in force within the district of any such authority at the time of the passing of this Act, and are repealed by this Act, shall be deemed to be substituted for those enactments (11).

As to main sewerage districts and joint sewerage boards. 11 & 12 Vict. c. 63.

Any order made under this section may if necessary provide for the settlement of any differences or the adjustment of any accounts or the apportionment of any liabilities arising between districts, parishes, or other places in consequence of the exercise of any of the powers conferred by this section, and may direct the persons by and to whom any moneys found to be due are to be paid and the mode of raising such moneys.

324. The accounts of any urban or rural sanitary authority under the Sanitary Acts by this Act repealed (12), not audited at the time of the passing of this Act, shall be deemed for the purposes of audit to be accounts of such authority under this Act (13).

As to audit of certain accounts.

(1) As to communication with the Local Government Board, see *ante*, p. 157.

(2) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 46.

(3) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 3.

(4) See the last clause of section 10, *ante*.

(5) The previous enactments were the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 58, and the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113, ss. 10—14.

(6) One or two such districts were formed, and their existence recognised in section 57 of the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 57.

(7) See note (5), *supra*.

(8) See sections 297, 298, *ante*.

(9) See section 279, *ante*.

(10) Defined *ante*.

(11) See also section 313, *ante*.

(12) See the definition *ante*, p. 47, and see Schedule V., Part I., *post*, p. 225.

(13) As to accounts and the audit of them, see sections 245—249, *ante*.

Secs. 325—327.

As to certain orders under section 20 of 35 & 36 Vict. c. 79.

325. The power conferred by section 20 of "The Public Health Act, 1872," of temporarily constituting a port sanitary authority shall be deemed to have authorised a renewal from time to time of any order made under that section (1).

PART XI.

Saving Clauses and Repeal of Acts.

Saving Clauses.

Provision as to the sanitary authorities existing at the passing of this Act and their officers, &c.

326. All urban sanitary authorities and rural sanitary authorities existing at the time of the passing of this Act shall be deemed to be urban authorities and rural authorities under this Act (2); and all joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and all local government districts constituted in pursuance of the Sanitary Acts (3), and existing at the time of the passing of this Act, shall be deemed to be joint boards, port sanitary authorities, committees of rural sanitary authorities, and parochial committees, and local government districts under this Act (4); and the members of all the above-mentioned bodies shall hold office (subject to the provisions of this Act respecting the election of members of local boards) for such time as they would respectively have held office if this Act had not been passed (5); and the officers and servants of all the above-mentioned bodies shall continue to hold their several offices and employments on the same terms and subject to the same conditions as to duties, remuneration, and otherwise, as they would have held them if this Act had not been passed (6); and all bye-laws duly made under any of the Sanitary Acts by this Act repealed, and not inconsistent with any of the provisions of this Act, shall be deemed to be bye-laws under this Act (7); and all the provisions of this Act shall apply to all such bodies existing at the time of the passing of this Act, and to their several officers and servants, in substitution for the provisions of the Sanitary Acts by this Act repealed, but so as not to affect any right acquired or liability incurred under the Sanitary Acts, or any of them, before the passing of this Act, and existing at the time of the passing of this Act (8).

Saving for works and property of certain authorities, and for navigation and water rights, &c.

327 (9). Nothing in this Act shall be construed to authorise any local authority—

(1.) To use, injure, or interfere with any sluices, floodgates, sewers, groynes, or sea defences, or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the Crown, or any sewers or other works already or hereafter made and used by any body of persons or person for the purpose of draining, preserving,

(1) See sections 287—291, *ante*.

(2) The Public Health Act, 1872, 35 & 36 Vict. c. 79, ss. 4, 5, defined urban and rural sanitary authorities similarly to the definition of urban and rural authorities given in sections 6 and 9, *ante*.

(3) Defined *ante*, p. 47.

(4) See the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 19.

(5) See Schedule II., rr. 55, 59, 61, 73, *post*.

(6) See, further, section 318, *ante*.

(7) See, further, section 315, *ante;* and as to the making, &c., of bye-laws under this Act, see sections 182 *et seq.*, *ante;* and as to legal proceedings, see sections 251 *et seq.*, *ante*.

(8) See section 343, *post*.

(9) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 68.

or improving land under any local or private Act of Parliament, or for the purpose of irrigating land (1); or

(2.) To disturb or interfere with any lands or other property vested in the Lord High Admiral of the United Kingdom or the Commissioners for executing the office of the Lord High Admiral for the time being, or in Her Majesty's Principal Secretary of State for the War Department for the time being; or

(3.) To interfere with any river (2), canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any body of persons or person are or is by virtue of any Act of Parliament entitled to navigate on or use such river, canal, dock, harbour, lock, reservoir, or basin, or to receive any tolls or dues in respect of the navigation thereon or use thereof; or

(4.) To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river, canal, dock, harbour, reservoir, or basin, in cases where any such body of persons or person as last aforesaid would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference (3); or

(5.) To interfere with any bridges (4) crossing any river, canal, dock, harbour, or basin, in cases where any body of persons or person are or is authorised by virtue of any Act of Parliament to navigate or use such river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation thereon or use thereof; or

(6.) To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, to the exclusive use of which any body of persons or person are or is entitled by virtue of any Act of Parliament, or for the use of which any body of persons or person are or is entitled by virtue of any Act of Parliament to demand any tolls or dues,—

Without the consent in every case of such Lord High Admiral or commissioners for executing the office of Lord High Admiral, Secretary of State, commissioners, body of persons or person as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing (5), in the case of a corporation under their common seal, and in the case of any body of persons not being a corporation under the hand of their clerk or other duly authorised officer or agent. And nothing in this Act shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under such local or private Acts for draining, preserving, or improving land as are in this section mentioned.

Reference to arbitration in

328 (6). Where any matters or things proposed to be done by any local

(1) These do not, as other sewers do, vest in the local authority. See section 13, and note thereto, *ante*.

(2) As to navigation rights in rivers, see Lord Hale de Jure Maris, Part I. c. 3; *Lyon* v. *Fishmongers' Co.*, L. R. 1 App. Cas. 662, 46 L. J. Ch. 68, 35 L. T. N. S. 569, 25 W. R. 165; *Original Hartlepool Collieries Co.* v. *Gibbs*, L. R. 5 Ch. D. 713, 46 L. J. Ch. 311, 36 L. T. N. S. 433; *Orr-Ewing* v. *Colquhoun*, L. R. 2 App. Cas. 839. As to *pollution* of rivers, &c., see section 17 and notes, *ante*, p. 55.

(3) Injunction granted to restrain a local board from interfering with the supply of water to a canal: *Grand Junction Canal Co.* v. *Shugar*, *ante*, p. 73.

See, further, the Rivers Pollution Prevention Act, 1876, 39 & 40 Vict. c. 75, *post*.

(4) County bridges do not vest in the local authority: section 149, *ante*, and the definition of "street" in section 4, *ante;* but see section 148, *ante*, as to the power of urban authorities by agreement to undertake the maintenance, &c., of any road over a county bridge.

(5) As to the effect of *laches* on the part of the party affected upon his application for an injunction, see *A.-G.* v. *Luton Board*, *ante*, p. 56; and see *per* Wood, V.-C., in *A.-G.* v. *Proprietors of Bradford Canal*, *ante*, p. 54.

(6) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 69.

Secs. 328—331.

case of works not within preceding section.

authority, and not being within the prohibition aforesaid, interfere with the improvement of any river, canal, dock, harbour, lock, reservoir, basin, or towing-path which any body of persons or person are or is entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river, canal, dock, harbour, or basin, or with any land necessary for the enjoyment or improvement thereof, the local authority shall give to such body of persons or person a notice (1) specifying the particulars of the matters and things so intended to be done. If the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration (2); and the following questions shall be decided by such arbitration; (that is to say,)

(1.) Whether the matters or things proposed to be done by the local authority will cause any injury to such river, canal, dock, harbour, basin, towing-path, works, or land, or to the enjoyment or improvement of such river, canal, dock, harbour, or basin, as aforesaid:

(2.) Whether any injury that may be caused by such matters or things, or any of them, is or is not of a nature to admit of being fully compensated by money.

Effect of arbitration.

329 (3). The result of any such arbitration shall be final, and the local authority shall do as follows; (that is to say,)

(1.) If the arbitrators are of opinion that no injury will be caused, the local authority may forthwith proceed to do the proposed matters and things:

(2.) If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation; and on payment of the amount so assessed, but not before, the local authority may proceed to do the proposed matters and things:

(3.) If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the local authority shall not proceed to do any matter or thing in respect of which such opinion may be given.

Provision as to transfer of powers, &c.

330 (4). No transfer of powers and privileges under this Act (5) shall deprive any body of persons or person authorised by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their or his own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

Provision as to alteration of sewers.

331 (6). Any body of persons or person authorised by virtue of any Act of Parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation on such river or canal, or the use of such dock, harbour, or basin, may, at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the surveyor to the local authority, take up, divert, or alter the level of any sewers, drains, culverts, or pipes constructed by any local authority, and passing under or interfering with such rivers, canals, docks, harbours, or basins, or the towing paths thereof, and may do all such things as may be necessary for carrying into effect such taking up, diversion, or alteration (7).

(1) As to notices and the service thereof, see sections 266, 267, *ante*.

(2) As to arbitrations under the Act, see sections 179—181, *ante*.

(3) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 70.

(4) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 71.

(5) See sections 10, 270, 275 and 310, *ante*.

(6) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 72.

(7) Differences of opinion arising out of these alterations may be referred to arbitration. See section 333, *post*.

Secs. 332—335.

Saving for water rights generally.

332 (1). Nothing in this Act shall be construed to authorise any local authority to injuriously affect any reservoir, canal, river, or stream, or the feeders thereof, or the supply, quality, or fall of water contained in any reservoir, canal, river, stream, or in the feeders thereof, in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, canal, river, stream feeders, or such supply, quality, or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid (2).

Arbitration as to alteration of sewers injuriously affecting supply of water, &c.

333 (3). Any difference of opinion that may arise between a local authority and any such body of persons or person as aforesaid (4), whether any sewers, drains, culverts, or pipes substituted under the powers of this Act for sewers, drains, culverts, or pipes constructed or laid down by any local authority are equally effectual with those for which they are substituted, or whether the supply, quality, or fall of water in any such reservoir, canal, river, or stream, as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in manner by this part of this Act provided (5). The arbitrators shall decide the same questions as to the alleged injury, and the local authority shall proceed in the same way as is by this Act provided with regard to arbitrations in cases of alleged injury to rivers, canals, docks, harbours, and basins (6).

Saving for mines, &c.

334 (7). Nothing in this Act shall be construed to extend to mines of different descriptions so as to interfere with or to obstruct the efficient working of the same; nor to the smelting of ores and minerals, nor to the calcining, puddling, and rolling of iron and other metals, nor to the conversion of pig iron into wrought iron, so as to obstruct or interfere with any of such processes respectively (8).

Saving for collegiate

335 (9). Any collegiate or other corporate body required or authorised by or in

As to the power of the local authority themselves to alter and discontinue sewers, see section 18, *ante*.

See sections 26 and 307, *ante*, as to damaging sewers and building over them without consent.

(1) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 73, and the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, ss. 44, 45.

(2) The remedy for any damage caused by injuriously affecting such rights without previous consent in writing is by action for damages, and not by seeking compensation under section 308, *ante: R.* v. *Darlington Board*, *ante*, p. 56. See also *A.-G.* v. *Dorking Union*, *ante*, p. 56.

As to purchase, &c., of waterworks, &c., by agreement, see section 51 (2), *ante*, p. 69. As to compulsory purchase, see section 176, *ante*.

(3) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 74.

(4) See sections 331, 332, *ante*.

(5) See section 328, *ante*. As to arbitration under the Act, see sections 179 *et seq.*, *ante*.

(6) See section 329.

(7) The previous enactment was the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 44. The previous enactment was more extensive; it extended to the "manufacture of the *produce* of ores and minerals" generally.

(8) "Rather a difficult question arises on section 334. It is put that that section authorises the uncontrolled working of mines, and no doubt the first part of the section logically goes that length, and even further, for logically it prohibits the taking of mines by purchase; but when the second part of the section is considered, it is clear that the whole section applies to nuisances only:" *Re Corporation of Dudley*, *ante*, p. 55, *per* Lindley, L.J.

See *Norris* v. *Barnes*, L. R. 7 Q. B. 537, 41 L. J. M. C. 154, 41 J. P. 150.

See now sections 2, 3, and 4 of the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, *post*, incorporating the provisions of the Waterworks Clauses Act, 1847, with regard to mines, *post*.

(9) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 56.

Secs. 335—339.

bodies and Government departments.

pursuance of any Act of Parliament to divert its sewers or drains from any river, or to construct new sewers, and any public department of the Government shall have the like powers and be subject to the like obligations under this Act as they had or were subject to under the Sewage Utilization Act, 1867 (1); and for that purpose the provisions of this Act applicable to purposes the same as or similar to those of the Sewage Utilization Act, 1865 (2), and the Sewage Utilization Act, 1867 (1), shall apply in substitution for the last-mentioned provisions (3).

Saving for Metropolitan Board of Works.

336 (4). Nothing in or done under this Act shall affect any outfall or other works of the Metropolitan Board of Works (although beyond the Metropolis) executed under the Metropolis Management Act, 1855, and the Acts amending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction or privilege of the Metropolitan Board of Works (5).

Saving for payment in certain cases to local authority.

337. Nothing in this Act shall affect the payment or recovery of any yearly sum payable at the time of the passing of this Act in pursuance of the Local Government Act (1858) Amendment Act, 1861 (6), to any local authority in respect of any premises without their district which have a drain communicating with a sewer within their district: Provided that any such sum shall cease to be payable, if and when the connection between the drain and the sewer is discontinued, from the time of such discontinuance; but if after the discontinuance the connection is re-established, the yearly sum shall again become payable, and so from time to time (7).

Saving for acts of authorities under certain local Acts.

338 (8). All rates, orders, acts or things made, assessed, performed or done, before the passing of this Act, by any authority purporting to act under the powers conferred on them by a local Act with respect to any sanitary purposes shall be valid, notwithstanding the passing of the Public Health Act, 1872 (9), or of this Act.

Saving for certain local boards.

339 (10). Nothing in this Act shall affect the composition of any local board constituted by any Order in Council or any provisional order made under the Public Health Act, 1848 (11), and confirmed by Parliament, or the qualification or number of members of any such board; but any such Order in Council, or order so

(1) *I.e.*, 30 & 31 Vict. c. 113. (2) *I.e.*, 28 & 29 Vict. c. 75.

(3) See also section 313, *ante.*

(4) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 57.

(5) See also the Rivers Pollution Prevention Act, 1876, 39 & 40 Vict. c. 75, *post.*

(6) *I.e.*, 24 & 25 Vict. c. 61, s. 8 of which was as follows: "Where already or hereafter any premises not being within the limits of the district of the local board have a drain communicating directly or indirectly with a sewer within the district and maintained by the local board, and any sewage from the premises flows into the sewer, there shall (except in cases where the owner is entitled to use such sewer without making any payment) be paid to the local board in respect thereof such a yearly sum as is agreed on between them and the owner of the premises, or failing agreement between them, as on application of the local board is determined by two justices, and the yearly sum so agreed on or determined shall be private improvement expenses and shall be charged on the premises and be paid and recoverable accordingly as if the premises were within the district: Provided that the yearly sum so charged shall cease to be payable if and when the connection between the drain from the premises and the sewers is discontinued, so that a proportionate part thereof up to the time of the discontinuance shall alone be payable; but if after the discontinuance the connection be re-established the yearly sum shall again become payable, and so from time to time.

(7) See sections 22 and 28, *ante.*

(8) The previous enactment was the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, ss. 3, 4.

(9) *I.e.*, 35 & 36 Vict. c. 79.

(10) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 5.

(11) *I.e.*, 11 & 12 Vict. c. 63.

confirmed, or the Act confirming any such last-mentioned order, may be repealed, altered or amended in manner provided by this Act (1).

Secs. 339—342.

Saving for proceedings under local Acts.

340 (2). Where within the district of a local authority any local Act is in force, providing for purposes the same as or similar to the purposes of this Act, proceedings may be instituted at the discretion of the authority or person instituting the same, either under the local Act or this Act, or under both, subject to these qualifications (3):

(1.) That no person shall be punished for the same offence both under a local Act and this Act; and

(2.) That the local authority shall not, by reason of any local Act in force within their district, be exempted from the performance of any duty or obligation to which they may be subject under this Act.

Powers of Act to be cumulative.

341 (4). All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law or custom, and such other powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall exempt any person from any penalty to which he would have been subject if this Act had not passed (5).

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

Oxford

Constitution of local board of the Oxford district.

342 (6). The local government district of Oxford shall be subject to the jurisdiction of a local board consisting of the Vice-Chancellor of the University of Oxford and the Mayor of Oxford for the time being, of forty-five other members, fifteen to be elected by the University of Oxford, sixteen by the Town Council of Oxford, and fourteen by the ratepayers of the parishes situated within the area formerly within the jurisdiction of the commissioners, for amending certain mileways leading to Oxford, and making improvements in the University and City of Oxford, the suburbs thereof and the adjoining parish of St. Clement, and of the members for any parishes or parts of parishes which may have been or may hereafter be added to the Oxford district.

After the passing of this Act, a district formed out of the rural sanitary districts of the City of Oxford, and the Abingdon union, to be termed the "Grandpont district," shall be defined by an order of the Local Government Board, and on a day to be mentioned in such order, the said district shall form part of the said local government district of Oxford. The election of members of the said local board by the town council and by the ratepayers of the parishes and parts of parishes respectively shall be conducted at the same time, in the same way, and

(1) As to provisional orders, see sections 297, 298, *ante*.

See section 303, *ante*, as to the power to alter local Acts. And see the saving clause, section 312, *ante*.

See also Schedule II., rr. 71, 72.

(2) The previous enactment was the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 55.

(3) See the next section.

(4) The previous enactments were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 65, 134; the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, s. 43; the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 55; the Sewage Utilization Act, 1867, 30 & 31 Vict. c. 113, s. 19; the Sanitary Act, 1868, 31 & 32 Vict. c. 115, s. 9; and the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 59.

(5) See also section 111, *ante*.

(6) The previous enactments were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 82, 27 & 28 Vict. c. 68.

See also 28 & 29 Vict. c. 108, *post*.

See, further, as to Oxford, sections 6, 205 and 228, *ante*, Schedule I., r. 13, and Schedule I., r. 75, *post*; and as to the constitution of the Oxford Local Board, see 27 & 28 Vict. c. 68, and 28 & 29 Vict. c. 108.

Secs. 342, 343.

subject to the same regulations in and subject to which such election is conducted at the time of the passing of this Act.

As regards the district of Cowley now comprised in the said local government district of Oxford, and the district of Grandpont when added to the same district, the chairman of the said local board or, in his absence, the clerk to the local board, shall summon a meeting of the several persons rated to the relief of the poor in respect of hereditaments situated in the said Cowley and Grandpont districts respectively, by public notices under his hand, to be affixed three clear days previously to the principal doors of every church and chapel in the districts, such meeting to be held on the day when the members for the parishes are elected, and at a place in each such district to be fixed by the chairman or clerk, and the appointment of a chairman and all other the business of such meetings shall be conducted as if the meetings respectively were the meetings of a vestry in a parish.

An election of the member for the Grandpont district shall take place as soon as convenient after that district has been added to the Oxford local government district as aforesaid, and he shall continue in office until the next annual election of the said local board.

The fifteen members to be elected by the university shall be elected as follows; namely, four members shall be elected by the university in convocation, and eleven members shall be elected by the heads and senior resident bursars of the several colleges entitled by any statute of the university or otherwise to matriculate students, and by the heads of the several halls; any member of the university, being of the degree of Master of Arts, Bachelor of Civil Law, or Bachelor in Medicine, or any superior degree of the university, shall be qualified to be elected; and the elections shall be conducted by the said university, and by the colleges and halls respectively, at the same time, and in the same way, and subject to the same regulations, in and subject to which guardians of the poor for the university and for the colleges and halls are now or may hereafter be chosen by them respectively, save that in the election of members, the heads and bursars of all the colleges and the heads of all the halls shall be summoned by the Vice-Chancellor for that purpose, and shall be entitled to vote.

Except as above provided, nothing in this Act shall affect the provisions of any order confirmed by Parliament relating to the local government district of Oxford, and in force at the time of the passing of this Act.

Repeal of Acts.

Repeal of Acts in Schedule V.

343. The Acts specified in the first and second parts of Schedule V. to this Act (1) are hereby repealed to the extent in the third column in the said parts of that schedule mentioned, with the following qualification; (that is to say,)

That so much of the said Acts as is set forth in the third part of that schedule shall be re-enacted in manner therein appearing, and shall be in force as if enacted in the body of this Act.

Provided also, that this repeal shall not affect (2)—

(*a.*) Anything duly done or suffered under any enactment hereby repealed (3); or

(*b.*) Any right or liability acquired accrued or incurred under any enactment hereby repealed (4); or

(1) *Post*, pp. 255, 256.

(2) See also section 326, *ante*.

(3) A rate made after the passing of this Act in pursuance of notice under the Public Health Act, 1848, and amending Acts given before the passing of this Act, was held valid, though the rate in ignorance of their repeal purported to be made under the previous enactments, the notice being a "thing duly done": *R.* v. *JJ. Yorkshire*, L. R 1 Q. B. D. 220, 45 L. J. M. C. 97, 35 L. T. N. S. 358.

(4) An order under the Nuisances Removal Act, 1855, 18 & 19 Vict. c. 121, ss. 12, 14 and the Sanitary Act, 1866, 29 & 30 Vict. c. 90, s. 19, to discontinue sending forth black smoke from a certain chimney so as to be a nuisance, made and served before the

(*c.*) Any security given under any enactment hereby repealed; or

(*d.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*e.*) Any investigation, legal proceeding, or remedy in respect of any such right, liability, security, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not been passed.

SCHEDULES (1).

SCHEDULE I. (1).

Rules as to Meetings and Proceedings (2).

(1.) *Rules applicable to Local Boards* (3).

1. Every local board (3) shall, from time to time, make regulations (4) with respect to the summoning, notice, place, management and adjournment (5) of their meetings, and generally with respect to the transaction and management of their business under this Act.

2. No business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, subject to this qualification, that in no case shall a larger quorum than seven members be required (6).

3. Every local board (3) shall, from time to time, at their annual meeting (7) appoint one of their number to be chairman for one year at all meetings at which he is present.

4. If the chairman so appointed dies, resigns, or becomes incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, and no longer.

5. If the chairman is absent from any meeting at the time appointed for holding

assing of this Act was held to be a "liability incurred" within the meaning of this ub-section, and the person upon it was made liable for disobedience to it after the assing of this Act: *Barnes* v. *Eddleston*, L. R. 1 Ex. D. 102, 43 L. J. M. C. 73, 33 L. T. 22, 40 J. P. 663.

(1) By section 317, *ante*, "the schedules to this Act should be read and have effect as art of this Act."

(2) See section 199, *ante*; and as to joint boards, see section 282, *ante*, and Part (2) of his schedule, *post*.

The previous enactments on this subject were the Public Health Act, 1848, 11 & 12 ict. c. 63, ss. 19, 29, 34; the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 24 (8); nd the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 27.

(3) Defined *ante*, p. 44.

(4) By section 188, *ante*, p. 150, the provisions of the Act relating to bye-laws (sections 2 *et seq.*) do not apply to "regulations."

(5) As a general rule, and apart from any bye-law or regulation on the subject, notice the adjournment of meetings is not requisite: *Kerr* v. *Wilkie*, 6 Jur. N. S. 383, 24 P. 211, 8 W. R. 286, 35 L. T. 501; *Wills* v. *Murray*, 4 Exch. 843, 19 L. J. Exch. 209.

(6) Where notice of the meeting of a body is required to be given to the members, it ould seem that the meeting is not legally constituted if this be omitted in the case of y of the members of the body: *Dobson* v. *Fussey*, 7 Bing. 305, 5 M. & P. 112.

(7) See rule 11, *post*.

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the same, the members present shall appoint one of their number to act as chairman thereat.

6. The names of the members present, as well as of those voting on each question, shall be recorded, *so as to show whether each vote given was for or against the question* (1).

7. Every question at a meeting shall be decided by a majority of votes of the members present, *and voting on that question* (2).

8. In case of an equal division of votes the chairman shall have a second or casting vote.

9. The proceedings of a local board shall not be invalidated by any vacancy or vacancies among their members, or by any defect in the election of such board, or in the election or selection or qualification of any members thereof.

10. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting, if purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings (3); and, until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

11. The annual meeting of a local board shall be held as soon as may be convenient after the fifteenth of April in each year (4).

12. The first meeting of a local board for a district constituted after the passing of this Act shall be held at such place and on such day (not being more than ten days after the completion of the election) as the returning officer may by written notice to each member of the board appoint; and the members shall appoint one of their number to be chairman at such meeting, and shall also appoint one of their number to be chairman for one year at all meetings at which he is present.

13. Nothing in these rules contained with respect to the appointment of chairman shall apply to the Oxford district, and in that district a chairman shall be appointed as heretofore (5).

(2.) *Rules applicable to Committees of Local Authorities, other than Councils of Boroughs, and to Joint Boards* (6).

1. A committee (6) or joint board (6) may meet and adjourn as it thinks proper.

2. The quorum of a committee or joint board shall consist of such number of members as may be prescribed by the authority that appointed the committee or joint board, or, if no number is prescribed, of three members (6).

3. A committee or joint board may appoint a chairman of its meetings.

(1) The words in italics are new.

(2) The words in italics are new. They obviate the difficulty raised in *In re Eynsham*, 12 Q. B. 398 n., 18 L. J. Q. B. 210, 13 Jur. 345. See also *Ex parte Orde*, L. R. 6 Ch. App. 886.

(3) As to the evidence of minutes, see *Inglis* v. *Great Northern Ry.*, 16 Jur. 895; *Miles* v. *Bough*, 3 Q. B. 845, 12 L. J. Q. B. 74; *Sheffield, &c., Ry.* v. *Woodcock*, 7 M. & W. 574.

In *A.-G.* v. *Whitwood Board*, 40 L. J. Ch. 592, 19 W. R. 1107, the minute book of a local board, though in use by the board, was ordered to be brought to London, and deposited in the Record and Writ Clerk's Office, for the purpose of being inspected in proceedings in which the local board were concerned.

(4) This provision for the date of the meeting is new. See Schedule II., r. 55, *post*, p. 236.

(5) See section 342, *ante*.

(6) As to the appointment, &c., of committees, see sections 200—4; as to committees of councils of boroughs, see section 198; and as to joint boards, see sections 280—2.

And as to exercise of their powers by a committee, see *Cook* v. *Ward*, *ante*, p. 156.

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4. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.

5. Every question at a meeting shall be determined by a majority of votes of the members present and voting on that question ([1]).

6. In case of an equal division of votes the chairman shall have a second or casting vote.

7. The proceedings of a committee or joint board shall not be invalidated by reason of any vacancy or vacancies amongst their members, or any defect in the mode of appointment of such committee or joint board or of any member thereof.

8. Any minute made of proceedings at a meeting, and copies of any orders made or resolutions passed at a meeting purporting to be signed by the chairman of the meeting at which such proceedings took place or such orders were made or resolutions passed, or by the chairman of the next ensuing meeting, shall be received as evidence in all legal proceedings ([2]); and, until the contrary is proved, every meeting where minutes of the proceedings have been so made shall be deemed to have been duly convened and held, and all the proceedings thereat to have been duly had.

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SCHEDULE II. ([3]).

(I.) Rules for Election of Local Boards ([4]).

Number and Qualification of Members ([5]).

1. The number of members of a local board constituted after the passing of this Act shall be such number as is determined by the order forming the district ([6]).

2. The Local Government Board may, from time to time, by order ([7]), after local inquiry ([8]), increase or diminish the number of members of any local board, and may prescribe at what time or times and in what manner such increase or diminution shall take effect, and may vary temporarily the provisions of this schedule relating to the continuance in office and retirement of members so far as may be necessary for that purpose.

3. A person shall not be qualified to be a member of a local board unless he is at the time of his election, and so long as he continues in office by virtue of such election, resident within the district for which or for part of which he is elected, or within seven miles thereof ([9]), and is seised or possessed of real or personal estate, or both, to the value of not less than five hundred pounds in districts containing less than twenty thousand inhabitants, or to the value of not less than one thousand pounds in districts containing twenty thousand or more inhabitants;

([1]) See note ([2]), *ante*, p. 226.
([2]) See note ([3]), *ante*, p. 226.
([3]) See note ([1]), *ante*, p. 225.
([4]) See sections 8, 312, and 339, *ante*.
([5]) The previous enactments on this subject were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 19; the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 24 (3); and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 28.
([6]) See sections 271, 272, and 275, *ante*.
As to boards previously formed, see section 326, *ante*.
([7]) See section 295, *ante*.
([8]) See section 293, *ante*.
([9]) Measured in a straight line "as the crow flies": *R.* v. *Saffron Walden*, 9 Q. B. 15 L. J. M. C. 115, 10 Jur. 639, 11 J. P. 499; *Stokes* v. *Grissell*, 14 C. B. 678, 23 L. J. C. P. 141; *Mouflet* v. *Cole*, L. R. 8 Ex. 32, 42 L. J. Ex. 8, 27 L. T. N. S. 678, 21 W. R. 175.

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or is rated to the relief of the poor of such district, or of some parish within the same, on an annual value (1) of not less than fifteen pounds in districts containing less than twenty thousand inhabitants, or on an annual value (1) of not less than thirty pounds in districts containing twenty thousand or more inhabitants.

4. Where two or more persons are jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them, qualify each to be elected, or if two or more persons are jointly rated in respect of any property which if equally divided between them would qualifiy each to be elected, each of the persons so jointly seised possessed or rated may be elected, but the same property shall not at the same time qualify the owner and the occupier thereof.

5. A person who is a bankrupt, or whose affairs are under liquidation by arrangement, or who has entered into any composition with his creditors, shall be incapable, so long as any proceedings in relation to such bankruptcy, liquidation, or composition are pending, of being elected member of a local board (2).

Wards (3).

6. The Local Government Board may, by order (4) made on application in pursuance of a resolution of owners and ratepayers passed in manner provided by Schedule III. to this Act (5), and after local inquiry (6), divide any district into wards, and on the like application from time to time may abolish such wards, or alter the number or boundaries of such wards, and may determine and from time to time alter the proportion of members of the local board to be elected by each ward.

Provided that where a district has been divided into wards by a provisional order, such wards shall not be abolished or altered otherwise than by a provisional order confirmed by Parliament (7).

7. If any member is elected in more than one ward, he shall within three days' notice thereof (8) choose, or, in default of his choosing, the local board at their next meeting shall decide for which one of the wards the member shall serve, and he shall thereupon be held to be elected in that ward only, and a vacancy shall be held to exist in the other ward or wards, and shall be filled up as if it were a casual vacancy (9).

8. No person entitled to vote shall give in the whole of the wards a greater number of votes than he would have been entitled to give if the district had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward (10).

9. Subject as aforesaid, any owner or ratepayer may, by notice in writing delivered to the clerk of the local board, or in case of the first election to the returning officer, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of

(1) *I.e.*, the rateable value: *Baker* v. *Marsh*, 4 E. & B. 144, 24 L. J. Q. B. 1.

An incoming occupier is now to have his name inserted in the rate when he comes into occupation, and is thenceforth to be deemed actually rated: 31 & 32 Vict. c. 122, s. 38, and 32 & 33 Vict. c. 41, s. 16. As to the former law, see *R.* v. *Eddowes*, 1 El. & El. 330, 28 L. J. Q. B. 84.

As to making a false declaration of qualification, see rules 56, 57, *post*.

As to acting without qualification, see rule 70, *post*, p. 241.

(2) See, further, rule 64, *post*, p. 238.

(3) The previous enactments on this subject were the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 24 (4), and Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 25.

(4) See section 295, *ante*.

(5) *Post*, p. 243.

(6) Sections 293 *et seq.*, *ante*.

(7) As to provisional orders, see section 297, *ante*.

(8) See rule 52, *post*, p. 236.

(9) See rule 65.

(10) As to the scale of voting, see rule 12, *post*, p. 230.

such wards, and if he does not give such notice he shall not be entitled to vote for any ward in which he does not reside (1).

Qualification of Electors, Scale of Voting, and Register of Owners (2).

10. The word "owner" (3), when used in relation to the right of voting at any election of a local board, shall mean any person (4) for the time being in the actual occupation of any kind of property in the district or part of a district for which he claims to vote, rateable to the relief of the poor, and not let to him at a rack-rent (5), or any person receiving on his own account, or as mortgagee or other incumbrancer in possession, the rack-rent of any such property.

11. A person shall not be deemed a ratepayer (6) or be entitled to vote as such

(1) As to the nomination of a candidate by an elector from the ward for which the candidate is nominated, see rule 39, *post*, p. 234.

(2) The previous enactments on this subject were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 20, and the Sanitary Law Amendment Act, 1874, 37 & 38 Vict. c. 89, s. 23.

(3) As to the meaning of owner for the general purposes of the Act, see the interpretation clause, *ante*, p. 45.

(4) Defined *ante*, p. 44. (5) Defined *ante*, p. 45.

As to voting by corporations, see rules 14, 15, 16, *post*.

(6) By the Poor Rate Assessment and Collection Act, 1869, 32 & 33 Vict. c. 41, s. 19, it is enacted as follows:—

"The overseers in making out the poor rate shall in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid, and if any overseer negligently or wilfully, and without reasonable cause, omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully mis-states any name therein, such overseer shall for every such omission or mis-statement be liable on summary conviction to a penalty not exceeding two pounds,-provided that any occupier whose name has been omitted shall notwithstanding such omission, and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating in the same manner as if his name had not been so omitted."

It is also provided in section 7, "Every payment of a rate by the occupier, notwithstanding the amount thereof, may be deducted from his rent as herein provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or as agreed with the occupier, or with the overseers, to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise, which, as regards rating, depends upon the payment of the poor rate."

It is provided in section 15: "The overseers who make the poor rate for a period exceeding three months may declare that the same shall be paid by instalments at such times as they shall specify, and thereupon each instalment only shall be enforceable as and when it falls due, and the payment of any such instalment shall as respects any qualification or franchise depending upon the payment of the poor rate, be deemed a payment of such rate in respect of the period to which such instalment applies."

By section 17, it is provided that "a poor rate shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance then on the day of the last allowance."

In *Smith* v. *Overseers of Seghill*, L. R. 10 Q. B. 422, 44 L. J. M. C. 152, 32 L. T. N. S. 59, 23 W. R. 745, it was held that where married workmen resided rent free in houses belonging to their masters, receiving an allowance to enable them to pay their rent in case there were not sufficient houses of their masters for the purpose, but the occupation of the particular houses was not necessary in order to enable them to perform their work, and no additional allowance was made to the unmarried workmen, it was held

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at any such election unless he has been rated to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and has also before that day paid all rates made on him for the relief of the poor in such district or part of a district for the period of one whole year, and all rates due from him under this Act, except rates which have been made or become due within the six months immediately preceding.

12. Owners of and ratepayers in respect of property situated within the district for which the election is held shall be entitled to vote according to the scale following; (that is to say,)

If the property in respect of which the person (1) is entitled to vote is rated to the poor rate on a rateable value (2) of less than fifty pounds, he shall have one vote; if such rateable value amounts to fifty pounds and is less than one hundred pounds, he shall have two votes; if it amounts to one hundred pounds and is less than one hundred and fifty pounds, he shall have three votes; if it amounts to one hundred and fifty pounds and is less than two hundred pounds, he shall have four votes; if it amounts to two hundred pounds and is less than two hundred and fifty pounds, he shall have five votes; and if it amounts to or exceeds two hundred and fifty pounds, he shall have six votes (3).

13. Any person (4) who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect to such ownership and of such occupation.

14. Owners (5) may give their votes either personally or by proxy.

15. The instrument appointing a proxy shall be in writing under the hand of the appointor, or where the appointor is a corporation under their common seal, or where the appointor is a body of persons unincorporate under the hands of three directors or other persons having the direction or management of the undertaking or business carried on by such body of persons; and every such instrument shall be attested by a witness, and may be in the Form M. in Schedule IV. to this Act (6).

16. No member of a corporation or of any such body of persons (other than a partnership firm consisting of not more than six persons) shall be entitled to vote individually as owner in respect of property belonging to such corporation or body of persons (7).

that their occupation was as tenants and not as servants, and they were entitled to have their names entered in the occupier's column of the rate books, although notice to quit their service was notice to quit the houses, and although they could not go into the houses without their master's concurrence.

(1) Defined *ante*, p. 44.

(2) That is the "net annual value." See as to this, rule 4, *ante*, p. 228.

(3) As to cases in which the district is divided into wards, see rules 8 and 9, *ante* p. 228.

By the Divided Parishes and Poor Law Amendment Act, 1876, 39 & 40 Vict. c. 61, s. 14, "No person shall be entitled to vote in the election of a guardian, or in the election to an office under the provisions of any statute, who shall be in receipt of relief given to himself, his wife, or child, or who shall have been in receipt of such relief on any day during the year last preceding such election; in the case of any person objected to on this ground a certificate from the clerk of the guardians, under his hand, shall be sufficient evidence of such person having received relief.

(4) See the interpretation clause, *ante*, p. 44, and rules 16 and 17, *post*.

(5) Defined by rule 10, *ante*. (6) *Post*, p. 253.

The Commissioners of Inland Revenue are of opinion that this proxy requires a 10s. stamp, but an appointment once made does not require to be renewed so long as the name of the proxy remains on the register. See 33 & 34 Vict. c. 97, Schedule tit. "Letter of Attorney," and *R.* v. *Kelk*, 12 A. & E. 559.

(7) But they may vote by proxy. See rules 14, 15.

As to a partnership of not more than six persons, see the next rule.

17. Partners in a firm consisting of not more than six persons may vote as owners in respect of property of the firm as if that property were equally divided among the partners.

18. An owner or a proxy shall not (except at the first election of a local board constituted after the passing of this Act) be entitled to have a voting paper delivered to him as such unless his name is on the register hereinafter mentioned (1).

19. The local board (2) shall cause a register to be made and kept, in which shall be entered the names, addresses, and qualifications of the owners claiming and entitled to vote, and the names or descriptions, addresses and qualifications of the appointors of proxies, and the names and addresses of proxies duly appointed.

Any such register made before the passing of this Act shall be deemed to be a register or part of a register under this Act.

20. A claim by an owner or proxy to be entered on the register shall state his name and address within the district, and a description of the nature of the interest or estate in the property giving the qualification, and a statement of the amount of all rent service (if any) received or paid in respect thereof by him or the body of persons for whom he is proxy, and of the persons from whom or to whom the same is received or paid; and in the case of a proxy the claim shall be accompanied by the appointment of the proxy or an attested copy thereof (3).

21. A claim by an owner or proxy may be made by writing in the Form L. in Schedule IV. to this Act (4).

22. A person entitled to vote either as owner or ratepayer may object to the keeping of any name on the register by writing in the Form L. in the said schedule (4).

23. Claims and objections shall be sent to the chairman of the local board on some one of the first six days of March (5), and a claim or objection sent at any other time shall not be admitted by the chairman (6).

24. A person making an objection shall also give written notice thereof to the person objected to by leaving the same at the address within the district of that person.

25. The chairman shall, between the twentieth of February and the first day of March, publish a notice, in the Form L. in Schedule IV. to this Act (7), and signed by him, of the time within which claims and objections are to be made as aforesaid, and shall cause a copy of such notice to be inserted in some local newspaper circulating in the district and to be affixed at the places where parochial notices are usually affixed (8).

26. The chairman, on the expiration of the time for sending in claims and objections, shall, with the assistance of such persons (if any) as the local board may appoint, proceed forthwith to revise the register by entering thereon the names of the persons who have claimed and are proved to his satisfaction to be entitled to

(1) See rule 31, *post*. As to the register, see rules 19—30, *post*.

(2) See the interpretation clause, *ante*, p. 44.

(3) See rule 15, *ante*.

Under the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 20, it was held that the owner's claim must be made before each election: *R.* v. *Morgan*, L. R. 7 Q. B. 26, 41 L. J. Q. B. 55, 25 L. T. N. S. 930, 20 W. R. 279. This inconvenience is now removed.

(4) *Post*, p. 250.

(5) See rule 66, *post*.

(6) See rule 20 and the note thereto, *supra*.

This rule does not apply to the first election of a local board. See rule 31, *post*.

(7) *Post*, p. 250.

(8) These notices must be on or near to the doors of all the churches and chapels of the Church of England within the district: 7 Will. IV. & 1 Vict. c. 45, s. 2, *post*; *Ex parte Overseers of Warblington*, *ante*, p. 167; *R.* v. *Whipp*, *ibid.*; *Ormerod* v. *Chadwick*, *ibid.* As to the publication of the poor rate where there is no parish church, see 45 & 46 Vict. c. 20, s. 4, *post*.

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vote as owners or proxies respectively, and the other particulars by this schedule required to be entered with respect to owners and proxies (1), and by expunging from the register the names of owners and proxies who are proved to his satisfaction to be dead or to have ceased to be entitled to vote (2).

27. For the purpose of enabling the chairman to determine the validity of claims and objections he may examine such persons and call for such evidence from the persons making the same as he may think fit; any person may tender himself to be examined; but no person shall be entitled to be examined or to be heard before the chairman in support either of a claim or an objection.

28. Not later than the sixteenth of March the chairman shall close the revision and sign the revised register, and that register shall continue in force for the twelve months next ensuing.

29. If the chairman is unable or unwilling to conduct the revision of the register, the local board shall appoint some person to conduct the revision, and in default of such appointment the revision shall be conducted by the clerk to the local board. Any person so appointed or the clerk shall for the purposes of the revision have the same powers and duties as the chairman of the local board.

30. The register shall be open to the inspection of candidates and other persons interested in any election or in any question at which any such owner or proxy claims to vote, subject to such rules as the local board may prescribe for the prevention of loss, injury, or disorder.

31. At the first election of a local board constituted after the passing of this Act an owner or proxy shall be entitled to have a voting paper delivered to him if not less than fourteen days (3) before the last day appointed for delivery of the voting papers he sends a claim in writing to the returning officer containing such particulars as are hereinbefore required to be contained in claims to be entered on the register of owners and proxies.

Returning Officer (4).

32. The returning officer, for the purposes of the election of a local board (5), shall be the chairman of the board, or in the case of the first election, if the district is constituted by provisional order (6), such person as may be appointed by order of the Local Government Board; and if the district is constituted in pursuance of a resolution of owners and ratepayers (7), the summoning officer (8) of the meeting of owners and ratepayers; and all powers and duties by this Act vested in or imposed on the returning officer, and all other duties requisite to be performed by him in relation to such election, shall be exercised and performed by the chairman or such person as aforesaid (9).

(1) See rule 19, *ante.*

(2) As to the close of the revision, see rule 28, *infra.*

As to the appointment of a person other than the chairman to conduct the revision see rule 29, *infra.*

(3) These days must be reckoned excluding the day of sending in the claim and the last day appointed for delivery of the voting papers: *R.* v. *Justices of Shropshire*, 8 A. & E. 173. As to service by *post*, see section 267, *ante*, and *R.* v. *Recorder of Richmond*, 27 L. J. M. C. 197, 31 L. T. 115, 4 Jur. N. S. 456, 22 J. P. 321, 674.

(4) The previous enactment on this subject was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 21.

(5) Defined *ante*, p. 44.

(6) See section 271, *ante.*

(7) See section 272, *ante.*

(8) See Schedule III., r. 2, *post*, p. 243.

(9) The returning officer must attend and perform the duties, which are judicial, of examining the votes, and if the examination be made by assessors or others in his absence, and he signs the returns, &c., on their report only, and not on personal inspection, the election is void: *R.* v. *Backhouse*, L. R. 2 Q. B. 16, 36 L. J. Q. B. 7, 15 L. T. N. S. 240, 7 B. & S. 911. See also rule 51, *post.*

It would seem that the chairman, when he is himself a candidate, cannot act as returning officer: *R.* v. *White*, L. R. 2 Q. B. 557, 36 L. J. Q. B. 267, 16 L. T. N. S. 828, 15

33. If the office of chairman is vacant at the time when any such power or duty must be exercised or performed, or if the chairman or such other person as aforesaid, from illness or other sufficient cause, is unable to exercise or perform such powers or duties, or is absent, or refuses to act, some other person shall be appointed (in case of the first election) by the Local Government Board, and (in any other case) by the local board, to exercise or perform such powers and duties (1).

34. The local board, or (in case of the first election) the returning officer, shall, before or during the election, appoint a competent number of persons to assist the returning officer in conducting and completing the same (2).

35. If any returning officer appointed by the Local Government Board dies, refuses or becomes incapable to act, the Local Government Board may appoint another person to act in his stead.

Election (3).

36. The returning officer shall after the close of the revision of the register, but not less than fourteen days (4) before the last day appointed for delivery to him of nomination papers, publish a notice (5), signed by him, and specifying—

The number and qualification of the persons to be elected (6);

The place where the nomination papers (7) hereinafter mentioned are to be delivered or sent to him;

The last day on which they are to be delivered or sent in;

The mode of voting in case of a contest (8);

The day or days on which the voting papers will be delivered (9) and the day on which they will be collected (10); and

The place for the examination and for the casting up of the votes (11);

and shall also cause copies of such notice to be affixed at the places where parochial notices are usually affixed (12).

37. The returning officer may, if he thinks fit, cause to be made an alphabetical list of the persons entitled to vote at the election.

L. R. 988; *R.* v. *Ward*, L. R. 8 Q. B. 210, 42 L. J Q. B. 126, 28 L. T. N. S. 118, 21 W. R. 42, 37 J. P. 453; *R.* v. *Owen*, *post*, p. 284. And as to the effect of an interference by the chairman in an election where he is himself a candidate, see *R.* v. *Ward*, *supra*.

As to the returning officer's remuneration, see rule 67, *post;* and as to his liability to penalties for neglect, &c., of duty, see rule 68, *post*.

(1) See the notes to the preceding rule.

(2) As to the remuneration of these persons, see rule 67, *post*.

(3) The previous enactments on this subject were the Public Health Act, 1848, 11 & 12 Vict. c 63, ss. 22, 23, 25, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 24 (6).

(4) See *R.* v. *JJ. Shropshire*, *ante*, p. 232.

(5) In *R.* v. *Rippon*, L. R. 1 Q. B. D. 217, 45 L. J. Q. B. 188, 34 L. T. N. S. 444, 24 W. R. 363, where four members of a local board under the Public Health Act, 1848, having gone out of office, three at the expiration of their term of office and one by resignation before the end of the term, four new members were elected at one election without distinction, no distinction being made in the notice of election or the voting papers between the regular vacancies and the casual vacancy, the election was held valid.

See also *Howes* v. *Turner*, L. R. 1 C. P. D. 670, 45 L. J. C. P. 550, 35 L. T. N. S. 58, decided under the Municipal Elections Act, 1875, 38 & 39 Vict. c. 40, s. 1, sub-ss. 1, 2, 3, where it was held that, a notice being so defective by reason of erroneously stating the day for the delivery of nomination papers as to mislead the candidates and probably the constituency, the election was void.

(6) See rules 1—5, *ante*.

(7) See rules 39, 40, *post*.

(8) See rules 43—47, *post*.

(9) See rule 44, *post*.

(10) See rule 48, *post*.

(11) See rule 51, *post*.

(12) As to the publication of parochial notices, see note (8), *ante*, p. 231.

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38. The clerk of the board of guardians of any union, and the overseers or other officers of every parish wholly or in part within the parts for which the election is held, and having the custody of any books or papers relating to the election of guardians of the poor, or of the poor rate books relating to any such parish, shall permit the same to be inspected and copies or extracts to be taken therefrom by the returning officer. Any person having the custody of any such books or papers who refuses to permit the same to be inspected, or copies or extracts to be taken therefrom, shall be liable to a penalty not exceeding five pounds (1).

39. Any person entitled to vote may nominate for the office of member of the local board himself (if qualified to be elected), or any other person or persons so qualified (not exceeding the number of persons to be elected) (2).

40. Every such nomination shall be in writing, and shall state the names (3) and residence (4) and calling or quality (5) of the person or persons nominated, and shall be signed by the person nominating, and be delivered or sent to the returning officer (6).

41. Any person nominated may withdraw from his candidature by giving notice to that effect, signed by him, to the returning officer.

42. If the number of persons nominated and not withdrawn is the same as or less than the number of persons to be elected, such persons (if duly qualified) shall be deemed and shall be certified by the returning officer under his hand to be elected (7).

43. If the number nominated and not withdrawn exceeds the number to be elected, the returning officer shall cause voting papers, in the Form N. contained in Schedule IV. (8) to this Act, to be prepared and filled up, and shall insert therein the names and residence and the calling or quality of each of the persons nominated and not withdrawn, in the alphabetical order of the surnames of such persons, but it shall not be necessary to insert more than once the name of any person nominated (9).

(1) As to the recovery of penalties, see sections 251 *et seq.*, *ante*.

(2) It would seem that where the district is divided into wards (rules 6—9, *ante*) no person can nominate for a ward who is not qualified to vote in such ward. It has been so held under section 6 of 22 Vict. c. 35, which contains a like provision to the above in reference to the election of town councillors in a municipal borough: *R.* v. *Parkinson*, L. R. 3 Q. B. 11, 37 L. J. Q. B. 52, 17 L. T. N. S. 169, 8 B. & S. 769.

(3) In *Mather* v. *Brown*, L. R. 1 C. P. D. 596, 45 L. J. C. P. 547, 34 L. T. N. S. 869, 24 W. R. 736, decided in reference to an election for town councillors of a borough under 38 & 39 Vict. c. 40, it was held that the name of a candidate, which was Robert Vicars Mather, inserted as "Robert V. Mather," did not satisfy the requirements of section 1 and the form in Schedule II. of the statute, which required a statement of "the surname and other names of the person nominated."

(4) In *R.* v. *Hammond*, 17 Q. B. 772, 21 L. J. Q. B. 153, decided under 5 & 6 Will. IV. c. 76, s. 32, which required that the election of committees should be by voting papers "containing the christian names and surnames of the persons voted for, with their respective places of abode and descriptions," it was held that "place of abode" meant place of residence, and that voting papers which gave only the place of business were void, even though the candidate was as well known by that description as by his place of residence. See also *R.* v. *Deighton*, 5 Q. B. 896, 13 L. J. Q. B. 241, 8 Jur. 686; *Luckett* v. *Knowles*, 2 C. B. 187; *Allen* v. *Greensill*, 4 C. B. 100; *Soper* v. *Mayor, &c., of Basingstoke*, L. R. 2 C. P. D. 440, 46 L. J. C. P. 422, 36 L. T. N. S. 468, 25 W. R. 693.

(5) *I.e.*, rank. It is not necessary to state the *qualification* of the person nominating. If it be done, it is surplusage, and an error in it will not affect the nomination: *R.* v. *Morgan*, L. R. 7 Q. B. 26, 41 L. J. Q. B. 55, 25 L. T. N. S. 930, 20 W. R. 279.

(6) As to delivery, &c., on Sunday, see *Westbury-on-Severn Union Case*, 4 E. & B. 314; *Rawlins* v. *Overseers of W. Derby*, 15 L. J. C. P. 70.

(7) See rule 52, *post*. (8) *Post*, p. 253.

(9) In *R.* v. *Lofthouse*, L. R. 1 Q. B. 433, 7 B. & S. 447, 35 L. J. Q. B. 145, 14 L. T. N. S. 359, 14 W. R. 649, 12 Jur. N. S. 619, it was held by Blackburn and Mellor JJ., *diss.* Shee, J., under the Public Health Act, 1848, that it was the duty of the

44. The returning officer shall, three days at least (1) before the day of collection of the voting papers, cause one of such voting papers to be delivered, by persons appointed by him for that purpose, at the address stated in the register or claim of each owner and proxy, and at the residence within the district of each ratepayer entitled to vote therein (2).

45. Each voter shall write his initials in the voting paper delivered to him against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting paper (3).

46. Any person voting as a proxy shall in like manner write his own initials and sign his own name, and state also in writing the name of the person or body of persons for whom he is proxy.

47. Any voter unable to write shall affix his mark at the foot of the voting paper in the presence of a witness, who shall attest and write the name of the voter against the mark, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

48. The returning officer shall cause the voting papers to be collected on the day of collection (which shall not be later than the 7th of April) by such persons as he may appoint (4).

49. No voting paper shall be received or admitted unless the same has been delivered at the address or residence as aforesaid of the voter, nor unless the same is collected by the persons appointed for that purpose: Provided—

(*a.*) That if any person entitled to receive a voting paper has not received a voting paper as aforesaid, he shall, on personal (5) application before the day of collection to the returning officer, be entitled to receive a voting paper from him, and to fill up the same in his presence, and then and there to deliver the same to him:

(*b.*) That if any voting paper duly delivered has not been collected, through the default of the returning officer or the persons appointed to collect the same, the voter in person may deliver the same to the returning officer before twelve o'clock at noon on the day or on the first day (as the case may be) appointed for the examination and casting up of the votes.

50. If any person nominated, or any person on his behalf, gives at least one clear day's notice in writing to the returning officer, before the delivery or collection of the voting papers, of an intention to send some agent to accompany the deliverer or collector of the papers, the returning officer shall make his arrangements so as to enable the person appointed by him to be so accompanied, but no such agent shall interfere in any respect in the delivery or collection of the voting papers.

Counting of Votes (6).

51. The returning officer shall on the day immediately following the day of collection of the voting papers, and on as many days immediately succeeding

turning officer to fill up the column with the number of votes, but his omission to do , although it might expose him to a prosecution for a penalty, did not render the ction void.

It would seem that the voting papers do not require a stamp: *R.* v. *Strahan*, L. R. 7 B. 463, 41 L. J. Q. B. 210, 26 L. T. N. S. 835, 20 W. R. 629, 36 J. P. 727. This case s decided in respect of municipal elections.

(1) See *R.* v. *JJ. of Shropshire*, *ante*, p. 232.

(2) As to elector residing without the district, see rule 49, *post*.

(3) Under similar provisions in the repealed Municipal Corporations Act, 5 & 6 ill. IV. c. 76, s. 32, it has been held that a voting paper not signed is invalid: *R.* v. *rt*, 28 L. J. Q. B. 173, 5 Jur. N. S. 679. But the initials of the Christian names are ficient: *R.* v. *Avery*, 18 Q. B. 576, 21 L. J. Q. B. 429, 17 Jur. 272.

As to fabrication of voting papers, personation, &c., see rule 69, *post*.

(4) See the provision in rule 66, *post*, as to the day falling on a Sunday, &c.

(5) This word "personal" is new.

(6) The previous enactment on this subject was the Public Health Act, 1848, 11 & 12 ct. c. 63, s. 27.

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as may be necessary, attend at the place appointed for the examination and casting up of the votes, and ascertain the validity of the votes, by an examination of the rate books and such other books and documents as he may think necessary, and by examining such persons as he may see fit; he shall cast up such of the votes as he finds to be valid, and to have been duly given, collected, or received, and shall ascertain the number of such votes for each candidate (1).

Any candidate may himself attend or may appoint any agent to attend the examination and casting up of the votes; any candidate or agent so attending who obstructs or in any way interferes with the examination and casting up of the votes may, by order of the returning officer, be forthwith removed from the place appointed for that purpose, and if so removed shall not be permitted to return (2).

52. The candidates to the number to be elected who, being duly qualified (3), have obtained the greatest number of votes, shall be deemed and shall be certified by the returning officer under his hand to be elected, and to each person so elected the returning officer shall forthwith send or deliver notice of his election (4).

53. The returning officer shall also cause to be made a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected, and shall sign and certify such list, and shall deliver the same, together with the nomination and voting papers which he has received, to the local board at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office.

54. Such list shall during office hours be open to public inspection, together with all other documents relating to the election, for six months after the election, without fee or reward; and the returning officer shall, as soon as may be after the completion of the election, cause such list to be printed, and copies thereof to be affixed at the usual places for affixing parochial notices (5) within the parts for which the election has taken place.

55. The returning officer shall make all his arrangements for the conduct of the election so as to ensure its completion, and the ascertainment of the result, on or before the fifteenth of April in each year; and on that day the candidates elected shall come into office, and until that day the members in whose room they are elected shall continue to hold office.

Provided that the first election of a local board for a district constituted after

(1) The duties of the returning officer as to casting up the votes are ministerial merely, and therefore if he makes a mistake by putting down to one candidate votes which the voting papers show have been given for another, or has omitted to reckon votes, his decision may be questioned by *quo warranto* proceedings; but his duties in ascertaining the validity of the votes are judicial, and his decision as to the validity or invalidity of votes cannot be questioned: *R.* v. *Collins*, L. R. 2 Q. B. D. 30, 46 L. J. Q. B. 257, 36 L. T. N. S. 192, 24 W. R. 732. See also *R.* v. *Ward* and *R.* v. *Ellis*, *infra*.

The returning officer (*i.e.*, the chairman or his duly appointed deputy) must personally attend and examine the votes: *R.* v. *Backhouse*, *ante*, p. 232.

(2) This provision enabling a candidate or his agent to attend the counting of the votes is new.

(3) See rules 1—5, *ante*.

(4) As to when the decision of the returning officer may be questioned, and when not, see *R.* v. *Collins*, *supra*. But the Court will not allow an information in the nature of a *quo warranto* to be filed to try the title to an office merely because there has been an irregularity in the election, in the absence of bad faith, and where the result has not been affected: *R.* v. *Ward*, L. R. 8 Q. B. 210, 42 L. J. Q. B. 126, 28 L. T. N. S. 118, 21 W. R. 632, 37 J. P. 453. So, where E. and R. were candidates for a place in a local board, and the votes for R. were 57 and for E. 52, but the returning officer decided that R. was disqualified as his name was omitted from the rate book, and his son-in-law was rated instead of him, it was held that the officer was justified in disqualifying R., or at least R. had led to the mistake, and a rule for *quo warranto* against E. was discharged: *R.* v. *Ellis*, 44 J. P. 748.

(5) See note (8) to rule 25, *ante*, p. 231.

the passing of this Act (1) may be held at any time mentioned in the order constituting the district, and the members shall come into office on the day appointed for their first meeting (2), but shall for the purposes of retirement be deemed to have come into office on the fifteenth of April next following the commencement of the order (3).

Declaration to be made by Members.

56. A person shall not act (4) as a member of a local board (except in administering the following declaration) until he has made and signed before two or more other members of such board a declaration in writing to the effect following; (that is to say,)

"I *A. B.* do solemnly declare, that I am seised or possessed of real or personal [*or* real and personal] estate to the value or amount of (5)
[*or* that I am rated to the relief of the poor of on the annual value of (5)].

"(Signed) *A. B.*

"Made before us, *C. D.* and *E. F.*, members of the Local Board for the District of ,
this day of ."

57. Such declaration shall be signed by the person making the same, and shall be filed and kept by the clerk of the local board; and any person who falsely or corruptly makes and subscribes such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanour.

58. Any person who neglects to make and subscribe the declaration required by this Act for the space of three months next after he has become a member of the local board shall be deemed to have refused to act, and shall cease to be a member of such local board, and his office as such shall thereupon become vacant (6).

Retirement of Members (7).

59. Subject as hereinafter mentioned (8), one-third of the number of members elected for the district, or if the district is divided into wards, one-third of the number elected for each ward (being those who have been longest in office), shall go out of office on the fifteenth of April in each year (9).

60. The order in which the persons elected at the first election of a local board for a district constituted after the passing of this Act shall go out of office shall be regulated by the local board, and if the number of persons to be elected is not divisible by three, the proportion to go out of office in each year shall be regulated by the local board so that as nearly as may be one-third shall go out of office in each year (10).

61. No person elected shall in any case continuously remain in office (without re-election) for more than three years: Provided that if the number of persons to

(1) See sections 271, 272, *ante*. (2) See Sched. I. (1), 12, *ante*, p. 226.
(3) See section 275, *ante*.
(4) See rule 70, *post*, as to the penalty for acting without having made and subscribed this declaration.
(5) As to the qualification, see rule 3, *ante*.
(6) As to filling up casual vacancies, see rule 65, *post*.
(7) The previous enactment on this subject was the Public Health Act, 1848, 11 & 12 Vict. c. 63, ss. 13, 14.
(8) See rule 73, *post*.
(9) See rule 55, *ante*.
It is no objection that the members selected to go out of office have ceased to be members of the board before the 15th April, by reason of non-attendance, &c. See *Pritt* v. *Manfull*, 6 El. & Bl. 736, 25 L. J. Q. B. 411, 2 Jur. N. S. 883, 4 W. R. 612 decided upon the previous Public Health Act, 1848, (see note (7), *supra*.)
(10) See the preceding note.

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be elected for any ward is less than three, the persons elected shall go out of office on the fifteenth of April in such year or years as the local board may with the sanction of the Local Government Board determine.

62. Before the fifteenth of April in each year a number of persons equal to the number of retiring members shall be elected in manner provided by this schedule, and so many others as may be necessary to complete the full number of the local board in respect of which the election is held (1).

63. Any person who has ceased to be a member is re-eligible (if qualified).

Disqualification of Members (2).

64. Any member who ceases to hold his qualification, or becomes bankrupt, or submits his affairs to liquidation by arrangement, or compounds with his creditors, or is absent from meetings of the local board for more than six months (3) consecutively (unless in case of illness), or accepts or holds any office or place of profit under the local board of which he is member, or in any manner is concerned in any bargain or contract entered into by such board, or participates in the profit thereof (4), or of any work done under the authority of this Act in or for the district, shall, except in the cases next hereinafter provided, cease to be such member, and his office as such shall thereupon become vacant:

(1) See rules 55 and 59, *ante*. And as to the procedings in case of the lapse of a local board, see Part (II.), r. 2 of this schedule, *post*, p. 243.

(2) The previous enactments on this subject were the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 19, and the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 25.

(3) *I.e.*, calendar months. See 13 & 14 Vict. c. 21.

(4) In *Hunnings* v. *Williamson*, L. R. 11 Q. B. D. 533, 52 L. J. Q. B. 416, 49 L. T. N. S. 361, 32 W. R. 267, 48 J. P. 132 (decided under Metropolis Management Act, 1855, 18 & 19 Vict. c. 120, ss. 54 and 60), where a member of a vestry had lent money to his brother in order to enable the latter to carry out a contract made with the vestry *before* the election of the member, and had taken an assignment of the contract as security for repayment of the loan, it was held that the member was "interested" in the contract, and was liable to penalties for having acted after he had "ceased" to be a member. The prohibition applies only to contracts for the supply of a series of things, or in other words, to a *continuing* contract, and where the member would have to decide on the quality of the article produced, and does not apply to a single act of asking a price for an article and selling it there and then. See *Woolley* v. *Kay*, 1 H. & N. 307, 25 L. J. Ex. 351; *Le Feuvre* v. *Lankester*, 3 El. & Bl. 530, 23 L. J. Q. B. 254, 18 Jur. N. S. 894, 2 C. L. R. 1426. But in *Nicholson* v. *Fields*, 7 H. & N. 810, 31 L. J. Ex. 233, an invoice addressed to town commissioners by one of the commissioners for lime supplied at four different times was held evidence against the commissioner of being concerned in a contract with the town commissioners. See also *Lewis* v. *Carr*, L. R. 1 Ex. D. 484, 46 L. J. Ex. 314, 36 L. T. N. S. 44, 24 W. R. 940, 40 J. P. 279, and *Royse* v. *Birley*, L. R. 4 C. P. 296, 38 L. J. C. P. 203, 20 L. T. N. S. 786, 17 W. R. 827. In *Towsey* v. *White*, 5 B. & C. 125, where one of the trustees of a turnpike road let horses to a contractor to perform certain works on the road, and the horses were so used, the trustee was held liable to a penalty under a similar clause to the above in 3 Geo. IV. c. 126, s. 65.

As to whether the contract remains in force, though the contractor be disqualified, see *Barton* v. *Piggott*, L. R. 10 Q. B. 86, 44 L. J. M. C. 5, 31 L. T. N. S. 404, 23 W. R. 233, 39 J. P. 454; *R.* v. *St. Margaret's, &c., Commissioners*, 1 Jur. 104; *Foster* v. *Oxford, &c., Ry.*, 13 C. B. 200; *Webb* v. *Herne Bay Commissioners*, L. R. 5 Q. B. 642 22 L. T. N. S. 745.

A member of a board who under this rule ceases to be a member of the board is a person disabled from acting as a member by a provision of the Act within the meaning of rule 70, *post*, and liable to the penalty if he afterwards does so act: *Fletcher* v. *Hudson*, L. R. 7 Q. B. D. 611, 51 L. J. Q. B. 48.

Provided that no member shall vacate his office—

By reason of his being interested in the sale or lease of any lands (1) or in any loan of money to the local board; or

By reason of his being interested in any contract with the local board as a shareholder in any joint stock company, but he shall not vote at any meeting of the local board on any question in which such company are interested, save that in the case of a water company, or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the Local Government Board.

Casual Vacancies (2).

65. Any casual vacancy occurring by death, resignation, disqualification, failure duly to elect members, or otherwise, in a local board shall be filled up by the local board out of qualified persons within six weeks, or within such further period as the Local Government Board may by order allow; but the member so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

In the event of a casual vacancy, or of an ordinary vacancy which ought to have been filled up at a previous election, being filled up at an annual election, if there is a poll, the member who has been elected by the fewest votes shall be deemed elected to fill such vacancy; if there is no poll, the member to be deemed to be elected to fill such vacancy shall be determined by lot (3).

General Provisions.

66 (4). Whenever the day appointed for the performance of any act in relation to any election is a Sunday, Christmas Day, or Good Friday, a bank holiday (5), or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following, unless it is one of the days excluded as aforesaid; and in that case on the day following such excluded day.

67 (6). The necessary expenses attendant on any election, and such reasonable remuneration to the returning officer and other persons for services performed or expenses incurred by them in relation thereto as may be allowed by the local board, shall be paid out of the general district rates levied under this Act (7).

(1) These words cover a lease of a farm for agricultural or sewage purposes whether made by or to the local board. Therefore, a person is not disqualified by reason of a lease to him of a sewage farm containing covenants on the part of the board to supply, and on his part to use on the premises the sewage of the district: *R.* v. *Gaskarth*, L. R. 5 Q. B. D. 321, 49 L. J. Q. B. 509, 42 L. T. N. S. 688, 28 W. R. 596, 44 J. P. 507.

(2) The previous enactment on this subject was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 24 (7).

(3) See, as to this rule, the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 22.

See also *R.* v. *Rippon*, *ante*, p. 233, rule 36.

As to the proceedings in case of the lapse of a local board, see Part II. of this Schedule, *post*, p. 242.

As to the disqualification of members, see the preceding rule.

(4) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 23.

(5) *I.e.*, Easter Monday, Monday in Whitsun week, the first Monday in August, the 26th of December, if a week day, and if not, the 27th December. See 34 & 35 Vict. c. 17, and 38 & 39 Vict. c. 13.

(6) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 30.

(7) The remuneration to be allowed is in the discretion of the local board, and their discretion cannot be reviewed by the Court upon a suggestion that the sum allowed is inadequate: *Ex parte Metcalfe*, 6 El. & Bl. 287, 2 Jur. N. S. 1245, 27 L. T. 78, 4 W. R. 90.

Sched. II.

68 (1). If the returning officer refuses or neglects to comply with any of the provisions of this schedule relating to elections, he shall be liable to a penalty not exceeding fifty pounds; and any person employed for the purposes of any such election by or under the returning officer who is guilty of any such neglect or refusal shall be liable to a penalty not exceeding five pounds (2).

69 (3). Any person who—

Fabricates in whole or in part, or alters, defaces, destroys, abstracts, or purloins any voting paper (4), or

Personates any person entitled to vote at any election (5), or

Falsely assumes to act in the name or on the behalf of any person so entitled to vote, or

Interferes with the delivery or collection of any voting papers, or

Delivers any voting paper under a false pretence of being lawfully authorised so to do,

shall be liable to a penalty not exceeding twenty pounds, or, in the discretion of the Court, to imprisonment with or without hard labour for any period not exceeding three months (6).

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, s. 28.

(2) Under the previous enactment (see the preceding note) it was held that the penalty was not incurred by reason that the officer made a mistake in construing the Act, though it might be different if he neglected a mere ministerial duty about which there could be no mistake: *Summerhill* v. *Coley*, 32 J. P. 821. It has been held under the Ballot Act, 1872, 35 & 36 Vict. c. 33, that the returning officer at a municipal election is liable for neglect of ministerial duties, but that he is not responsible for the acts of his clerk, the relationship of master and servant not existing between them: *Pickering* v. *James*, L. R. 8 C. P. 489, 42 L. J. C. P. 217, 21 W. R. 786, S. C. *nom. Jones* v. *Pickering*, 29 L. T. N. S. 210. See also *King* v. *Burrell*, and *Hunt* v. *Hibbs*, *post*, p. 288.

If the officer, knowing a voter to be qualified, maliciously refuse to receive his voting paper, he is liable to an action by the voter; but it is otherwise if he acts *bonâ fide*: *Tozer* v. *Child*, 6 El. & Bl. 289, 27 L. T. 100, 4 W. R. 513.

As to the recovery of penalties, and as to the persons by whom proceedings may be taken, see sections 251, 253, and the notes thereto, *ante*.

A member of a local board who is not a candidate at an election, cannot, without the consent of the Attorney-General or the local board, prosecute the returning officer for neglecting to deliver the voting papers to the local board, the persons returned at the election having been properly elected: *R.* v. *Blanshard*, 30 J. P. 280, and see *Verdin* v. *Wray*, *post*, p. 241.

(3) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 13 (5).

(4) Where a wife having her husband's authority, but being unable to write, put a cross at the bottom of a voting paper, and a canvasser for one of the candidates put the voter's initials in the margin opposite the name of the candidate for whom the vote was intended, and signed his name as witness to the mark of the voter, this was held to be no fabrication within the meaning of the enactment, as the canvasser had no guilty intention, and *bonâ fide* believed (as the fact was) that the wife had authority to put her husband's name to the paper: *Aberdare Board* v. *Hammett*, L. R. 10 Q. B. 162, 44 L. J. M. C. 49, 32 L. T. N. S. 20, 39 J. P. 598.

(5) A person is not guilty of personation unless the person personated is entitled to vote at the time of the election: *Whiteley* v. *Chappell*, L. R. 4 Q. B. 147, 38 L. J. M. C. 51, 19 L. T. N. S. 355.

(6) As to the persons by whom proceedings may be taken, see section 253, *ante*.

An unsuccessful candidate at an election is "a party aggrieved" in respect of the fabrication of a voting paper which, if given in his favour, would have secured him the election; and *per* Lush, J., a candidate is aggrieved by the mere fabrication of a voting

70 (1). Any person who, not being duly qualified (2) to act as member of the local board, or not having made and subscribed the declaration required of him by this Act (3), or being disabled from acting by any provision of this Act (4), acts as such member, shall be liable to a penalty of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt; in such action it shall be sufficient for the plaintiff to prove in the first instance that the defendant at the time when the offence is alleged to have been committed acted as such member (5); and the burden of proving qualification, and the making and subscription of the declaration, or of negativing disqualification by reason of non-residence, or not being seised or possessed of the requisite real or personal estate, or both, shall be on the defendant.

But all acts and proceedings of any person disqualified, disabled, or not duly qualified, or who has not made and subscribed the declaration required by this Act, shall, if done previously to the recovery of the penalty mentioned in this Act, be valid and effectual to all intents and purposes (6).

As to Local Boards established before the passing of the Local Government Act, 1858.

71. Where the district of a local board established under the Public Health Act, 1848, before the passing of the Local Government Act, 1858, comprises the whole or any part of a borough or boroughs, and also parts not within the boundaries of any such borough, the following provisions shall have effect; (namely,)

(*a.*) Each person selected by the council of any such borough out of their own number shall be a member of the local board with which he is selected to act, so long as he continues without re-election to be member of the council from whom he was selected, and no longer; and a declaration shall not be required to be made by any person so selected:

(*b.*) Each person selected by any such council otherwise than out of their own number shall be a member of the local board with which he is selected to act, for one year from the date of his selection, and no longer:

(*c.*) In case of any vacancy in the number selected, some other qualified person shall be selected by the council by whom the person causing the vacancy was selected, within one month after the occurrence of the vacancy:

(*d.*) The meeting of any council at which any selection as aforesaid is made in pursuance of this Act shall to all intents and purposes be deemed to be a meeting held in pursuance of the Act of the session of the fifth and sixth years of the reign of King William the Fourth, intituled, "An Act for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same:

aper, whether or not the fabricated voting paper can have any influence on the return f the candidates at the election: *Verdin* v. *Wray*, L. R. 2 Q. B. D. 608, 46 L. J. M. C. 70, 35 L. T. N. S. 942, 41 J. P. 69. See *R.* v. *Blanshard*, *ante*, p. 240.

(1) The previous enactment was the Public Health Act, 1848, 11 & 12 Vict. c. 63, 19.

(2) See rules 3, 4, and 5, *ante*.

(3) See rules 56, 57, *ante*.

(4) See rules 58, 61, 64, *ante*.

See also *Fletcher* v. *Hudson*, *ante*, p. 238.

(5) Under the Metropolis Management Act, 1855, it has been held that the attendance ook of the members of a vestry, signed by the defendant, and the minute book conining his name as a member in attendance, were evidence of his having acted as a ember of the vestry: *Hunnings* v. *Williamson*, *ante*, p. 238.

(6) See Schedule I., Part I., r. 9, and Part II., r. 7, of the same schedule, *ante*, . 226, 227.

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(*e.*) If any person is both selected and elected to be a member of any such local board, he shall, within three days after notice thereof from the clerk ([1]), choose, or, in default of such choice, the local board of which he is so selected and elected to be member shall determine, the title in respect of which he shall serve; and immediately on such choice or determination the person so selected and elected shall be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant ([2]).

72. Elective members of any local board established under the Public Health Act, 1848, before the passing of the Local Government Act, 1858, shall be elected by such owners of property and ratepayers, and in such manner as in this schedule mentioned; and the provisions of this schedule (with the exception of the provisions relating to the number and qualification of members) ([3]) shall apply accordingly.

Temporary Provisions.

73. All members of local boards existing at the time of the passing of this Act shall, notwithstanding any provision of any Act or order confirmed by Parliament, continue to hold office till the fifteenth day of April one thousand eight hundred and seventy-six; and the next election of members of such local boards shall be held in accordance with the provisions of this schedule.

74. The provisions of section twenty-six of the Sanitary Law Amendment Act, 1874 ([4]), shall be deemed not to have been compulsory in the case of the first election of members of any local board elected after the passing of that Act, and before the passing of this Act; and all elections held or purporting to have been held in accordance with such provisions before the passing of this Act, shall be deemed to have been duly held, and to be valid for all purposes.

Oxford.

75. Nothing in the rules in this schedule shall apply to the local government district of Oxford ([5]).

(II.) Proceedings in case of Lapse of Local Board.

1 ([6]). Where any local board lapses through its members ceasing to hold office, and failure to elect new members in manner by this Act provided, any mortgagee or other person entitled to any principal or interest on any mortgage of rates made by such local board may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to a Court of Summary Jurisdiction. The said Court may, by writing under their hands, appoint a person to make, levy, and collect the whole or a competent part of the rates liable to the payment of the principal and interest in respect of which the application is made, and to recover all arrears of such rates until such principal and interest, together with the costs of the application and of collection, are paid; and on such appointment being made, all such rates, competent part thereof, and arrears, shall be paid to the

([1]) As to notices and the service thereof, see sections 266, 267, *ante.*

([2]) See the Public Health Act, 1848, 11 & 12 Vict. c. 63, ss. 12 and 13; and see, further, sections 6 and 339, *ante.*

([3]) See rules 1—5, *ante.*

([4]) *I.e.*, 37 & 38 Vict. c. 89.

([5]) See section 342, *ante*, and 28 & 29 Vict. c. 108.

([6]) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 10, and the Local Government Amendment Act, 1863, 26 & 27 Vict. c. 17, s. 5.

Sched. II.

receiver so appointed, and shall be rateably apportioned by him among the mortgagees or other persons entitled to the same (1).

2 (2). In the case of any lapse of a local board, the owners and ratepayers of the district may, by resolution passed in manner provided by Schedule III. (3) to this Act, determine to elect, and may accordingly proceed to the election of a new local board in manner provided by this schedule, and the result of such election shall be signified to the Local Government Board by the returning officer; and all the powers, rights, duties, property, and liabilities of the lapsed board shall attach to the new board as if there had been no lapse before the election thereof, and from the date of the completion of such election all powers of any receiver to make rates under this schedule shall determine.

If no election takes place in pursuance of this provision within three months from the date of the lapse of the board, the Local Government Board may by order (4) dissolve the district, and declare it to be a rural district, or to be included in any adjoining rural district; and from and after a day named in such order all such powers, rights, duties, property, and liabilities of the lapsed board as the Local Government Board may direct shall with respect to the dissolved district attach to the rural authority named in the order, and such property shall be held by the rural authority for the benefit of the dissolved district.

The Local Government Board may by order (4) determine any question as to the fact of a local board having lapsed, or as to the date of the lapse of any local board.

SCHEDULE III.

Sched. III.

Rules as to Resolutions of Owners (5) and Ratepayers.

1 (6). For the purpose of passing a resolution of owners (5) and ratepayers under this Act (7), a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners, resident in the district or place with respect to which the resolution is to be passed.

2 (8). The summoning officer of such meeting shall be—

In boroughs, the mayor;

In Improvement Act districts, the chairman of the improvement commissioners;

(1) As to the raising of money by mortgage of the rates, see sections 233—244, *ante*.

Section 239 makes provision for the appointment of a receiver in certain cases where there is no lapse of the local board.

(2) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 11.

See as to this rule the Circular of the Local Government Board, dated 30th Septemper, 1875, *ante*, p. 22.

(3) *Infra*. (4) See section 295, *ante*. (5) Defined *ante*, p. 45.

(6) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 13 (1).

(7) That is to say, resolutions for the establishment of a market (section 166, *ante*); the formation into a highway parish of part of a new urban district (section 216, *ante*); the constitution of a local government district (section 272, *ante*); the division of a district into wards (Schedule II., Part I., r. 6); the election of a new local board on the lapse of an existing board (Schedule II., Part II., r. 2). A resolution may also be passed giving consent to the promotion of or opposition to a bill in Parliament by an urban authority. See section 313, *ante*, and 35 & 36 Vict. c. 91, *post*.

(8) See the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 22.

Sched. III.

In local government districts, the chairman of the local board;

In places situated in any rural district or districts and having known and defined boundaries (1), the churchwardens or one of them having jurisdiction co-extensive with the place; or if there are no churchwardens, the overseers or one of them having the like jurisdiction; or if there is none of the officers respectively above enumerated, or if such officer in any case neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by the Local Government Board.

Where the boundaries of a place are settled by order of the Local Government Board, the Board shall by such order appoint the summoning officer.

If any summoning officer appointed by the Local Government Board dies, becomes incapable, or refuses or neglects to act, the Local Government Board may appoint another officer in his room.

3. Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the resolution not being passed, of the costs incurred in relation to such meeting or any poll taken in pursuance of any demand made thereat (2); the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or, in case of dispute, by a Court of Summary Jurisdiction (3).

4 (4). The summoning officer shall, on such requisition as aforesaid, fix a time and place for holding such meeting, and shall forthwith give notice thereof—

By advertisement in some one or more of the local newspapers circulated in the district or place;

By causing such notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed (5).

5 (6). The summoning officer shall be the chairman of the meeting unless he is unable or unwilling to preside, in which case the meeting on assembling shall choose one of its number as chairman, who may, with the consent of a majority of the persons present, adjourn the same from time to time (7).

6 (8). The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption: Provided, that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the Form O. in Schedule IV. to this Act (9), in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery, filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever as is provided by the rules for the election of local boards in Schedule II. to this Act; except that in districts or places where there is no register of owners and proxies under this Act, any owner or proxy shall be entitled to have a voting paper delivered to him if at least fourteen days (10) before the last day appointed for delivery of the voting

(1) See section 272 and the notes thereto, *ante*.

(2) See rule 8, *post*.

(3) Defined *ante*, p. 47.

(4) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 13 (2).

(5) See the note *ante*, p. 167.

(6) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 13 (3).

(7) See the Circular of the Local Government Board, dated 30th September, 1875, *ante*, p. 23.

It would seem that fresh notice need not be given of the adjourned meeting: *Loraut* v. *Scudding*, 3 H. L. C. 418, 19 L. J. M. C. 5; *Kerr* v. *Wilkie*, *ante*, p. 225.

(8) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 13 (4).

(9) *Post*, p. 254.

(10) See *R.* v. *JJ. of Shropshire*, *ante*, p. 232.

papers he sends a claim in writing to the summoning officer containing the particulars required by Schedule II. to this Act to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply.

For the purposes of such poll the summoning officer shall be the returning officer, and shall have the powers and perform the duties of a returning officer under Schedule II. to this Act, so far as the same are applicable to a poll under this schedule (1).

If no poll is demanded, or the demand for a poll is withdrawn by the persons making the same, a declaration by the chairman shall, in the absence of proof to the contrary, be sufficient evidence of the decision of such meeting.

7 (2). A copy, under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the Local Government Board; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed (3).

8 (4). Where in pursuance of a resolution passed in manner provided by this schedule any place is constituted a local government district, all costs incurred by the summoning officer in relation to the meeting, and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district; in the case of a resolution so passed by owners or ratepayers in any urban district, such cost shall be paid out of the fund or rate applicable by the urban authority to the general purposes of this Act (5).

(1) This provision is in accordance with *Ex parte Littleborough Local Board*, 22 L. T. N. S. 437, 35 J. P. 118.

After the meeting is at an end the chairman's functions are at an end, and a *mandamus* will not lie to compel him to take a poll. See *R.* v. *Bird*, 39 L. T. 286.

(2) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 19.

(3) See note (6), *ante*, p. 167.

(4) The previous enactment was the Local Government Act, 1858, 21 & 22 Vict. c. 98, s. 23.

(5) See sections 207 *et seq.*, *ante*.

Where the resolution is not passed the costs will have been provided for under rule 3, *ante*.

SCHEDULE IV.

Forms.

Form A.

Form of Notice requiring Abatement of Nuisance.

To [*person causing the nuisance, or owner or occupier of the premises whereon the nuisance exists, as the case may be*].

Take notice that under the provisions of the Public Health Act, 1875, the [*describe the local authority*], being satisfied of the existence of a nuisance at [*describe premises or place where the nuisance exists*], arising from [*describe the cause of nuisance, for instance,* want of a privy or drain; *or for further instance,* a ditch or drain so foul as to be a nuisance or injurious to health; *or for further instance,* swine kept so as to be a nuisance or injurious to health], do hereby require you within from the service of this notice to abate the same, and for that purpose to [*state any things required to be done or works to be executed*].

If you make default in complying with the requisitions of this notice, or if the said nuisance, though abated, is likely to recur, a summons will be issued requiring your attendance to answer a complaint which will be made to a Court of Summary Jurisdiction for enforcing the abatement of the nuisance, and prohibiting a recurrence thereof, and for recovering the costs and penalties that may be incurred thereby.

Dated this day of . 18 .

Signature of officer of local authority

Form B.

Form of Summons.

Summons.

To the owner or occupier of [*describe premises*], situated at [*insert such a description as may be sufficient to identify the premises*], *or* to *A. B.* of

County of [*or* borough of *&c. or* district of *or as the case may be*] to wit. } You are required to appear before [*describe the Court of Summary Jurisdiction*], at the Petty Sessions [*or* Court] holden at on the day of next, at the hour of in the noon, to answer the complaint this day made to me by that in or on the premises above-mentioned [*or* in or on certain premises situated at No. in the street in the parish of *or such other description or reference as may be sufficient to identify the premises*], in the district, under the Public Health Act, 1875, of [*describe the local authority*], the following nuisance exists [*describing it, as the case may be*], and that the said nuisance is caused by the act or default of the occupier [*or* owner] of the said premises, *or* by you *A. B.* [*or in case the nuisance be discontinued but likely to be repeated, say,* there existed recently, to wit, on or about the day of on the premises, the following nuisance [*describe the nuisance*], and that the said nuisance was caused [*&c.*], and although the same has since the said last mentioned day been abated or discontinued, there is reasonable ground to consider that the same or the like nuisance is likely to recur on the said premises].

Given under my hand and seal this day of 18 .

J. S. (L.S.)

FORM C.

Form of Order for Abatement or Prohibition of Nuisance.

To the owner [*or* occupier] of [*describe the premises*] situated [*give such description as may be sufficient to identify the premises*], *or* to *A. B.* of

County of [*or* borough, *&c.*, of , *or* district of , *or as the case may be*].

WHEREAS on the day of complaint was made before Esquire, one of Her Majesty's justices of the peace acting in and for the county [*or other jurisdiction*] stated in the margin, [*or as the case may be*, [by that in or on certain premises situated at in the district under the Public Health Act, 1875, of [*describe the local authority*] the following nuisance then existed [*describing it*]; and that the said nuisance was caused by the act or default of the owner [*or* occupier] of the said premises [*or* was caused by *A. B.*] [*If the nuisance have been removed say*, the following nuisance existed on or about [*the day the nuisance was ascertained to exist*], and that the said nuisance was caused, *&c.*, and although the same is now removed, the same or the like nuisance is likely to recur on the same premises.]

And whereas the owner [*or* occupier] within the meaning of the said Public Health Act, 1875, [*or* the said *A. B.*,] hath this day appeared before us [(*or* me) *describing the Court*], to answer the matter of the said complaint [*or in case the party charged do not appear, say*, and whereas it hath been this day proved to our [*or* my] satisfaction that a true copy of a summons requiring the owner [*or* occupier] of the said premises [*or* the said *A. B.*] to appear this day before us [*or* me] hath been duly served according to the said Act.

Now on proof here had before us [*or* me] that the nuisance so complained of doth exist on the said premises, and that the same is caused by the act or default of the owner [*or* occupier] of the said premises [*or* by the said *A. B.*], we [*or* I], in pursuance of the said Act, do order the said owner [*or* occupier, *or A. B.*] within [*specify the time*] from the service of this order or a true copy thereof according to the said Act [*here specify any things required to be done or works to be executed, as, for instance*, to provide for the cleanly and wholesome keeping of, *or*, to remove the animal kept so as to be a nuisance or injurious to health; *or, for further instance*, to cleanse, whitewash, purify, and disinfect the said dwelling-house; *or, for further instance*, to construct a privy *or* drain, *&c.*; *or, for further instance*, to cleanse *or* to cover *or* to fill up the said cesspool, *&c.*], so that the same shall no longer be a nuisance or injurious to health as aforesaid.

[*And if it appear to the Court that the nuisance is likely to recur on the premises say* [And we] [*or* I] being satisfied that, notwithstanding the said cause or causes of nuisances may be removed under this order, the same is or are likely to recur, do therefore prohibit the said owner [*or* occupier, *or A. B.*,] from [*here insert the matter of the prohibition, as, for instance*,] from using the said house or building for human habitation until the same, in our [*or* my] judgment, is rendered fit for that purpose.]

In case the nuisance were removed before complaint, say, Now, on proof here had before us [*or* me] that at or recently before the time of making the said complaint, to wit, on as aforesaid, the cause of nuisance complained of did exist on the said premises, but that the same hath since been removed, yet, notwithstanding such removal, we [*or* I] being satisfied that it is likely that the same or the like nuisance will recur on the said premises, do hereby prohibit [*order of prohibition*]; and if this order of prohibition be infringed, then we [*or* I] [*order on local authority to do works*].

Given under the hands and seals of us, [*or* the hand and seal of me, *describing the Court*].

This day of 18 .

J. S. (L.S.)
J. P. (L.S.)

Sched. IV.

FORM D.

Form of Order for Abatement of Nuisance by Local Authority.

To the town council, *&c., as the case may be.*

County, *&c.*, to wit. } WHEREAS [*recite complaint of nuisance as in last form*].

And whereas it hath been now proved to our [*or* my] satisfaction that such nuisance exists, but that no owner or occupier of the premises, or person causing the nuisance, is known *or* can be found [*as the case may be*]; Now we [*or* I], in pursuance of the said Act, do order the said [*local authority, naming it,*] forthwith to [*here specify the works to be done*].

Given, *&c.* (*as in last form*).

FORM E.

Form of Order to permit Execution of Works by Owner.

County of [*or* borough, *&c.*,] to wit, } WHEREAS complaint hath been made to me, *E. F.*, Esquire, one of Her Majesty's justices of the peace in and for the county [*or* borough, *&c.*,] of , by *A. B.*, owner within the meaning of the Public Health Act, 1875, of certain premises [*describe situation of premises so as to identify them*], that *C. D.*, the occupier of the said premises, doth prevent the said *A. B.* from obeying and carrying into effect the provisions of the said Act in this, to wit, that he the said *C. D.* doth prevent the said *A. B.* from [*here describe the works generally, according to circumstances, for instance, thus:* constructing and laying down, in connection with the said house, a covered drain, so as to communicate with a sewer, which the local authority under the said Act of the district of are entitled to use, such sewer being within one hundred feet of the said premises]: And whereas the said *C. D.* having been duly summoned to answer the said complaint, and not having shown sufficient cause against the same, and it appearing to me that the said works are necessary for the purpose of enabling the said *A. B.* to obey and carry into effect the provisions of the said Act, I do hereby order that the said *C. D.* do permit the said *A. B.* to execute the same in the manner required by the said Act.

Given under my hand and seal, this day of , 18 .

J. S. (L.S.)

FORM F.

Order of Justice for Admission of Officer of Local Authority.

WHEREAS [*describe the local authority*] have by their officer [*naming him*] made application to me, *A. B.*, one of Her Majesty's justices of the peace having jurisdiction in and for [*describe the place*], and the said officer has made oath to me that demand has been made pursuant to the provisions of the Public Health Act, 1875, for admission to [*describe situation of premises so as to identify them*], for the purpose of [*describe the purpose, as the case may be*], and that such demand has been refused.

Now, therefore, I the said *A. B.* do hereby require you [*name the person having custody of the premises*], to admit the said [*name the local authority*], [*or* the officer of the said *local authority*], to the said premises, for the purpose aforesaid.

Given, *&c.* (*as in last form*).

FORM G.

Form of Notice requiring Owner to Sewer, &c., Private Street.

To the owner of certain premises fronting, adjoining, or abutting on a certain street called within the district of [*describe the local authority*].

Whereas the said street is not sewered, levelled, paved, flagged, and channelled to the satisfaction of the above-named [*local authority*]; and whereas your said premises front adjoin, or abut on certain parts of the said street which require to be sewered, levelled, paved, flagged, and channelled: Now, therefore, the said [*local authority*], hereby give you notice (in pursuance of the Public Health Act, 1875), to sewer, level, pave, flag, and channel the same within the space of [*state the time*] from the date hereof, in manner following; (that is to say,) the sewers to be laid or made [*here describe the mode to be adopted and material to be used*], of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the [*local authority*].

Each gully for surface draining, and its connection with the sewer, to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [*here describe the mode to be adopted and the material to be used*], and the said carriageway and footway to be paved [*here describe the mode to be adopted and the material to be used*].

The channel stones to be [*here describe the mode to be adopted and the material to be used*]. The curb or side stones to be [*here describe the mode to be adopted and the material to be used*].

The whole of the above-mentioned works to be executed by you in accordance with the plans and sections hereinbefore referred to, and now lying for inspection by you at the office of the [*local authority*], situate in street, in , aforesaid, and the dimensions, widths, and levels shown thereon, and to be done in a good, workmanlike, and substantial manner, to the satisfaction of the said [*local authority*] or their surveyor.

Dated this day of 18 .

(Signed)

Clerk to the said [*local authority*].

FORM H.

Form of Mortgage of Rates.

By virtue of the Public Health Act, 1875, we the being the local authority under that Act for the district of , in consideration of the sum of paid to the treasurer of the said district by *A. B.* of , for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from [*the rates mortgaged*] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said rates, to hold to the said *A. B.*, his executors, administrators, and assigns, from the day of the date hereof until the said sum of with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied: And it is hereby declared, that the said principal sum shall be repaid on the day of , at [*place of payment*]. Dated this day of one thousand eight hundred and .

[*To be sealed with the common seal of the local authority.*]

Sched. IV.

FORM I.

Form of Transfer of Mortgage.

I *A. B.* of , in consideration of the sum of paid to me by *C. D.* of , do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage, bearing date the day of , and made by the local authority under the Public Health Act, 1875, for the district of , for securing the sum of and interest thereon at per centum per annum [*or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns,"* the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal this day of one thousand eight hundred and .

A. B. (L.S.)

FORM K.

Form of Rentcharge.

BY virtue of the Public Health Act, 1875, we the , being the local authority under that Act for the district of , do hereby declare and absolutely order that the inheritance of the [dwelling-house, shop, lands, and premises, *as the case may be*], situated in street, in the parish of , within the said district, and now in the occupation of , shall be absolutely charged with the sum of pounds, paid by of for the improvement by drainage and water supply [*as the case may be*] of the same dwelling-house, shop, lands, and premises [*as the case may be*], together with interest for the same from the date hereof at pounds per centum per annum, until full payment thereof; and also all costs incurred by the said , his executors, administrators, or assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises to the said , his executors, administrators, and assigns, in manner following; (that is to say,) the interest on such principal sum of pounds, or on so much thereof as shall from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the day of and the day of in every year, the first payment thereof to be made on the day of next, and such principal sum of pounds shall be paid and payable by equal annual instalments on the day of in each of the next succeeding years, towards the discharge of the said principal sum, until the whole shall be fully satisfied and discharged.

[*To be sealed with the common seal of the local authority.*]

FORM L.

Register of Owners for the District of .

Notice of Time for making Claims and Objections.

I hereby give notice that all persons who are entitled to vote as owners or proxies at the election of members of the local board for the district of , and who are not on the register of owners and proxies now in force, or who being on the register do not retain the qualification or the address described therein, and who are desirous to

have their names inserted in the register about to be made for the said district, and all persons who are desirous of objecting to any name on the register now in force, are hereby required to give or send to me, on some one of the first six days of March next, a claim or objection (*as the case may be*) in the form hereunder set forth.

(Signed)
Chairman of the local board.

Owner's Claim.

To the chairman of the local board for the district of
This day of 18 .

I the undersigned claim to have my name inserted in the register of owners and proxies for the district of , pursuant to the provisions of the Public Health Act, 1875, as owner of the property hereinafter described which is situated in the parish of , that is to say (1):

I also state that the interest or estate which I have in such property, and the amount of all the rent-service which I receive or pay in respect thereof, and the names of the persons from whom I receive or to whom I pay such rent-service are set forth in the form hereunder written.

Description of property (2).	In respect of which I have an estate or interest of (3)	And in respect of which I receive in rent-service the sum of (4)	From (5)	And in respect of which I pay in rent-service the sum of (6)	To (7)
		£ s. d.		£ s. d.	

Signature of claimant.
Address (8) of claimant.

Claim of Proxy.

To the chairman of the local board for the district of .
This day of 18 .

I the undersigned having been appointed by of owner [*or* owners] of the property hereinafter described which is situated in the parish of to vote as his [*or* their] proxy pursuant to the provisions of the Public Health Act, 1875, claim to have my name inserted in the register of owners and proxies for the district of as such proxy.

(1) Here insert a clear statement of the property, as "house," "building," "house and acres of land."

(2) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(3) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and also whether it is held by the claimant solely, or jointly with others, and in the case of a partner claiming, insert the number and names of the other partners in the firm.

(4) If the property is let by the owner, insert the amount of rent received from each tenant.

(5) Insert name of tenant or tenants.

(6) If the owner is a lessee paying rent, insert the amount of all the rent he pays.

(7) Insert the name of the lessor.

(8) This need not be the owner's residence, but should be some address within the district.

* A partner must set out the amount of rent-service which he would receive or pay if the qualifying property were equally divided among his co-partners and himself.

Sched. IV.

I herewith transmit to you (1) the writing under the hand [*or* hands, *or in the case of a corporation*, the seal] of appointing me such proxy.

I also state that the interest or estate which has [*or* have] in such property and the amount of the rent-service which he [*or* they] receives or pays [*or* pay] in respect thereof and the names of the persons from whom he [*or* they] receives [*or* receive] or to whom he [*or* they] pays [*or* pay] such rent-service are set forth in the form hereunder written.

Description of property (2).	In respect of which the appointor has an estate or interest of (3)	And in respect of which the appointor receives in rent-service the sum of (4)	From (5)	And in respect of which the appointor pays in rent-service the sum of (6)	To (7)
		£ s. d.		£ s. d.	

Signature of proxy.
Address (8) of proxy.

Form of Objection.

To the chairman of the local board of the district of .

This day of .

I hereby give you notice that I object to the name of the person mentioned and described below being retained on the register of owners and proxies for the district of .

Christian and surname of the owner or proxy objected to.	Address, as described.	Nature of Qualification, as described.	Description (in case of proxy) of appointor.

Signature of objector.
Address of objector.

(1) If the appointment itself is not sent, insert the words "an attested copy of."

(2) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(3) Describe the estate or interest, as *an estate in fee simple, of freehold, a term of years*, and whether it is held by the appointor solely or jointly with others.

(4) If the property is let by the appointor, insert the amount of rent received from each tenant.

(5) Insert name of tenant or tenants.

(6) If the appointor is a lessee paying rent, insert the amount of all the rent he pays.

(7) Insert the name of the lessor.

(8) This need not be the proxy's residence, but should be some address within the district.

FORM M.

Appointment of Proxy.

To the chairman of the local board for the district of .

This day of 18 .

I [*or* we] the undersigned being the owner [*or* owners] of the property hereinafter described, which is situated in the parish of , do hereby appoint to vote as my [*or* our] proxy in all cases wherein he may lawfully do so, pursuant to the provisions of the Public Health Act, 1875. And I [*or* we] hereby state that the description of the said property is as follows; viz. (1)

Signature of owner (2).
Address of owner.

, Witness.

FORM N.

Form of Voting Paper at Elections of Members of Local Boards.

Voting Paper.

District of .

No. of Voting Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer.

Initials of the Voter against the Names of the Persons for whom he intends to vote.	Names of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Name of the Nominator or of one of the Nominators.	Address of such Nominator.

I vote for the persons in the above list against whose names my initials are placed.

(Signed) ,
or the mark of .
Witness to the mark ,
or proxy for .

Directions to the Voter.

The voter must write his initials against the name of every person for whom he votes, and must subscribe his name and address at full length.

If the voter cannot write he must make his mark instead of initials, but such mark

(1) Describe the property by its name, situation, or the name of the occupier, or any other designation by which it may be identified.

(2) Or of three directors; or in the case of a corporation *say*, Given under our common seal, and *add the name of the person or persons entitled to affix the seal.*

Sched. IV. must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote.

If a proxy votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the name of the body of persons for whom he is proxy.

This paper will be collected on the of , between the hours of and .

FORM O.

Form of Voting Paper for Poll taken under Schedule III.

Voting Paper No. ( ).

At a meeting held on the day of , at in the county of , it was agreed that the following resolution should be proposed to the owners and ratepayers of .

(*Set out the resolution.*)

———	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution.				

(Signed) ,
or the mark of .
Witness to the mark ,
or proxy for .

Directions to the Voter.

The voter must write his initials under the heading "in favour" or "against," according as he votes for or against the resolution, and must subscribe his name and address at full length.

If the voter cannot write he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark.

If a proxy votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the words "as proxy for," with the name of the body of persons for whom he is proxy.

This paper will be collected on the of , between the hours of and .

SCHEDULE V.

Part I.

Enactments which have been already repealed are in a few instances included in this repeal, in order to avoid the necessity of reference to previous statutes.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
11 & 12 Vict. c. 63 - -	The Public Health Act, 1848	The whole Act.
14 & 15 Vict. c. 28 - -	The Common Lodging Houses Act, 1851.	The whole Act, except so far as relates to the Metropolitan Police District.
16 & 17 Vict. c. 41 - -	The Common Lodging Houses Act, 1853.	The whole Act, except so far as relates to the Metropolitan Police District.
18 & 19 Vict. c. 116 -	The Diseases Prevention Act, 1855.	The whole Act, except so far as relates to the Metropolis.
18 & 19 Vict. c. 121 - -	The Nuisances Removal Act for England, 1855.	The whole Act, except so far as relates to the Metropolis.
21 & 22 Vict. c. 98 - -	The Local Government Act, 1858.	The whole Act.
23 & 24 Vict. c. 77 - -	An Act to amend the Acts for the Removal of Nuisances and the Prevention of Diseases.	The whole Act, except so far as relates to the Metropolis.
24 & 25 Vict. c. 61 - -	The Local Government Act (1858) Amendment Act, 1861.	The whole Act.
26 & 27 Vict. c. 17 - -	The Local Government Act Amendment Act, 1863.	The whole Act.
26 & 27 Vict. c. 117 -	The Nuisances Removal Act, for England (Amendment) Act, 1863.	The whole Act, except so far as relates to the Metropolis.
28 & 29 Vict. c. 75 - -	The Sewage Utilization Act, 1865.	The whole Act, except so far as relates to Scotland and Ireland.
29 & 30 Vict. c. 41 - -	The Nuisances Removal (No. 1) Act, 1866.	The whole Act, except so far as relates to the Metropolis.
29 & 30 Vict. c. 90 - -	The Sanitary Act, 1866 -	Parts I., II., and III., except so far as relates to the Metropolis or to Scotland or Ireland.
30 & 31 Vict. c. 113 -	The Sewage Utilization Act, 1867.	The whole Act, except so far as relates to Scotland or Ireland
31 & 32 Vict. c. 115 -	The Sanitary Act, 1868 -	The whole Act, except so far as relates to the Metropolis.
32 & 33 Vict. c. 100 -	The Sanitary Loans Act, 1869	The whole Act, except so far as relates to the Metropolis.
33 & 34 Vict. c. 53 - -	The Sanitary Act, 1870 -	The whole Act, except so far as relates to the Metropolis.
35 & 36 Vict. c. 79 - -	The Public Health Act, 1872	The whole Act, except so far as relates to the Metropolis.
37 & 38 Vict. c. 89 - -	The Sanitary Law Amendment Act, 1874.	The whole Act, except so far as relates to the Metropolis or the Metropolitan Police District.

Of the above Acts, the following, (namely,) "The Public Health Act, 1848," and "The Local Government Act, 1858," and "The Local Government Act (1858) Amendment Act, 1861," and "The Local Government Act Amendment Act, 1863," are in this Act referred to as "The Local Government Acts."

Sched. V.

PART II.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
12 & 13 Vict. c. 94 - -	The Public Health Supplemental Act, 1849.	The whole Act, except—Section 1 (Confirmation of certain provisional orders of the General Board of Health), and section 12 (short title of Act), and the schedule.
13 & 14 Vict. c. 90 - -	The Public Health Supplemental Act, 1850 (No. 2) -	The whole Act, except—Section 1 (certain provisional orders of General Board of Health confirmed), and section 7 (short title of Act), and the schedule.
15 & 16 Vict. c. 42 - -	The first Public Health Supplementa Act, 1852.	Sections 6 to 12, both inclusive (first election or first selection and election of certain local boards), and section 13 (11 & 12 Vict. c. 63, ss. 68, 69, as to repair of highways), and section 14 (interpretation of year), and section 15 (Act incorporated with Public Health Act).

PART III. (1).

11 & 12 Vict. c. 63, s. 83.

As to interments within churches.

No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any urban district after the thirty-first day of August, one thousand eight hundred and forty-eight; and whosoever shall bury, or cause, permit, or suffer to be buried, any corpse or coffin in any vault or grave constructed or made contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, in an action of debt

21 & 22 Vict. c. 98, s. 49.

Local board to be burial board in certain cases.

When a vestry of any parish comprised in a local government district resolves to appoint a burial board, the local board may at the option of the vestry be the burial board for such parish, and all expenses incurred by such burial board shall be defrayed out of a rate to be levied in such parish in the same manner as a general district rate.

Provided, that if such parish has been declared a ward for the election of members of the local board, such members shall form the burial board for the parish, and shall be deemed to be a burial board elected under the Burial Acts for the time being in force.

24 & 25 Vict. c. 61, s. 21.

Urban authorities may repair fences surrounding burial grounds.

Any urban authority constituted a burial board may from time to time repair and uphold the fences surrounding any burial ground which has been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu

(1) The portions of Acts set forth in this schedule are re-enacted by section 343, *ante*, p. 224, subject to the provisions therein contained.

thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial ground and placing it in a proper sanitary condition; and they may from time to time pass bye-laws (subject to the provisions of this Act) for the preservation and regulation of all burial grounds within their jurisdiction; and the expense of carrying this section into execution may be defrayed out of any rates authorised to be levied by any urban authority constituted a burial board.

26 & 27 Vict. c. 17, s. 6.

Local government districts to be within highway districts for purpose of highway meetings.

Where any local government district or any other place is surrounded by or adjoins a highway district constituted under the Highway Acts, such first-mentioned district or other place shall, for the purpose of any meeting of the highway board, be deemed to be within such highway district.

29 & 30 Vict. c. 90, s. 44.

Power to burial boards in certain cases to transfer their powers to urban authority.

When the district of a burial board is included in or conterminous with the district of an urban authority, the burial board may, by resolution of the vestry, and by agreement of the burial board and urban authority, transfer to the urban authority all their estate, property, rights, powers, duties, and liabilities, and from and after such transfer, the urban uthority shall have all such estate, property, rights, powers, duties, and liabilities as if they had been duly appointed a burial board under the Burial Acts for the time being in force.

29 & 30 Vict. c. 90, s. 51.

Power to reduce penalties imposed by 6 Geo. IV. c. 78.

All penalties imposed by the Act of the sixth year of King George the Fourth, chapter seventy-eight, intituled "An Act to repeal the several laws relating to quarantine and to make other provisions in lieu thereof," may be reduced by the justices or Court having jurisdiction in respect of such penalties to such sum as the justices or Court think just.

29 & 30 Vict. c. 90, s. 52.

Description of vessels within provisions of 6 Geo. IV. c. 78.

Every vessel having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, although such vessel has not commenced her voyage, or has come from or is bound for some place in the United Kingdom.

35 & 36 Vict. c. 76, s. 34.

As to consent of Local Government Board required in certain cases.

Where in any local Acts the consent, sanction, or confirmation of one of Her Majesty's principal Secretaries of State is required with the respect to the borrowing of any money, or the giving effect to any bye-laws, or to the appointment of any officer for sanitary purposes, the consent, sanction, or confirmation of the Local Government Board shall be required instead of that of the Secretary of State.

The consent of the Local Government Board, and not that of the Treasury, shall be required to the borrowing of money for the purposes of the Baths and Wash-houses Acts.

If any question arises as to what are sanitary purposes within the meaning of this section, the determination of the Local Government Board on such question shall be conclusive.

35 & 36 Vict. c. 79, s. 35.

Transfer of powers and duties of Board of Trade under Alkali Act, 1863, and Metropolis Water Acts, 1852 and 1871, to Local Government Board.

The powers and duties of the Board of Trade under the Alkali Act, 1863, and any Act amending the same, and under the Metropolis Water Acts, 1852 and 1871, shall be exerciseable and performed by the Local Government Board, and "the Local Government Board" shall be deemed to be substituted for "the Board of Trade" wherever the latter expression occurs in the said Acts.

Sched. V.

35 & 36 Vict. c. 79, s. 36.

Transfer of powers and duties of Secretary of State under Highway and Turnpike Acts to Local Government Board.

All powers, duties, and acts vested in, imposed on, or required to be done by or to one of Her Majesty's Principal Secretaries of State by the several Acts of Parliament relating to highways in England and Wales, and to turnpike roads and trusts and bridges in England and Wales, shall be imposed on and be done by or to the Local Government Board, subject to the conditions, liabilities, and incidents to which such powers, duties, and acts were respectively subject immediately before the passing of the Public Health Act, 1872, or as near thereto as circumstances admit.

35 & 36 Vict. c. 79, s. 37.

Transfer of officers to Local Government Board.

All inspectors, clerks, and other officers who are by virtue of section thirty-seven of the Public Health Act, 1872, attached to and under the control of the Local Government Board, shall hold their offices and places upon the same terms and conditions, and shall have the same powers, privileges, and immunities with respect to the performance of their duties, as if this Act had not passed.

The Local Government Board may by order distribute the business to be performed under the Local Government Board amongst such officers and persons in such manner as the Local Government Board may think expedient.

35 & 36 Vict. c. 79, s. 38.

Salary of medical officer.

Notwithstanding anything contained in any Act of Parliament now in force, there shall be paid out of moneys to be provided by Parliament to the medical officer of the Local Government Board such salary as the Treasnry may from time to time determine.

35 & 36 Vict. c. 79, s. 48.

Orders of the Local Government Board how to be published.

Every general order of the Local Government Board, made in pursuance of the Poor Law Amendment Act, 1834, and the several Acts amending the same, shall be published in the *London Gazette*, and when so published shall take effect in like manner, and shall be of as much force and validity as any general order of the Poor Law Board made and sent in the manner prescribed by the last-mentioned Acts, and no further proceeding shall be necessary in such behalf; and as regards any single order of the said Board made in pursuance of the said last-mentioned Acts, it shall not be necessary henceforth to send a copy thereof to the clerk to the justices of the petty sessions.

MUNICIPAL CORPORATIONS ACT, 1882.

45 & 46 VICT. c. 50.

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MUNICIPAL CORPORATIONS ACT, 1882.

45 & 46 VICT c. 50.

An Act for consolidating, with Amendments, enactments relating to Municipal Corporations (1) *in England and Wales.* [18*th August*, 1882.]

Whereas divers bodies corporate at sundry times have been constituted in the cities, towns, and boroughs of England and Wales, to the intent that the same might for ever be and remain well and quietly governed:

And whereas the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, "to provide for the regulation of Municipal Corporations in England and Wales," applies to most of those bodies constituted before the passing of that Act, and to every of those bodies constituted after the passing of that Act; and that Act having been from time to time much altered and added to by other Acts (2), it is expedient that all the Acts aforesaid be reduced into one Act with some amendments:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I.

Preliminary.

Secs. 1—6.

Short title.

1. This Act may be cited as the Municipal Corporations Act, 1882.

Division of Act into parts.

2. This Act is divided into parts, as follows:—
Part I.—Preliminary.
Part II.—Constitution and Government of Borough.
Part III.—Preparations for and Procedure at Elections.
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Extent.

3. This Act shall not extend to Scotland or Ireland.

Commencement.

4. This Act shall commence and have effect from and immediately after the thirty-first of December, one thousand eight hundred and eighty-two.

Repeals.

5. The enactments described in the First Schedule are hereby repealed, subject to the exceptions and qualifications in this Act mentioned.

Application.

6. This Act shall apply to every city and town to which the Municipal Corporations Act, 1835, applies at the commencement of this Act, and to any town, district, or place whereof the inhabitants are incorporated after the commencement of this Act, and whereto the provisions of the Municipal Corporation Acts are under this Act extended by charter, but to no other place (3).

(1) See the interpretation clause, *post*, p. 270.
(2) See the First Schedule, Part I., *post*, p. 225.
(3) As to municipal corporations and other local authorities not subject to this Act, see the Municipal Corporations Act, 1883, *post*.

Sec. 7.

Interpretation and construction.

7.—(1.) In this Act,

"Borough" means, unless a contrary intention appears, a city or town to which this Act applies:

"Municipal corporation" means the body corporate constituted by the incorporation of the inhabitants of a borough:

"Municipal Corporations Act, 1835," means the recited Act of King William the Fourth, the date of the passing whereof is the ninth of September, one thousand eight hundred and thirty-five:

"Municipal Corporations Acts" means this Act and any Act to be passed amending this Act:

"Burgess" includes citizen:

"Corporate seal" means the common seal of a municipal corporation:

"Corporate office" means the office of mayor, alderman, councillor, elective auditor, or revising assessor:

"Corporate land" means land belonging to or held in trust for a municipal corporation:

"Municipal election" means an election to a corporate office:

"Parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places, returning a member to serve in Parliament, and not being a county at large, or a riding, parts, or division of a county at large:

"Parliamentary election" means an election of a member to serve in Parliament:

"Parish" means any place for which a separate poor rate is or can be made:

"Overseers" means overseers of the poor of a parish, township, or place, and includes all persons who execute the duties of overseers:

"County" does not include a county of a city or county of a town, but includes a riding, parts, division, or liberty of a county:

"Trustees" means trustees, commissioners, or directors, or the persons charged with the execution of a trust or public duty, however designated:

"Person" includes a body of persons corporate or unincorporate:

"Treasury" means the Commissioners of Her Majesty's Treasury:

"The Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"High Court" means Her Majesty's High Court of Justice:

"Justice" means one of Her Majesty's justices of the peace:

"Borough Civil Court" means an inferior Court of Record for the trial of civil actions which by charter, custom, or otherwise, is or ought to be holden in a borough, but does not include a County Court:

"Bank of England" means the Governor and Company of the Bank of England:

"Schedule" means Schedule to this Act, and "Part" means Part of this Act:

"Writing" includes print, and "written" includes printed.

(2.) Words in this Act referring to a borough, municipal corporation, authority, officer, or office, shall be construed distributively as referring to each borough, corporation, authority, officer, or office to which or to whom the provision is applicable.

(3.) Words in this Act referring to a parish shall be construed, unless a contrary intention appears, as referring to every parish situate wholly or in part in a borough.

(4.) The schedules shall be read and have effect as if they were part of this Act.

PART II.

Constitution and Government of Borough.

Corporate Name.

Name of municipal corporation.

8. The municipal corporation of a borough shall bear the name of the mayor, aldermen, and burgesses of the borough, or, in the case of a city, the mayor, aldermen, and citizens of the city.

Burgesses.

Qualification of burgess.

9 (1).—(1.) A person (2) shall not be deemed a burgess for any purpose of this Act unless he is enrolled as a burgess.

(2.) A person (2) shall not be entitled to be enrolled as a burgess unless he is qualified as follows:

(*a.*) Is of full age; and

(*b.*) Is on the fifteenth of July in any year, and has been during the whole of the then last preceding twelve months, in occupation, joint or several, of any house, warehouse, counting-house, shop, or other building (3) (in this Act referred to as qualifying property) in the borough; and

(*c.*) Has during the whole of those twelve months resided in the borough (4), or within seven miles thereof (5); and

(*d.*) Has been rated in respect of the qualifying property to all poor rates made during those twelve months for the parish wherein the property is situate (6); and

(*e.*) Has on or before the twentieth of the same July paid all such rates, including borough rates (if any), as have become payable by him in respect of the qualifying property up to the then last preceeding fifth of January.

(3.) Every person (7) so qualified shall be entitled to be enrolled as a burgess, unless he—

(*a.*) Is an alien (8); or

(*b.*) Has within the twelve months aforesaid received union or parochial relief or other alms (9); or

(*c.*) Is disentitled under any Act of Parliament.

(1) The previous enactments were 32 & 33 Vict. c. 55, s. 1, and 41 & 42 Vict. c. 26, s. 7.

(2) This does not include a married woman: *R.* v. *Harrald*, L. R. 7 Q. B. 361, 41 L. J. Q. B. 173, 26 L. T. N. S. 616, 20 W. R. 328, 36 J. P. 438. A woman rightly on the burgess list, but married before an election, is, it seems, disqualified from voting: *Ibid.* See section 63, *post.*

(3) As to the meaning of "building," see *Morrish* v. *Harris*, L. R. 1 C. P. 155, 35 L. J. C. P. 101, S. C. *nom. Norrish* v. *Harris*, and *Gilham* v. *Harris*, 13 L. T. N. S. 762, 14 W. R. 479, 12 Jur. N. S. 627; *Powell* v. *Farmer*, 34 L. J. C. P. 71, 11 L. T. N. S. 736, 11 Jur. N. S. 162, H. & P. 172; *Watson* v. *Cotton*, 5 C. B. 51, 17 L. J. C. P. 68; *Whitmore* v. *Bedford*, 5 M. & G. 9, 13 L. J. C. P. 55; and see *per* Erle, C.J., in *Powell* v. *Boraston*, 34 L. J. C. P. 73, 11 L. T. N. S. 734, 11 Jur. N. S. 160, H. & P. 179. See, also, section 31, *post.*

(4) As to what constitutes continuous residence, see *Ford* v. *Hart*, L. R. 9 C. P. 273, 43 L. J. C. P. 24, 29 L. T. N. S. 685, 22 W. R. 159, 2 Hopw. & C. 167; *Ford* v. *Pye*, L. R. 9 C. P. 269, 43 L. J. C. P. 21, 29 L. T. N. S. 684, 22 W. R. 159, 2 Hopw. & C. 157; *Durant* v. *Carter*, L. R. 9 C. P. 261, 43 L. J. C. P. 17, 29 L. T. N. S. 681, 22 W. R. 158, 2 Hopw. & C. 142; *Ford* v. *Drew*, L. R. 5 C. P. D. 59, 49 L. J. C. P. 172, 41 L. T. N. S. 478, 28 W. R. 137.

(5) See section 231, *post.*

(6) See sections 32 and 33, *post.*

(7) See note (2), *supra.*

(8) See the Naturalization Act, 1870, 33 & 34 Vict. c. 14, s. 2 (1).

(9) Medical or school aid do not disqualify: section 33 (4), *post.* "Other alms applies only to such as are parochial": *R.* v. *Mayor of Lichfield*, 2 Q. B. 693, 2 G. & D. 10.

Constitution of council.

10 (1).—(1.) The municipal corporation of a borough shall be capable of acting by the council of the borough, and the council shall exercise all powers vested in the corporation by this Act or otherwise.

(2.) The council shall consist of the mayor, aldermen, and councillors.

Qualification of councillor.

11.—(1.) The councillors shall be fit persons elected by the burgesses.

(2.) A person shall not be qualified to be elected or to be a councillor, unless he—

(*a.*) Is enrolled and entitled to be enrolled as a burgess (2); or

(*b.*) Being entitled to be so enrolled in all respects except that of residence, is resident beyond seven miles but within fifteen miles (3) of the borough, and is entered in the separate non-resident list directed by this Act to be made (4); and

(*c.*) In either of those cases, is seised or possessed of real or personal property or both, to the value or amount, in the case of a borough having four or more wards, of one thousand pounds, and in the case of any other borough, of five hundred pounds, or is rated to the poor rate in the borough, in the case of a borough having four or more wards, on the annual value of thirty pounds, and in the case of any other borough of fifteen pounds.

(3.) Provided, that every person shall be qualified to be elected and to be a councillor, who is, at the time of election, qualified to elect to the office of councillor; which last-mentioned qualification for being elected shall be alternative for and shall not repeal or take away any other qualification.

(4.) But if a person qualified under the last foregoing proviso ceases for six months to reside in the borough, he shall cease to be qualified under that proviso, and his office shall become vacant, unless he was at the time of his election and continues to be qualified in some other manner.

Disqualifications for being councillor.

12.—(1.) A person shall be disqualified for being elected and for being a councillor, if and while he—

(*a.*) Is an elective auditor or a revising assessor, or holds any office or place of profit, other than that of mayor or sheriff, in the gift or disposal of the council; or

(*b.*) Is in holy orders (5), or the regular minister (6) of a dissenting congregation; or

(*c.*) Has directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council (7):

(2.) But a person shall not be so disqualified, or be deemed to have any share or interest in such a contract or employment, by reason only of his having any share or interest in (8)—

(*a.*) Any lease, sale, or purchase of land, or any agreement for the same; or

(1) The previous enactment was 5 & 6 Will. IV. c. 76, s. 6.

(2) See section 9, *ante.*

(3) See section 231, *post.*

(4) Section 49, *post.*

(5) As to the relinquishment of "holy orders," see the Clerical Disabilities, Act, 1870, 33 & 34 Vict, c. 91; and see section 242 (2), and Schedule 9, Part II., *post.*

(6) *I.e.*, "a person who is appointed to be the minister of a particular congregation, and not merely asked temporarily to hold the office": *R.* v. *Oldham*, L. R. 4 Q. B. 290, 38 L. J. Q. B. 125, *per* Mellor, J.

(7) See Schedule 2, rule 64, of the Public Health Act, 1875, and the notes thereto, *ante*, p. 238, and *Le Feuvre* v. *Lankester*, there cited.

As to questioning an election or displacing a corporate officer, where the person whose election is questioned or the officer is disqualified, see section 87, *post*, and section 225, *post.*

As to the penalty for acting after disqualification, see section 41, *post.*

(8) But see section 22 (3), *post.*

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(*b.*) Any agreement for the loan of money, or any security for the payment of money only; or

(*c.*) Any newspaper in which any advertisement relating to the affairs of the borough or council is inserted; or

(*d.*) Any company which contracts with the council for lighting or supplying with water or insuring against fire any part of the borough; or

(*e.*) Any railway company, or any company incorporated by Act of Parliament or Royal Charter, or under the Companies Act, 1862. 25 & 26 Vict. c. 89.

13.—(1.) The term of office of a councillor shall be three years.

Term of office and rotation of councillors.

(2.) On the ordinary day of election (1) of councillors in every year one third of the whole number of councillors for the borough or for the ward, as the case may be, shall go out of office, and their places shall be filled by election (2).

(3.) The third to go out shall be the councillors who have been longest in office without re-election.

Number, term of office, and rotation of aldermen.

14.—(1.) The aldermen shall be fit persons elected by the council (3).

(2.) The number of aldermen shall be one third of the number of councillors.

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor.

(4.) If a counciller is elected to, and accepts, the office of alderman he vacates his office of councillor.

(5.) The term of office of an alderman shall be six years.

(6.) On the ordinary day of election of aldermen (4) in every third year one half of the whole number of aldermen shall go out of office, and their places shall be filled by election (2).

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election.

Qualification, term of office, salary, precedence, and powers of mayor.

15.—(1.) The mayor shall be a fit person elected by the council from among the aldermen or councillors or persons qualified to be such (5).

(2.) An outgoing alderman is eligible.

(3.) The term of office of the mayor shall be one year, but he shall continue in office until his successor has accepted office and made and subscribed the required declaration.

(4.) He may receive such remuneration as the council think reasonable.

(5.) He shall, subject to the provisions of this Act respecting justices (6), have precedence in all places in the borough.

(6.) The mayor of a borough named in the schedules to the Municipal Corporations Act, 1835, shall be capable in law to do and suffer all acts which the chief officer of the borough might at the passing of that Act lawfully do or suffer, as far as the same were not altered or annulled by that Act, or have not been altered or annulled by any subsequent Act.

Power of mayor to appoint deputy.

16.—(1.) The mayor may from time to time appoint an alderman or councillor to act as deputy mayor during the illness or absence of the mayor.

(2.) The appointment shall be signified to the council in writing and be recorded in their minutes.

(3.) A deputy mayor may, while acting as such, do all acts which the mayor as such might do, except that he shall not take the chair at a meeting of the council unless specially appointed by the meeting to do so, and shall not, unless he is a justice, act as a justice or in any judicial capacity (7).

(1) See sections 52, 212, and 230, *post.*

(2) As to re-eligibility, see section 37, *post.*

(3) See section 10 (2), *ante.*

(4) See sections 60, 212, 230, *post.*

(5) As to time and mode of election of mayor, see sections 61, 212, 230, *post.* As to obligation to accept office or pay fine, see section 34, *post.*

(6) See section 155 (2), *post;* and see section 257 (2), *post.*

(7) See further section 237 and the Second Schedule, rule 9, *post.*

The town clerk and deputy.

17.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the town clerk of the borough (1).

(2.) The town clerk shall hold office during the pleasure of the council.

(3.) He shall have the charge and custody of, and be responsible for, the charters, deeds, records, and documents of the borough, and they shall be kept as the council direct.

(4.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(5.) In case of the illness or absence of the town clerk, the council may appoint a deputy town clerk, to hold office during their pleasure.

(6.) All things required or authorised by law to be done by or to the town clerk may be done by or to the deputy town clerk.

The treasurer.

18.—(1.) The council shall from time to time appoint a fit person, not a member of the council, to be the treasurer of the borough (2).

(2.) The treasurer shall hold office during the pleasure of the council.

(3.) A vacancy in the office shall be filled within twenty-one days after its occurrence.

(4.) The offices of town clerk and treasurer shall not be held by the same person.

Other borough officers.

19. The council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be re-appointed.

Security by and remuneration of officers.

20. The council shall require every officer appointed by them to give such security as they think proper for the due execution of his office, and shall allow him such remuneration as they think reasonable (3).

Accountability of officers.

21.—(1.) Every officer appointed by the council shall at such times during the continuance of his office, or within three months after his ceasing to hold it, and in such manner as the council direct, deliver to the council, or as they direct, a true account in writing of all matters committed to his charge, and of his receipts and payments, with vouchers, and a list of persons from whom money is due for purposes of this Act in connexion with his office, showing the amount due from each.

(2.) Every such officer shall pay all money due from him to the treasurer, or as the council direct.

(3.) If any such officer—

(*a.*) Refuses or wilfully neglects to deliver any account or list which he ought to deliver, or any voucher relating thereto, or to make any payment which he ought to make; or

(*b.*) After three days' notice, in writing, signed by the town clerk or by three members of the council, given or left at his usual or last known place of abode, refuses or wilfully neglects to deliver to the council, or as they direct, any book or document which he ought so to deliver, or to give satisfaction respecting it to the council, or as they direct;

a Court of Summary Jurisdiction having jurisdiction where the officer is or resides may, by summary order, require him to make such delivery or payment, or to give such satisfaction (4).

(1) The appointment should be under seal: *Arnold* v. *Poole*, 4 M. & G. 860, 12 L. J. C. P. 97, 5 Scott N. R. 741, 2 D. N. S. 574, 7 Jur. 653. No stamp is necessary: 38 Vict. c. 23, s. 14. The office of town clerk and treasurer cannot be held by same person (section 18, *post*), nor can the town clerk be appointed auditor or revising assessor (sections 25, 29, *post*).

(2) See the preceding note.

(3) As to "security," see the notes to sections 194, 195, of the Public Health Act, 1875, *ante*. As to remuneration of town clerk for extra services, see *R.* v. *Hull*, 2 El. & Bl. 182, 22 L. J. Q. B. 324, 25 L. T. 197, 17 Jur. 914; *R.* v. *Prest*, 16 Q. B. 32, 20 L. J. Q. B. 17, 15 Jur. 554; *Thomas* v. *Swansea*, 2 Dowl. N. S. 470, 12 L. J. Ex. 73.

(4) See section 158, *post*.

(4.) But nothing in this section shall affect any remedy by action against any such officer or his surety, except that the officer shall not be both sued by action and proceeded against summarily for the same cause.

Meetings and Proceedings of Council; Committees.

Quarterly and other meetings of council; appointment of committees, minutes, &c.

22.—(1.) The rules in the Second Schedule (1) shall be observed.

(2.) The council may from time to time appoint out of their own body such and so many committees, either of a general or special nature, and consisting of such number of persons, as they think fit, for any purposes which, in the opinion of the council, would be better regulated and managed by means of such committees; but the acts of every such committee shall be submitted to the council for their approval (2).

(3.) A member of the council shall not vote or take part in the discussion of any matter before the council, or a committee, in which he has, directly or indirectly, by himself or by his partner, any pecuniary interest (3).

(4.) No act or proceeding of the council, or of a committee, shall be questioned on account of any vacancy in their body (4).

(5.) A minute of proceedings at a meeting of the council, or of a committee, signed at the same or the next ensuing meeting, by the mayor, or by a member of the council, or of the committee, describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof (5).

(6.) Until the contrary is proved, every meeting of the council, or of a committee, in respect of the proceedings whereof a minute has been so made, shall be deemed to have been duly convened and held, and all the members of the meeting shall be deemed to have been duly qualified; and where the proceedings are proceedings of a committee, the committee shall be deemed to have been duly constituted, and to have had power to deal with the matters referred to in the minutes.

Bye-laws (6).

Power of council to make bye-laws.

23.—(1.) The council may, from time to time, make such bye-laws as to them seem meet for the good rule and government of the borough, and for prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force throughout the borough (7), and may thereby appoint such fines, not exceeding in any case five pounds, as they deem necessary for the prevention and suppression of offences against the same.

(2.) Such a bye-law shall not be made unless at least two-thirds of the whole number of the council are present.

(3.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof has been fixed on the town hall (8).

(4.) Such a bye-law shall not come into force until the expiration of forty days after a copy thereof, sealed with the corporate seal, has been sent to the Secretary of State; and if within those forty days the Queen, with the advice of Her Privy Council, disallows the bye-law or part thereof, the bye-law or part disallowed shall not come into force; but it shall be lawful for the Queen, at any time within those

(1) *Post*, p. 353.
(2) See *Cook* v. *Ward*, *ante*, p. 156.
(3) See section 12, *ante*.
(4) See further, section 102, *post*.
(5) As to obtaining inspection of these minutes, see section 233 (1) and (7), *post*. As to forgery, see section 235, *post*.
(6) As to bye-laws generally, see note, *ante*, pp. 147, 148. See also sections 247, 260, of this Act, *post*.
(7) See the Public Health Act, 1875, sections 47, 80, and 91—111, *ante*, and section 11, *ante*, incorporating certain sections of the Towns Police Clauses Act, 1847, *post*. Besides general Acts there may also be local Acts in force throughout the borough.
(8) See section 232, *post*. As to the computation of time, see section 230, *post*.

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forty days, to enlarge the time within which the bye-law shall not come into force, and in that case the bye-law shall not come into force until after the expiration of that enlarged time (1).

(5.) Any offence against such a bye-law may be prosecuted summarily.

38 & 39 Vict. c. 55.

(6.) Nothing in this section shall interfere with the operation of section one hundred and eighty-seven of the Public Health Act, 1875; and that section shall have effect as if this section were therein referred to, instead of section ninety of the Municipal Corporations Act, 1835; but nothing in the Public Health Act, 1875, shall be construed as having restricted the meaning or scope of the Municipal Corporations Act, 1835, or as restricting the meaning or scope of this section, with respect to prevention or suppression of nuisances.

Evidence of bye-laws.

24. The production of a written copy of a bye-law made by the council under this Act, or under any former or present or future general or local Act of Parliament, if authenticated by the corporate seal, shall, until the contrary is proved, be sufficient evidence of the due making and existence of the bye-law, and, if it is so stated in the copy, of the bye-law having been approved and confirmed by the authority whose approval or confirmation is required to the making or before the enforcing of the bye-law.

Accounts and Audit.

The borough auditors.

25.—(1.) There shall be three borough auditors, two elected by the burgesses, called elective auditors, and one appointed by the mayor, called mayor's auditor.

(2.) An elective auditor must be qualified to be a councillor (2), but may not be a member of the council or the town clerk or the treasurer.

(3.) The mayor's auditor must be a member of the council.

(4.) The term of office of each auditor shall be one year (3).

(5.) The appointment of the mayor's auditor shall be made on the ordinary day of election of the elective auditors (4).

(6.) On a casual vacancy in his office an appointment to fill it shall be made within ten days after the occurrence of the vacancy (5).

Half-yearly accounts of treasurer.

26. The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act (6).

Audit and publication of treasurer's accounts.

27.—(1.) The treasurer shall within one month from the date to which he is required to make up his accounts in each half year, submit them, with the necessary vouchers and papers, to the borough auditors, and they shall audit them.

(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year (7).

Returns to Local Government Board.

28.—(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year.

(2.) The return shall be made for the financial year ending on the twenty-fifth of March, or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(4.) The return shall be sent to the Local Government Board within one month after the completion of the audit for the second half of each financial year.

(1) See section 187 of the Public Health Act, 1875, *ante*. The present section is taken from sections 90 and 91 of 5 & 6 Will. IV. c. 76, but see now sub-section (6) of this section, *infra*.

(2) See sections 11 and 12, *ante*. As to time and mode of election, see section 62, *post*.

(3) As to re-elegibility, see section 37.

(4) See section 62, *post*. (5) See section 230, *post*.

(6) See section 28 (2). As to inspection of these accounts, see section 233, *post*.

(7) As to the audit of the accounts of the council where they are an urban authority see section 246 of the Public Health Act, 1875, *ante*.

(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds, to be recovered by action on behalf of the Crown in the High Court.

(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament (1).

Revising Assessors.

Revising assessors in non-parliamentary boroughs.

29.—(1.) In every borough whereof no part of the area is co-extensive with or included in the area of a parliamentary borough, there shall be two revising assessors elected by the burgesses (2).

(2.) Every person shall be eligible who is qualified to be a councillor (3) and is not a member of the council or the town clerk or treasurer.

(3.) The term of office of each revising assessor shall be one year (4).

(4.) Every revising assessor shall, as soon as conveniently may be after his election, and from time to time as occasion requires, appoint, by writing signed by him, a person eligible to the office of revising assessor, to be his deputy, to act for him in case of his illness or incapacity to act.

(5.) The appointment shall be signified to the council, in writing signed by the assessor, and be recorded in their minutes.

Division of Borough into Wards, or alteration of Wards.

Proceedings for division of borough into wards or alteration of wards.

30 (5).—(1.) If two-thirds of the council of a borough agree to petition, and the council thereupon petition, the Queen for the division of the borough into wards, or for the alteration of the number and boundaries of its wards, it shall be lawful for Her Majesty from time to time, by Order in Council, to fix the number of wards into which the borough shall be divided; and the borough shall be divided into that number of wards (6).

(2.) Notice of the petition, and of the time when it pleases Her Majesty to order that the same be taken into consideration by Her Privy Council, shall be published in the *London Gazette* one month at least before the petition is so considered.

(3.) Where an Order in Council has been so made, the Secretary of State shall appoint a commissioner to prepare a scheme for determining the boundaries of the wards and apportioning the councillors among them.

(4.) In case of division into wards, the commissioner shall apportion all the councillors among the wards.

(5.) In case of alteration of wards, he shall so apportion among the altered wards the councillors for those wards as to provide for their continuing to represent as large a number as possible of their former constituents.

(6.) In either case, each councillor shall hold his office in the ward to which he is assigned for the same time that he would have held it had the borough remained undivided or the wards unaltered.

(7.) In case of division into wards the returning officer at the first election for each ward held after the division shall, notwithstanding anything in this Act, be the mayor or a person appointed by the mayor.

(1) This section is founded on the Local Taxation Returns Act, 1877, 40 & 41 Vict. c. 66, now repealed as to boroughs within this Act: section 5 *ante*, and First Schedule, Part II., *post*.

(2) As to time and mode of election, see section 62, *post*. As to duties, see section 44, *post*.

(3) See sections 11 and 12, *ante*.

(4) As to re-eligibility, see section 37, *post*; and as to casual vacancies, see section 40, *post*.

(5) The previous enactments were 5 & 6 Will. IV. c. 76, ss. 39, 40, 42, 43; 7 Will. IV. c. 1; 1 Vict. c. 78, s. 10; 22 Vict. c. 35, ss. 1—5.

(6) See section 250 (2), *post*.

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(8.) If by reason of any division or alteration under this section any doubt arises as to which councillor should go out of office, the doubt may be determined by the council.

(9.) The division of a borough into a greater number of wards shall not affect the qualification of aldermen or councillors.

(10.) The number of councillors assigned to each ward shall be a number divisible by three; and in fixing their number the commissioner shall, as far as he deems it practicable, have regard as well to the number of persons rated in the ward as to the aggregate rating of the ward.

(11.) The commissioner shall make the scheme in duplicate, and shall deliver one of the duplicates to the town clerk, and shall send the other to the Secretary of State, to be submitted by him to Her Majesty in Council for approval.

(12.) The scheme shall be published in the *London Gazette*, and shall come into operation at the date of that publication, and thenceforth the boundaries of wards and apportionment of councillors determined and made by the scheme shall be observed and be in force.

(13.) If Her Majesty in Council does not approve the scheme, as originally prepared by the commissioner, it shall nevertheless be published in the *London Gazette*, and shall be in force for the purposes of any municipal election until Her Majesty in Council, on further information and report from the commissioner, definitively approves a scheme in that behalf.

(14.) The commissioner may administer oaths, and may require any person having the custody of any book containing a poor rate made for a parish to produce the book for his inspection; and every person required by the commissioner to answer any question put to him for the purposes of this section shall answer it.

(15.) The commissioner shall have remuneration as appearing by the Fourth and Fifth Schedules (1).

Supplemental and Exceptional Provisions.

Occupation of part of house.

31 (2). In and for the purposes of this Act—

(*a.*) The terms house, warehouse, counting house, shop, or other building include any part of a house, where that part is separately occupied for the purposes of any trade, business, or profession; and any such part may, for the purpose of describing the qualification, be described as office, chambers, studio, or by any like term applicable to the case (3).

(*b.*) Where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

Claim by occupier to be rated.

32.—(1.) If an occupier of any qualifying property, whether the landlord is or is not liable to be rated to the poor rate in respect thereof, claims to be rated to the poor rate in respect thereof, and pays or tenders to the overseers of the parish where the property is situate the full amount of the poor rate last made in respect of the property, the overseers shall put the occupier's name on the rate book in respect of that rate (4).

(1) *Post*, pp. 358—360.

(2) See 41 & 42 Vict. c. 26, s. 5, *post*.

(3) See section 9 (2) (*b*) and the note thereto, *ante*.

(4) By the Poor Rate Assessment and Collection Act, 1869, 32 & 33 Vict. c. 41, s. 19, it is provided that "the overseers in making out the poor rate shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupier's column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid, and if any overseer negligently, or wilfully, and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully mis-states any name therein, such overseer shall for every such omission or mis-state-

(2.) If they fail to do so, he shall nevertheless for the purposes of this Act be deemed rated to that rate.

Rules as to qualification of burgess on succession, &c.

33.—(1.) Where a person succeeds to qualifying property (1) by descent, marriage, marriage settlement, devise, or promotion to a benefice or office, then, for the purpose of qualification, the occupancy of the property by a predecessor in title, and the rating of the predecessor in respect thereof, shall be equivalent to the occupancy and rating of the successor; and rating in the name of the predecessor shall, until a new rate is made after the date of succession, be equivalent to rating in the name of the successor; and the successor shall not be required to prove his own residence, occupancy, or rating before the succession.

(2.) The qualifying property (1) need not be throughout the twelve months constituting the period of qualification the same property or in the same parish.

(3.) Where by law a borough rate is payable by instalments, payment by any person of any such instalment shall, as regards his qualification to be enrolled as a burgess, be deemed a payment of the borough rate in respect of the period to which the instalment applies.

(4.) A person shall not be disentitled to be enrolled as a burgess by reason only (2)—

(*a.*) That he has received medical or surgical assistance from the trustees of the municipal charities, or has been removed, by order of a justice, to a hospital or place for reception of the sick, at the cost of any local authority (3); or

(*b.*) That his child has been admitted to and taught in any public or endowed school (4).

Obligation to accept office or pay fine.

34.—(1.) Every qualified person elected to a corporate office (5), unless exempt under this section or otherwise by law (6), either shall accept the office by making and subscribing the declaration (7) required by this Act within five days (8) after notice of election (9), or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman, councillor, elective auditor, or revising assessor, fifty pounds, and in case of a mayor one hundred pounds, as the council by bye-law determine.

nent, be liable on summary conviction to a penalty not exceeding two pounds, provided that any occupier whose name has been omitted shall, notwithstanding such omission, and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating in the same manner as if his name had not been so omitted."

(1) See section 9 (2) (*b*), *ante.* (2) See section 9 (3) (*b*), *ante.*

(3) See the Public Health Act, 1875, s. 124, *ante.*

(4) The Elementary Education Act, 1870, 33 & 34 Vict. c. 75, s. 17, provides that remission of school fees under that Act in the case of a child, shall not be deemed to be parochial relief given to the parent, and the Elementary Education Act, 1876, 39 & 30 Vict. c. 79, s. 10, provides that payment by the guardians of the school fee of a non-pauper child whose parent is unable by poverty to pay the fee, shall not deprive the parent of any franchise, right, or privilege, or subject him to any disability or disqualification.

(5) See the interpretation clause, *ante*, p. 270.

(6) *I.e.*, (1) commissioned officers in the army on full pay, 44 & 45 Vict. c. 58, s. 146, who are incapable of serving; and see section 253, *post;* (2) men enrolled and officers under Reserve Forces Act, 1882, 45 & 46 Vict. c. 48, s. 7; (3) Postmaster-General and officers of Post-office, 7 Will. IV. & 1 Vict. c. 33, s. 12; (4) Officers of Inland Revenue, 16 & 17 Vict. c. 59, s. 17; (5) of Customs, 39 & 40 Vict. c. 36, s. 9; (6) Inspectors of factories, 41 & 42 Vict. c. 16, s. 67; (7) registered medical practitioners, 21 & 22 Vict. c. 90, s. 35; and (8) dentists, 41 & 42 Vict. c. 33, s. 30, who are not compelled to serve; and see also section 36 (3), *post.*

(7) See section 35, *post.* (8) See section 230, *post.*

(9) "Notice of election" means "regular notice, . . . either by being actually present when it is announced, or by being apprised of the fact by some official authority": *R.* v. *Greece*, 5 Q. B. 94, 12 L. J. Q. B. 335, 7 Jur. 896.

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(2.) If there is no bye-law determining fines, the fine, in case of an alderman, councillor, elective auditor, or revising assessor, shall be twenty-five pounds, and in case of a mayor fifty pounds.

(3.) The persons exempt under this section are—

(*a.*) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and

(*b.*) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice of his election.

(4.) A fine payable under this section shall be recoverable summarily.

Declaration on acceptance of office.

35. A person elected to a corporate office (1) shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration as in the Eighth Schedule, act in the office except in administering that declaration (2).

Fine on resignation, &c.

36.—(1.) A person elected to a corporate office (1) may at any time, by writing signed by him and delivered to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof (3).

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) No person enabled by law to make an affirmation instead of taking an oath (4) shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

Re-eligibility of office holders.

37. A person ceasing to hold a corporate office (1) shall, unless disqualified to hold the office, be re-eligible.

Mayor and aldermen to continue members of council.

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years (5).

Avoidance of office by bankruptcy or absence.

39.—(1.) If the mayor, or an alderman or councillor—

(*a.*) Is declared bankrupt, or compounds by deed with his creditors (6), or makes an arrangement or composition with his creditors, under the Bankruptcy Act, 1869, by deed or otherwise; or

(*b.*) Is (except in case of illness) continuously absent from the borough, being mayor, for more than two months, or, being alderman or councillor, for more than six months:

he shall thereupon immediately become disqualified and shall cease to hold the office (7).

(2.) In any such event the council shall forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall (8), and the office shall thereupon become vacant.

(1) See the interpretation clause, *ante*, p. 270.

(2) See section 239, *post*. (3) See section 34.

(4) As to Quakers and Moravians, see 3 & 4 Will. IV. c. 49; as to Separatists, see 3 & 4 Will. IV. c. 82; and as to conscientious objectors, and persons upon whose conscience the taking of an oath would have no binding effect, see 17 & 18 Vict. c. 125, s. 20, and 32 & 33 Vict. c. 68, s. 4.

(5) See section 13, *ante*.

(6) A composition, not under the Bankruptcy Act, does not disqualify if no composition deed is executed: *Aslatt* v. *Southampton*, L. R. 16 Ch. D. 143, 50 L. J. Ch. 31, 43 L. T. N. S. 464, 29 W. R. 117.

(7) As to whether the office is thereby rendered void, without the declaration in subsection (2) of this section being thereupon made, see *Hardwick* v. *Brown*, L. R. 8 C. P. 406, 28 L. T. N. S. 502, 21 W. R. 639; and see also *R.* v. *Blizard*, L. R. 2 Q. B. 55, 36 L. J. Q. B. 18, 15 L. T. N. S. 242, 15 W. R. 105.

(8) See section 232, *post*.

(3.) Where a person becomes so disqualified by being declared bankrupt, or ompounding, or making an arrangement or composition, as aforesaid, the disqualiication, as regards subsequent elections, shall, in case of bankruptcy, cease on is obtaining his order of discharge, and shall, in case of a compounding or comosition, as aforesaid, cease on payment of his debts in full, and shall, in case of an rrangement as aforesaid, cease on his obtaining his certificate of discharge.

(4.) Where a person becomes so disqualified by absence, he shall be liable to the ıme fine as for non-acceptance of office (1), recoverable summarily, but the disquaification shall, as regards subsequent elections, cease on his return.

Filling of casual vacancies.

40.—(1.) On a casual vacancy in a corporate office (2), an election shall be held y the same persons and in the same manner as an election to fill an ordinary acancy; and the person elected shall hold the office until the time when the erson in whose place he is elected would regularly have gone out of office, and he ıall then go out of office (3).

(2.) In case of more than one casual vacancy in the office of councillor being filled the same election, the councillor elected by the smallest number of votes shall be eemed to be elected in the place of him who would regularly have first gone out of fice, and the councillor elected by the next smallest number of votes shall be eemed to be elected in the place of him who would regularly have next gone out office, and so with respect to the others; and if there has not been a contested ection, or if any doubt arises, the order of rotation shall be determined by the uncil.

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

Penalty on unqualified person acting in office.

41.—(1.) If any person acts in a corporate office (4) without having made the eclaration by this Act required (5), or without being qualified at the time of aking the declaration, or after ceasing to be qualified, or after becoming disualified, he shall for each offence be liable to a fine not exceeding fifty pounds, ecoverable by action (6).

(2.) A person being in fact enrolled in the burgess roll shall not be liable to a ie for acting in a corporate office on the ground only that he was not entitled to enrolled therein.

Validity of acts done notwithstanding disqualification, &c.

42.—(1.) The acts and proceedings of a person in possession of a corporate ice (4), and acting therein, shall, notwithstanding his disqualification or want of alification, be as valid and effectual as if he had been qualified (7).

(2.) An election of a person to a corporate office (4) shall not be liable to be estioned by reason of a defect in the title, or want of title, of the person before hom the election was had, if that person was then in actual possession of, or ing in, the office giving the right to preside at the election.

(3.) A burgess roll shall not be liable to be questioned by reason of a defect in title, or want of title, of the mayor or any revising authority by whom it is

(1) See section 34, *ante*.

(2) See the interpretation clause, *ante*, p. 270.

(3) As to the time for filling casual vacancies, see section 66, *post*.

In the previous enactment (5 & 6 Will. IV. c. 76, ss. 27, 47, 49, and 51, and 7 Will. IV. & 1 Vict. c. 78, s. 11) these vacancies were called "extraordinary" instead of "casual." Where an election to supply a casual vacancy and an ordinary election take place on the same day, a clear distinction should be made between the two elections and the candidates for each, both in the notice of election and all other proceedings: *R.* v. *Rowley*, 3 Q. B. 143, 6 Q. B. 668; *R.* v. *Leeds*, 7 A. & E. 963, 2 Jur. 345; and see *R.* v. *Rippon*, *ante*, p. 238.

(4) See the interpretation clause, *ante*, p. 270.

(5) See section 35, *ante*.

(6) As to notice of action, &c., see section 224, *post*. Under the previous enactment it was held that a person disqualified by reason of a contract with the borough, who does not act during the existence of the contract, is not liable to the penalty for acting after the contract has ceased: *Lewis* v. *Carr*, L. R. 1 Ex. D. 484; 46 L. J. Ex. 314; 36 L. T. N. S. 44; 24 W. R. 940.

(7) See further section 102, *post*.

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revised, if he was then in actual possession and exercise of the office of mayor or revising authority.

Duties of town clerk, deputy, and treasurer, during vacancy or incapacity.

43. If there is no town clerk and no deputy town clerk, or there is no treasurer, or the town clerk, deputy town clerk, or treasurer (as the case may be) is incapable of acting, all acts by law authorised or required to be done by or with respect to the town clerk or the treasurer (as the case may be) may, subject to the provisions of any other Act, be done by or with respect to a person appointed in that behalf by the mayor.

PART III.

Preparations for and Procedure at Elections.

Parish Burgess Lists; Burgess Rolls; Ward Rolls.

Preparation and revision of parish burgess lists. 41 & 42 Vict. c. 26.

44.—(1.) Where the whole or part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses are to be made out and revised, and claims and objections relating thereto are to be made, in accordance with the provisions of the Parliamentary and Municipal Registration Act, 1878 (1).

(2.) Where no part of the area of a borough is co-extensive with or included in the area of a parliamentary borough, the lists of burgesses shall be made out and revised, and claims and objections relating thereto may be made, in accordance, as nearly as may be, with the provisions of Part I. of the Third Schedule (2).

(3.) In either case the lists shall be styled the parish burgess lists (3).

The burgess roll and ward rolls.

45.—(1.) When the parish burgess lists have been revised and signed, the revising authority shall deliver them to the town clerk, and a printed copy thereof, examined by him and signed by him, shall be the burgess roll of the borough (4).

(2.) The burgess roll shall be completed on or before the twentieth of October in each year, and shall come into operation on the first of November in that year, and shall continue in operation for the twelve months beginning on that day (5).

(3.) The names in the burgess roll shall be numbered by wards or by polling districts, unless in any case the council direct that the same be numbered consecutively without reference to wards or polling districts (6).

(4.) Where the borough has no wards, the burgess roll shall be made in one general roll for the whole borough.

(5.) Where the borough has wards, the burgess roll shall be made in separate rolls, called ward rolls, one for each ward, containing the names of the persons entitled to vote in that ward, and the ward rolls collectively shall constitute the burgess roll.

(6.) A burgess shall not be enrolled in more than one ward roll (7).

(7.) Where a duplicate of a burgess list is made under section thirty-one of the Parliamentary and Municipal Registration Act, 1878 (8), it shall have the same effect as the original, and may be delivered instead thereof.

(8.) Every person enrolled in the burgess roll shall be deemed to be enrolled as

(1) See these provisions, *post*.

(2) *Post*, pp. 354, 355.

(3) This designation is new.

(4) As to obtaining copy of this on payment, see section 48 (1), *post*.

(5) This is in accordance with the law as laid down in *Budge* v. *Andrews*, L. R. 3 C. P. D. 510, 47 L. J. C. P. 586, 39 L. T. N. S. 166. As to the last day for revision of burgess list in purely municipal boroughs, see Third Schedule, Part I., r. 25, *post*; and in parliamentary and municipal boroughs, see 41 & 42 Vict. c. 26, s. 18 (2), *post*.

(6) See section 64, *post*.

(7) See further as to purely municipal boroughs, Third Schedule, Part I., r. 18, *post*; and as to parliamentary and municipal boroughs, 41 & 42 Vict. c. 26, s. 28 (14), *post*.

(8) See the provisions of this Act *post*.

a burgess, and every person not enrolled in the burgess roll shall be deemed to be not enrolled as a burgess.

(9.) No stamp duty shall be payable in respect of the enrolment of a burgess.

Arrangement of lists and rolls.

46.—(1.) If and as far as the council so direct, the parish burgess lists, and the burgess roll, and the ward rolls (if any), and the lists of claimants and respondents, or any of those documents, shall be arranged in the same order in which the qualifying properties appear in the rate book for the parish in which they are situate, or otherwise in such order as will cause those lists and rolls to record the qualifying properties in successive order in the street or other place in which they are situate.

(2.) Subject to any such direction, and to the provisions of this Act as to polling districts (1), the arrangement of the lists and rolls shall be alphabetical.

Correction of burgess roll.

47.—(1.) Where the parish burgess lists are revised under the Parliamentary and Municipal Registration Act, 1878, the burgess roll is subject to alteration or correction in manner provided by section thirty-five of that Act (2).

(2.) Where the parish burgess lists are revised under this Act, any person whose claim has been rejected or name expunged at the revision of the lists may apply, within two months after the last sitting of the revision court, to the High Court in the Queen's Bench Division for a *mandamus* to the mayor to insert his name in the burgess roll; and thereupon the Court shall inquire into the title of the applicant to be enrolled (3).

(3.) If the Court grants a *mandamus*, the mayor shall insert the name in the burgess roll, and shall add thereto the words "by order of Her Majesty's High Court of Justice," and shall subscribe his name to those words.

Printing and sale of burgess roll and other documents.

48.—(1.) The town clerk shall cause the parish burgess lists, the lists of claimants and respondents, and the burgess roll, to be printed, and shall deliver printed copies to any person on payment of a reasonable price for each copy (4).

(2.) Subject to section thirty of the Parliamentary and Municipal Registration Act, 1878 (5), the proceeds of sale shall go to the borough fund.

Separate list of persons qualified to be councillors but not to be burgesses.

49.—(1.) The overseers of each parish shall at the same time that they make the parish burgess list make a list of the persons entitled in respect of the occupation of property in that parish to be elected councillors, as being resident within fifteen miles although beyond seven miles from the borough (6).

(2.) The provisions of this Act as to the parish burgess lists, and claims and objections relating thereto, and the revision of those lists shall, as nearly as circumstances admit, apply to the lists made under this section.

(3.) The town clerk shall arrange the names entered in these lists, when revised, in alphabetical order as a separate list (in this Act called the separate non-resident list), with an appropriate heading, at the end of the burgess roll (7).

Election of Councillors.

Borough and ward elections.

50.—(1.) Where a borough has no wards, there shall be one election of councillors for the whole borough.

(2.) Where a borough has wards, there shall be a separate election of councillors for each ward (8).

Title to vote.

51.—(1.) At an election of councillors a person shall be entitled to subscribe a nomination paper, and to demand and receive a voting paper, and to vote, if he is enrolled in the burgess roll, or, in the case of a ward election, the ward roll, and not otherwise (9).

(1) See section 64, *post*. (2) See this Act *post*.

(3) This last clause is in accordance with *R.* v. *Harwich*, 8 A. & E. 919, 1 P. & D. 134. See also *R.* v. *Lichfield*, 2 Q. B. 693, 2 G. & D. 10.

(4) "Reasonable price" is here substituted for "one shilling" in the previous enactment (5 & 6 Will. IV. c. 76, s. 17).

(5) See this Act *post*. (6) See section 11 (2) and note thereto, *ante*.

(7) See also 41 & 42 Vict. c. 26, s. 19, *post*.

(8) But as to notices of elections, see section 65, *post*.

(9) As to nomination papers and the form thereof, see Third Schedule, Part II., and Eighth Schedule, Form I., *post*.

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(2.) No person shall subscribe a nomination paper in or for more than one ward, or vote in more than one ward (1).

(3.) Nothing in this section shall entitle any person to do any act therein mentioned who is prohibited by law from doing it, or relieve him from any penalty to which he may be liable for doing it.

Day of election.

52. The ordinary day of election of councillors shall be the first of November (2).

Returning officer at election.

53.—(1.) At an election of councillors for a whole borough the returning officer shall be the mayor (3).

(2.) At an election for a ward the returning officer shall be an alderman assigned for that purpose by the council at the meeting of the ninth of November (4).

Notice of election.

54. Nine days (5) at least before the day for the election of a councillor, the town clerk shall prepare and sign a notice thereof (6), and publish it by fixing it on the town hall (7), and, in the case of a ward election, in some conspicuous place in the ward (8).

Nomination of candidates.

55. The nomination of candidates for the office of councillor shall be conducted in accordance with the rules in Part II. of the Third Schedule.

Relation of nomination to election.

56.—(1.) If the number of valid nominations (9) exceeds that of the vacancies, the councillors shall be elected from among the persons nominated.

(2.) If the number of valid nominations (9) is the same as that of the vacancies, the persons nominated shall be deemed to be elected.

(3.) If the number of valid nominations (9) is less than that of the vacancies, the persons nominated shall be deemed to be elected, and such of the retiring councillors for the borough or ward as were highest on the poll at their election, or, if the poll was equal, or there was no poll, as are selected for that purpose by the mayor, shall be deemed to be re-elected to make up the required number.

(4.) If there is no valid nomination (9), the retiring councillors shall be deemed to be re-elected.

Publication of uncontested election.

57. If an election of councillors is not contested, the returning officer shall publish a list of the persons elected not later than eleven o'clock in the morning on the day of election (10).

(1) See also section 45 (6), *ante*. As to selection of ward for purpose of voting by person entitled, or if he does not choose, by revision court, see Third Schedule, Part I., r. 18, *post*, as to purely municipal borough; and see 41 & 42 Vict. c. 26, s. 28 (14), *post*, as to municipal and parliamentary boroughs. These latter provisions preclude the application of *R.* v. *Harrald*, L. R. 8 Q. B. 418, 42 L. J. Q. B. 211, 28 L. T. N. S. 767, 21 W. R. 910, decided under the previous enactment (5 & 6 Will. IV. c. 76, s. 44).

(2) As to omission to hold election or in case of void election, see section 70, *post*. As to computation of time, see section 230, *post*.

(3) But as to *first* election after a division into wards, see section 30 (7), *ante*. As to case of illness, absence, incapacity to act, &c., of returning officer, see section 67, *post*. A candidate is "incapable of acting" as returning officer at his own election: *R.* v. *White*, L. R. 2 Q. B. 557, 36 L. J. Q. B. 267, 16 L. T. N. S. 828, 15 W. R. 988. See also *R.* v. *Blizard*, L. R. 2 Q. B. 55, 36 L. J. Q. B. 18, 15 L. T. N. S. 242, 15 W. R. 105; *R.* v. *Owens*, 2 E. & E. 86, 28 L. J. Q. B. 316, 33 L. T. N. S. 257, 5 Jur. N. S. 764, 7 W. R. 566.

As to defect in title of returning officer, see 42 (2), *ante*.

(4) See the preceding note. (5) See section 230, *post*.

(6) As to the form, see Eighth Schedule, Form H., *post*.

(7) See section 232, *post*.

(8) If the notice be so defective as to be calculated to mislead the candidates, and so prevent a fair election, the whole proceeding will be void: *Howes* v. *Turner*, L. R. 1 C. P. D. 670, 45 L. J. C. P. 550, 35 L. T. N. S. 58. As to case of void election, see section 70, *post*.

(9) As to decision as to validity of nominations, see Third Schedule, Part II., rr. 9, 14, *post*.

(10) Greenwich time: 43 & 44 Vict. c. 9, s. 1.

Mode of conducting poll at contested election. 35 & 36 Vict. c. 33.

58.—(1.) If an election of councillors is contested, the poll shall, as far as circumstances admit, be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872 (1), directed to be conducted, and, subject to the modifications expressed in Part III. of the Third Schedule, and to the other provisions of this Act, the provisions of the Ballot Act, 1872, relating to a poll at a parliamentary election (including the provisions relating to the duties of the returning officer after the close of the poll), shall apply to a poll at an election of councillors.

(2.) Every person entitled to vote may vote for any number of candidates not exceeding the number of vacancies.

(3.) The poll shall commence at nine o'clock in the forenoon and close at four o'clock in the afternoon of the same day (2).

(4.) But if one hour elapses during which no vote is tendered, and the returning officer has not received notice that any person has within that hour been prevented from coming to the poll by any riot, violence or other unlawful means, the returning officer may, if he thinks fit, close the poll at any time before four o'clock (1).

(5.) Where an equality of votes is found to exist between any candidates, and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer, whether entitled or not to vote in the first instance, may give such additional vote by word of mouth or in writing.

(6.) Nothing in the Ballot Act, 1872, as applied by this Act, shall be deemed to authorise the appointment of any agents of a candidate at a municipal election; but if, in the case of a municipal election, an agent of a candidate is appointed, and notice in writing of the appointment is given to the returning officer, one clear day before the polling day, then the provisions of the Ballot Act, 1872, with respect to agents of candidates, shall, as far as regards that agent, apply in the case of that election (3).

Questions which may be put to voters.

59.—(1.) At an election of councillors, the presiding officer shall, if required by two burgesses, or by a candidate or his agent, put to any person offering to vote, at the time of his presenting himself to vote, but not afterwards, the following questions or either of them:

(*a.*) Are you the person enrolled in the burgess [*or* ward] roll now in force for this borough [*or* ward] as follows [*read the whole entry from the roll*]?

(*b.*) Have you already voted at the present election [*add, in case of an election for several wards*], in this or any other ward?

(2.) The vote of a person required to answer either of these questions shall not be received until he has answered it.

(3.) If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

(4.) Save as by this Act authorised, no inquiry shall be permitted at an election as to the right of any person to vote.

Election of Aldermen.

Time and mode of election of aldermen.

60.—(1.) The ordinary day of election of aldermen shall be the ninth of November, and the election shall be held at the quarterly meeting of the council (4).

(2.) The election shall be held immediately after the election of the mayor (5), and, if there is a sheriff, the appointment of the sheriff.

(3.) An outgoing alderman, although mayor elect, shall not vote.

(4.) Every person entitled to vote may vote for any number of persons not exceeding the number of vacancies, by signing and personally delivering at the

(1) See this Act *post.* (2) Greenwich time: 43 & 44 Vict. c. 9, s. 1.

(3) See *Clementson* v. *Mason*, L. R. 10 C. P. 209, 44 L. J. C. P. 171, 32 L. T. N. S. 325, 22 W. R. 620.

(4) As to election of aldermen, see section 14 (6), *ante.* As to the computation of time, see section 230, *post.* As to omission to hold election, see section 70, *post.* As to quarterly meeting, see Second Schedule, rule 2, *post.*

(5) See section 61, *post.*

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meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes (1).

(5.) The chairman (2), as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months.

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance, shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

Election of Mayor.

Time and mode of election of mayor.

61.—(1.) The ordinary day of election of mayor shall be the ninth of November (3).

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election.

(3.) An outgoing alderman may vote although the person for whom he votes is an alderman.

(4.) In case of equality of votes, the chairman (4), although not entitled to vote in the first instance, shall have the casting vote.

Election of Auditors and Assessors.

Time and mode of election of auditors and assessors.

62.—(1.) The ordinary day of election of elective auditors shall be the first of March, or such other day as the council, with the approval of the Local Government Board, from time to time appoint (5).

(2.) The ordinary day of election of revising assessors shall be the first of March (5).

(3.) If the election of elective auditors and that of revising assessors are held at the same time, then at the poll one voting paper only shall be used by any person voting (6). The names of the candidates for the respective offices shall be therein separate, and distinguished so as to show the office for which each is a candidate, and the provisions of the Ballot Act, 1872, shall be varied accordingly; but in the counting of the votes every voting paper shall be deemed to be a separate voting paper in respect of each office, and any objections thereto shall be considered and dealt with accordingly.

(1) These voting papers do not require a stamp: *R.* v. *Strachan*, L. R. 7 Q. B. 463, 41 L. J. Q. B. 210, 26 L. T. N. S. 835, 20 W. R. 629. In *Mather* v. *Brown*, L. R. 1 C. P. D. 596, 45 L. J. C. P. 547, 34 L. T. N. S. 869, 24 W. R. 736 (decided under 38 & 39 Vict. c. 40, s. 1 (2)), it was held that the description of the name of a candidate, whose name was Robert Vicars Mather, as "Robert V. Mather," was not a statement of "the surname and other names of the person nominated." But see *Henry* v. *Armitage*, 32 W. R. 192 (C.A.), "Wm." for "William," held good under 38 & 39 Vict. c. 40, s. 1 (2), and Schedule I., Form 2, now repealed; *R.* v. *Plenty*, L. R. 4 Q. B. 346, 38 L. J. Q. B. 205, 20 L. T. N. S. 521; *R.* v. *Bradley*, 3 E. & E. 634, 30 L. J. Q. B. 180, 3 L. T. N. S. 853, 7 Jur. N. S. 757; *R.* v. *Deighton*, 5 Q. B. 896, 13 L. J. Q. B. 241, 8 Jur. 686 (place of business given instead of place of abode); and as to misnomer, &c., in voting paper, see section 241, *post*.

(2) See Second Schedule, r. 9, *post*.

(3) See note (4) to the preceding section. As to qualification, term of office, &c., of mayor, see section 15, *ante*.

The election of mayor must precede that of aldermen: *R.* v. *McGowan*, 11 A. & E. 869, 4 Jur. 913.

(4) See Second Schedule, r. 9, *post*.

(5) As to computation of time, &c., see section 230, *post*.

(6) See Eighth Schedule, Part II., Form K.

(4.) An elector shall not vote for more than one person to be elective auditor or vising assessor.

(5.) Elections of elective auditors and of revising assessors shall be held at the wn hall or some one other convenient place appointed by the mayor (1).

(6.) Save as in this section provided, all the provisions of this Act with respect the nomination and election of councillors for a borough not having wards all apply to the nomination and election of elective auditors and revising sessors (2).

Supplemental and Exceptional Provisions.

Right to women to vote.

63. For all purposes connected with and having reference to the right to vote municipal elections words in this Act importing the masculine gender include men (3).

Polling districts.

64. The council may divide the borough or any ward into polling districts, and reupon the overseers shall, as far as practicable, make out the parish burgess lists as to divide the names in conformity with the polling districts (4).

Notices as to elections.

65. Any notice required to be given in connexion with a municipal election may, to elective auditors and revising assessors, be comprised in one notice (5), and y, as to ward elections, comprise matter necessary for several wards (6).

Time for filling casual vacancies.

66.—(1.) On a casual vacancy in a corporate office (7), the election shall be held thin fourteen days after notice in writing of the vacancy has been given to the yor or town clerk by two burgesses (8).

(2.) Where the office vacant is that of mayor, the notice of the meeting for the ction shall be signed by the town clerk.

(3.) In other cases the day of election shall be fixed by the mayor.

Illness, &c., of mayor or returning officer.

67.—(1.) If the mayor is dead, or is absent or otherwise incapable of acting (9) the execution of his powers and duties as to elections under this Act, the council ll forthwith choose an alderman to execute those powers and duties in the place he mayor (10).

(2.) In case of the illness, absence, or incapacity to act of the alderman assigned e returning officer at a ward election (11), the mayor may appoint to act in his d another alderman, or, if the number of aldermen does not exceed the number vards, a councillor not being a councillor for that ward, and not being enrolled he ward roll for that ward.

Election of councillor in more than one ward.

68. If a person is elected councillor in more than one ward, he shall, within e days after notice thereof, choose, by writing signed by him and delivered to town clerk, or in his default the mayor shall, within three days after the time choice has expired, declare, for which of those wards he shall serve, and the ce or declaration shall be conclusive (12).

Elections not in churches.

69. A municipal election shall not be held in any church, chapel, or other e of public worship.

Omission to hold election, or election void.

70.—(1.) If a municipal election is not held on the appointed day or within the inted time, it may be held on the day next after that day or the expiration of time (13).

(2.) If a municipal election is not held on the appointed day or within the inted time, or on the day next after that day or the expiration of that time, ecomes void, the municipal corporation shall not thereby be dissolved or be bled from electing, but the High Court may, on motion, grant a *mandamus* for lection to be held on a day appointed by the Court (13).

(1) But see section 69, *post*.
(2) See sections 51, 53—59, *ante*, and Third Schedule, Parts II. and III., *post*.
(3) See *R.* v. *Hurrald*, *ante*, p. 271.
(4) See sections 45 (3) and 46, *ante*.
(5) See section 62 (3), *ante*.
(6) See section 50 (2), *ante*.
(7) See the interpretation clause, *ante*, p. 270.
(8) See sections 40, *ante*, and 70, *post*.
(9) See *R.* v. *White*, *ante*, pp. 232, 284.
(10) See section 66 (2), *ante*, and Second Schedule, r. 6.
(11) See section 53 (2), *ante*.
(12) As to computation of time, see section 230, *post*.
(13) See section 230, *post*.

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(3.) Thereupon public notice of the election shall, by such person as the Court directs, be fixed on the town hall (1), and shall be kept so fixed for at least six days before the day appointed for the election (2); and in all other respects the election shall be conducted as directed by this Act respecting ordinary elections.

Burgess roll to be in operation until revision of new burgess roll.

71.—(1.) If a parish burgess list is not made or revised in due time, the corresponding part of the burgess roll in operation before the time appointed for the revision shall be the parish burgess list until a burgess list for the parish has been revised and become part of the burgess roll (3).

(2.) If a burgess roll is not made in due time, the burgess roll in force before the time appointed for the revision shall continue in force until the new burgess roll is made.

Non-compliance with rules.

72. An election shall not be invalidated by non-compliance with the rules in the Third Schedule, or mistake in the use of the forms in the Eighth Schedule, if it appears to the Court having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act (4).

Election valid unless questioned within twelve months.

73. Every municipal election not called in question within twelve months after the election, either by election petition (5) or by information in the nature of a *quo warranto* (6), shall be deemed to have been to all intents a good and valid election (7).

Offences in relation to nomination papers.

74.—(1.) If any person forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the town clerk any forged nomination paper, knowing it to be forged, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding six months, with or without hard labour (8).

(2.) An attempt to commit any such offence shall be punishable as the offence is punishable.

Offences in relation to lists and elections.

75.—(1.) If a mayor or revising assessor neglects or refuses to revise a parish burgess list, or a mayor or alderman neglects or refuses to conduct or declare an election, as required by this Act, he shall for every such offence be liable to a fine not exceeding one hundred pounds, recoverable by action (9).

(2.) If—

(*a.*) An overseer neglects or refuses to make, sign, or deliver a parish burgess list, as required by this Act (10); or

(1) See section 232, *post.* (2) See section 230, *post.*

(3) As to burgess lists and burgess roll, &c., see sections 44 and 45, *ante.*

(4) This reproduces Ballot Act, 1872, 35 & 36 Vict. c. 33, s. 13, omitting the words "and that such non-compliance or mistake did not affect the result of the election." Under this latter Act it has been held that a double nomination of a candidate does not invalidate his election: *Northcote* v. *Pulsford*, L. R. 10 C. P. 476, 44 L. J. C. P. 217, 32 L. T. N. S. 602, 23 W R. 700. See also *Woodward* v. *Sarsons*, L. R. 10 C. P. 733, 44 L. J. C. P. 293, 32 L. T. N S. 867. Where a returning officer allowed an objection to a nomination paper on the ground that the number on the burgess roll of the burgess nominating the candidate was incorrectly stated, the number "704" being given instead of "695," it was held that the objection was rightly allowed, and that section 13 of the Ballot Act, 1872, did not apply: *Gothard* v. *Clarke*, L. R. 5 C. P. D. 253, 49 L. J. C. P. 474, 42 L. T. N. S. 776.

(5) See section 88 (4), *post.* (6) See section 225, *post.*

(7) But a party, if he acts while disqualified, may still run the risk of penalties: *Ex parte Birkbeck*, L. R. 9 Q. B. 256, *per* Blackburn, J., 22 W. R. 299.

(8) See also section 235, *post.*

(9) Under the previous enactment (5 & 6 Will. IV. c. 76, s. 48, which was substantially the same as the present) it was held that the liability attached, although the neglect was not wilful or corrupt: *King* v. *Burrell*, 12 A. & E. 460, 4 P. & D. 207, 4 Jur. 1109. See also *Hunt* v. *Hibbs*, 5 H. & N. 123, 29 L. J. Ex. 222, 6 Jur. N. S. 78.

(10) See Third Schedule, Part I., *post.* In *King* v. *Share*, 3 Q. B. 31, 2 G. & D. 453, 6 Jur. 730, it was held that the overseers of a parish divided into nine districts, each of whom had made out, &c., a list of his own district, but no other list was made out, &c., were liable to the penalty.

Secs. 75–77.

(*b.*) A town clerk neglects or refuses to receive, print, and publish, a parish burgess list or list of claimants or respondents, as required by this Act (1); or

(*c.*) An overseer or town clerk refuses to allow any such list to be inspected by a person having a right thereto (2);

he shall for every such neglect or refusal be liable to a fine not exceeding fifty pounds, recoverable by action.

(3.) An action under this section shall not lie after three months from the neglect or refusal. A moiety of any fine recovered therein shall, after payment of the costs of action, be paid to the plaintiff (3).

Revival of former law on expiration of Ballo Act.

76.—(1.) If the Ballot Act, 1872, ceases to be in force (4) so much of this Act as directs that the poll at a contested election of councillors shall be conducted as the poll at a contested parliamentary election is by the Ballot Act, 1872, directed to be conducted, and as applies provisions of the Ballot Act, 1872, to a poll at a contested election of councillors, shall forthwith cease to be in force, and thereupon the enactments in Part IV. of the Third Schedule shall revive and be in force.

(2.) But this cesser and revivor shall not affect any act done, right acquired, or liability or fine incurred, or the institution or prosecution to its termination of any proceeding in respect of any such right, liability, or fine.

PART IV.

Corrupt Practices and Election Petitions.

Corrupt Practices.

Definitions

77. In this Part—

"Bribery," "treating" (5), "undue influence," and "personation," include respectively anything done before, at, after, or with respect to a municipal election which if done before, at, after, or with respect to a parliamentary election would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections (6):

"Corrupt practice" means bribery, treating, undue influence, or personation:

"Candidate" means a person elected, or having been nominated, or having declared himself a candidate for election, to a corporate office (7):

"Canvasser" (8) means any person who solicits or persuades, or attempts to persuade, any person to vote or to abstain from voting at a municipal election, or to vote or to abstain from voting for a candidate at a municipal election (9):

"Voter" means a burgess or a person who votes or claims to vote at a municipal election (9):

"Election court" means a court constituted under this Part for the trial of an election petition (10):

"Municipal election petition" or "election petition" means a petition under this part complaining of an undue municipal election (9):

(1) See Third Schedule, Part I., rr. 3, 7.

(2) It would seem that no liability can attach under this sub-section, if, as a fact, no liability exists: *Gregory* v. *Fell*, 6 Jur. 422.

(3) As to the recovery of the moiety by the corporation from a successful plaintiff, see *Mayor of Harwich* v. *Gant*, 5 El. & Bl. 182, 1 Jur. N. S. 708.

(4) The Ballot Act, 1872, is continued till 31st December, 1884, by the Expiring Laws Continuance Act, 1883, 46 & 47 Vict. c. 40.

(5) Section 23 of 17 & 18 Vict. c. 102, *post*, is applicable: *Hargreaves* v. *Simpson*, L. R. 4 Q. B. D. 403, 48 L. J. Q. B. 607, 41 L. T. N. S. 216, 27 W. R. 885.

(6) See the provisions of the Corrupt Practices Prevention Acts, 1854, 1863, and 1883, 17 & 18 Vict. c. 102, 26 & 27 Vict. c. 29, and 46 & 47 Vict. c. 51, *post*.

(7) See the interpretation clause, *ante*, p. 270. (8) See section 82, *post*.

(9) See the interpretation clause, *ante*, p. 270. (10) See sections 92, 93, *post*.

Secs. 77–82.

31 & 32 Vict. c. 125.

"Parliamentary election petition" means a petition under the Parliamentary Elections Act, 1868:

"Prescribed" means prescribed by general rules made under this Part (1):

"Borough" and "election" when used with reference to a petition mean the borough and election to which the petition relates.

General penalties for corrupt practices.

78. A person guilty of a corrupt practice at a municipal election shall be liable to the like actions, prosecutions, penalties, forfeitures, and punishments as if the corrupt practice had been committed at a parliamentary election (2).

Disqualifications and avoidance of election for corrupt practices by candidates.

79.—(1.) Where it is found by the report of an election court (3) that a corrupt practice (3) has been committed by or with the knowledge and consent of a candidate (3) at a municipal election, that candidate shall be deemed to have been personally guilty of a corrupt practice at the election, and his election, if he has been elected, shall be void; and he shall (whether elected or not) during seven years from the date of the report be subject to the following disqualifications (4):

He shall be incapable of—

(*a.*) Holding or exercising any corporate office or municipal franchise, or being enrolled or voting as a burgess:

(*b.*) Acting as a justice or holding any judicial office:

(*c.*) Being elected to or sitting or voting in Parliament:

(*d.*) Being registered or voting as a parliamentary voter:

(*e.*) Being employed by a candidate in a parliamentary or municipal election:

(*f.*) Acting as overseer or as guardian of the poor.

(2.) If any person is on indictment or information found guilty of a corrupt practice at a municipal election, or is in any action or proceeding adjudged to pay a penalty or forfeiture for a corrupt practice at a municipal election, he shall, whether he was a candidate at the election or not, be subject during seven years from the date of the conviction or judgment to all the disqualifications mentioned in this section.

(3.) If after a person has become disqualified under this part any witness on whose testimony he has become disqualified is, on his prosecution, convicted of perjury in respect of that testimony, the High Court may, on motion, and on proof that the disqualification was procured by means of that perjury, order that the disqualification shall cease.

Disqualifications and avoidance of election for corrupt practices by agents, and for offences against this Part.

80. If it is found by an election court (5) that a candidate (5) has by an agent been guilty of a corrupt practice (5) at a municipal election (6), or that any offence against this Part has been committed at a municipal election by a candidate, or by an agent for a candidate with the candidate's knowledge and consent, the candidate shall during the period for which he was elected to serve, or for which, if elected, he might have served, be disqualified for being elected to and for holding any corporate office in the borough, and if he was elected his election shall be void.

Avoidance of election for general corruption.

81. A municipal election (6) shall be wholly avoided by such general corruption, bribery, treating, or intimidation at the election as would by the common law of Parliament avoid a parliamentary election.

Paid agents and canvassers.

82.—(1.) A burgess of a borough shall not be retained or employed for payment

(1) See section 100, *post*; and see the rules, *post*, pp. 371—379.

(2) Where a person has been guilty of several acts of bribery at a municipal election, he is liable to a penalty in respect of each such act of bribery: *Milnes* v. *Bale*, L. R. 10 C. P. 591, 44 L. J. C. P. 336, 33 L. T. N. S. 174, 23 W. R. 660.

(3) See section 77, *ante*.

(4) The disqualification does not attach until after the finding of the Court: *Drinkwater* v. *Deakin*, L. R. 9 C. P. 626, 43 L. J. C. P. 355, 30 L. T. N. S. 832; and in order to disqualify, it is not enough that the report states facts from which the commission of a corrupt practice might be inferred, but the candidate must be found by the report to have been guilty of a corrupt practice: *Grant* v. *Pagham*, L. R. 3 C. P. D. 80, 47 L. J. C. P. 59, 37 L. T. N. S. 404, 26 W. R. 169, 2 Hopw. & C. 358.

(5) For definition, see section 77, *ante*.

(6) See the interpretation clause, *ante*, p. 270.

or reward by or on behalf of a candidate (1) at a municipal election (2) for that borough or any ward thereof as a canvasser for the purposes of the election (3).

(2.) If any person is retained or employed in contravention of this prohibition, that person and also the person by whom he is retained or employed shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

(3.) An agent or canvasser (1) retained or employed for payment or reward for any of the purposes of a municipal election (2) shall not vote at the election, and if he votes he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding ten pounds.

Payment for conveyance of voters.

83. If a candidate (1) or an agent for a candidate pays or agrees to pay any money on account of the conveyance of a voter to or from the poll, he shall be guilty of an offence against this Part, and shall be liable on summary conviction to a fine not exceeding five pounds.

Prosecutions for corrupt practices.

84.—(1.) The costs and expenses of a prosecutor and his witnesses in the prosecution of any person for bribery, undue influence, or personation at a municipal election (2), with compensation for trouble and loss of time, shall, unless the court otherwise directs, be allowed, paid, and borne as in cases of felony (4).

(2.) The clerk of the peace of the borough, or, if there is none, of the county in which the borough is situate, shall, if so directed by an election court, prosecute any person for bribery, undue influence, or personation at the election in respect of which the court acts, or sue or proceed against any person for penalties for bribery, treating, undue influence, or any offence against this Part at the election.

Striking off votes.

85. The votes of persons in respect of whom any corrupt practice (1) is proved to have been committed at a municipal election (5) shall be struck off on a scrutiny.

Personati n.

86. The enactments for the time being in force for the detection of personation and for the apprehension of persons charged with personation at a parliamentary election shall apply in the case of a municipal election (5).

Election Petitions.

Power to question municipal election by petition.

87.—(1.) A municipal election (5) may be questioned by an election petition on the ground—

(*a.*) That the election was as to the borough or ward wholly avoided by general bribery, treating, undue influence, or personation; or

(*b.*) That the election was avoided by corrupt practices (1) or offences against this Part committed at the election; or

(*c.*) That the person whose election is questioned was at the time of the election disqualified (6); or

(*d.*) That he was not duly elected by a majority of lawful votes.

(2.) A municipal election (5) shall not be questioned on any of those grounds except by an election petition.

Presentation of petition.

88.—(1.) An election petition may be presented either by four or more persons who voted or had a right to vote at the election or by a person alleging himself to have been a candidate (1) at the election (7).

(1) For definition, see section 77, *ante*. (2) See the interpretation clause, *ante*, p. 270

(3) Under the previous enactment (35 & 36 Vict. c. 60, s. 7) there was a doubt whether burgess enrolled in one ward could be employed on behalf of a candidate at an election in another ward. See *Maude* v. *Lowley*, L. R. 9 C. P. 165, 43 L. J. C. P. 105, 30 L. T. N. S. 168. The present section removes that doubt.

(4) See section 169, *post*.

(5) See the interpretation clause, *ante*, p. 270. See 6 & 7 Vict. c. 18, ss. 85—89, *post*, 35 & 36 Vict. c. 33, s. 24, *post*.

(6) Under this sub-section an election petition may be presented where a returning officer has improperly allowed an objection to a nomination paper: *Budge* v. *Andrews*, L. R. 3 C. P. D. 510, 47 L. J. C. P. 586, 39 L. T. N. S. 166; or having no power to do so has decided as to an objection as to the time of delivery of a nomination paper: *Rees* v. *Turner*, *ante*, p. 284. See also *Burgoyne* v. *Collins*, L. R. 8 Q. B. D. 450, 51 L. J. Q. B. 335, 30 W. R. 923.

(7) A petition cannot, after the expiration of the twenty-one days limited by sub-

Secs. 88, 89.

(2.) Any person whose election is questioned by the petition, and any returning officer of whose conduct a petition complains, may be made a respondent to the petition (1).

(3.) The petition shall be in the prescribed form (2) and shall be signed by the petitioner, and shall be presented in the prescribed manner (3) to the High Court in the Queen's Bench Division, and the prescribed officer shall send a copy thereof to the town clerk, who shall forthwith publish it in the borough (4).

(4.) It shall be presented within twenty-one days (5) after the day on which the election was held, except that if it complains of the election on the ground of corrupt practices, and specifically alleges that a payment of money or other reward has been made or promised since the election by a person elected at the election, or on his account or with his privity, in pursuance or furtherance of such corrupt practices, it may be presented at any time within twenty-eight days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.

Security for costs.

89.—(1.) At the time of presenting an election petition (6), or within three days (7) afterwards, the petitioner shall give security for all costs, charges, and expenses, which may become payable by him to any witness summoned on his behalf, or to any respondent.

(2.) The security shall be to such amount (8), not exceeding five hundred pounds, as the High Court, or a judge thereof, on summons, directs, and shall be given in the prescribed manner, either by a deposit of money (9), or by recognisance (10) entered into by not more than four sureties, or partly in one way and partly in the other.

(3.) Within five days after the presentation of the petition the petitioner shall in the prescribed manner (11) serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition (12).

(4.) Within five days (7) after service of the notice the respondent may object in writing to any recognisance (13) on the ground that any surety is insuffi-

section (4), *infra*, be amended by the introduction of a substantially new charge: *Clark* v. *Wallond*, 52 L. J. Q. B. 321, 48 L. T. N. S. 762, 31 W. R. 551.

(1) A person claiming to be, though not in fact, elected may be made respondent: *Yates* v. *Leach*, L. R. 9 C. P. 605, 43 L. J. C. P. 377, 30 L. T. N. S. 790. But not an unsuccessful candidate: *Lovering* v. *Dawson*, L. R. 10 C. P. 711, 44 L. J. C. P. 321, 32 L. T. N. S. 819.

Complaint of the conduct of a returning officer means complaint of his misconduct, and it seems the misconduct must be such as would render him liable to an action before the act. Therefore, a returning officer who has given a *bonâ fide* though erroneous decision at an election, cannot be made a respondent: *Harmon* v. *Park*, L. R. 6 Q. B. D. 323, 50 L. J. Q. B. 227, 44 L. T. N. S. 82.

(2) See section 77, *ante*, and rules 2—6, *post*, pp. 371, 372.

(3) See section 77, *ante*, and rules 1, 7, 9, 38, *post*, pp. 371—375.

(4) See rules 1, 12, *post*, pp. 371—373. See *Harmon* v. *Park*, *supra*.

(5) In *Maude* v. *Lowley*, *ante*, p. 291, it was held, under 35 & 36 Vict. c. 60, s. 13 (2), that an amendment in the petition introducing substantially a new charge could not be made after twenty-one days. See also *Neild* v. *Batty*, L. R. 9 C. P. 104, 43 L. J. C. P. 73, 29 L. T. N. S. 747, 22 W. R. 407. But see *Pickering* v. *Startin*, 28 L. T. N. S. 11.

(6) For definition, see section 77, *ante*.

(7) As to computation of time, see section 230, *post*.

(8) See now General Rule 26, *post*, p. 374.

(9) See section 77, *ante*, and General Rules 16, 17, *post*, p. 373.

(10) See section 77, *ante*, and General Rules 24, 25, 26, *post*, pp. 373, 374.

(11) See section 77, *ante*, and General Rule 13, *post*, p. 373.

(12) Otherwise the petition may be taken off the file: *Williams* v. *Tenby*, L. R. 5 C. P. D. 135, 49 L. J. Q. B. 325, 42 L. T. N. S. 187, 28 W. R. 616.

An affidavit of service must be filed: General Rule 36, *post*, p. 375.

(13) See General Rules 27, 28, *post*, p. 374.

cient or is dead, or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the same.

(5.) An objection to recognisance shall be decided in the prescribed manner (1).

(6.) If the objection is allowed, the petitioner may, within a further prescribed time not exceeding five days (2), remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognizance of the matter, make the security sufficient (3).

(7.) If no security is given, as prescribed, or any objection is allowed and is not removed, as aforesaid, no further proceedings shall be had on the petition.

Petition at issue.

90. On the expiration of the time limited for making objections, or, after objection made, on the objection being disallowed or removed, whichever last happens, the petition shall be at issue.

Municipal election list.

91.—(1.) The prescribed officer (4) shall as soon as may be make a list, in this Act referred to as the municipal election list, of all election petitions at issue, placing them in the order in which they were presented, and shall keep at his office a copy of this list, open to inspection in the prescribed manner (5).

(2.) The petitions shall, as far as conveniently may be, be tried in the order in which they stand in the list.

(3.) Two or more candidates (6) may be made respondents to the same petition (6), and their cases may be tried at the same time, but for the purposes of this part the petition shall be deemed to be a separate petition against each respondent.

(4.) Where more petitions (6) than one are presented relating to the same election, or to elections held at the same time for different wards of the same borough, they shall be bracketed together in the list as one petition, but shall, unless the High Court otherwise directs, stand in the list in the place where the last of them would have stood if it had been the only petition relating to that election.

Constitution of election court.

92.—(1.) An election petition (6) shall be tried by an election court (6) consisting of a barrister qualified and appointed as in this section provided, without a jury (7).

(2.) A barrister shall not be qualified to constitute an election court (6) if he is less than fifteen years standing, or is a member of the Commons House of Parliament, or holds any office or place of profit under the Crown, other than that of recorder.

(3.) A barrister shall not be qualified to constitute an election court for trial of an election petition relating to any borough for which he is recorder, or in which he resides, or which is included in a circuit of Her Majesty's judges on which he practices as a barrister.

(4). As soon as may be after a municipal election list is made out the prescribed officer shall send a copy thereof to each of the judges for the time being on the rota for the trial of parliamentary election petitions; and those judges or two of them shall forthwith determine the number of barristers, not exceeding five at any one time, necessary to be appointed for the trial of the election petitions at issue, and shall appoint that number accordingly as commissioners under this Part, and shall assign the petitions to be tried by each.

(5.) If a commissioner to whom the trial of a petition is assigned dies, or declines or becomes incapable to act, the said judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.

(1) See section 77, *ante*, and General Rules 29, 30, *post*, p. 374.
(2) As to computation of time, see section 230, *post*.
(3) See section 77, *ante*, and General Rule 31, *post*, p. 374.
(4) See section 77, *ante*, and General Rule 1, *post*, p. 371.
(5) See section 77, *ante*, and General Rule 39, *post*, p. 375.
(6) For definition, see section 77, *ante*.
(7) Under the previous enactment, 35 & 36 Vict. c. 60, s. 14, it was held that an election court is a court of record: *R.* v. *Maidenhead*, L. R. 9 Q. B. D. 494, 51 L. J. Q. B. 444, 47 L. T. N. S. 529, 46 J. P. 724.

Secs. 92, 93.

(6.) The election court [1] shall for the purposes of the trial have the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal by the court may on motion by the person aggrieved be discharged or varied by the High Court, or in vacation by a judge thereof, on such terms, if any, as the High Court or judge thinks fit.

Trial of election petition.

93.—(1.) An election petition [1] shall be tried in open court, and notice of the time and place of trial shall be given in the prescribed manner not less than seven days before the day of trial [2].

(2.) The place of trial shall be within the borough, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(3.) The election court may in its discretion adjourn the trial from time to time, and from any one place to any other place within the borough or place where it is held [3].

(4.) At the conclusion of the trial the election court shall determine whether the person whose election is complained of, or any and what other person, was duly elected, or whether the election was void [4], and shall forthwith certify in writing the determination to the High Court, and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(5.) Where a charge is made in a petition of any corrupt practice or offence against this part having been committed at the election the court shall, in addition to the certificate, and at the same time, report in writing to the High Court as follows:

(*a.*) Whether any corrupt practice or offence against this Part has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt practice or offence;

(*b.*) The names of all persons (if any) proved at the trial to have been guilty of any corrupt practice or offence against this Part;

(*c.*) Whether any corrupt practices have, or whether there is reason to believe that any corrupt practices have, extensively prevailed at the election in the borough or in any ward thereof.

(6.) The election court may at the same time make a special report to the High Court as to any matters arising in the course of the trial, an account of which ought, in the judgment of the election court, to be submitted to the High Court.

(7.) If, on the application of any party to a petition [1] made in the prescribed manner to the High Court [5], it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct the same to be stated accordingly, and any such special case shall be heard before the High Court, and the decision of the High Court shall be final [6].

(8.) If it appears to the election court on the trial of a petition that any question of law as to the admissibility of evidence, or otherwise, requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve any such question, as questions may be reserved by a judge on a trial at *nisi prius*.

(9.) On the trial of a petition, unless the election court otherwise directs, any charge of a corrupt practice or offence against this Part may be gone into, and evidence in relation thereto received before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice or offence.

(10.) On the trial of a petition complaining of an undue election and claiming the office for some person, the respondent may give evidence to prove that that

(1) For definition, see section 77, *ante*.

(2) See section 77, *ante*, and General Rule 41, *post*, p. 375.

(3) See General Rules 44 and 45.

(4) See *Howes* v. *Turner*, *ante*, p. 284.

(5) See section 77, *ante*, and General Rule 48, *post*, p. 376.

(6) But see *Crush* v. *Turner*, L. R. 3 Ex. D. 303, 47 L. J. Q. B. 639, 38 L. T. N. S. 95, 26 W. R. 673.

person was not duly elected, in the same manner as if he had presented a petition against the election of that person (1).

(11.) The trial of a petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition (2).

(12.) A copy of any certificate or report made to the High Court on the trial of a petition, and, in the case of a decision by the High Court on a special case, a statement of the decision shall be sent by the High Court to the Secretary of State.

(13.) A copy of any such certificate and a statement of any such decision shall also be certified by the High Court, under the hands of two or more judges thereof, to the town clerk of the borough.

Witnesses.

94.—(1.) Witnesses at the trial of an election petition shall be summoned and sworn in the same manner, as nearly as circumstances admit, as witnesses at a trial at *nisi prius*, and shall be liable to the same penalties for perjury.

(2.) On the trial the election court may, by order in writing (3), require any person who appears to the court to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3.) The court (4) may examine any person so required to attend or being in court although he is not called and examined by any party to the petition.

(4.) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent or either of them.

(5.) A witness on an election petition shall not be excused from answering any question relating to a corrupt practice or offence against this Part committed at or connected with the election on the ground that the answer thereto may criminate or tend to criminate him; but if he answers it he shall be entitled to receive from the court a certificate stating that he was on his examination required by the court to answer questions the answers whereto criminated or tended to criminate him, and that he answered all such questions.

(6.) If any information, indictment, or action is at any time thereafter pending against the witness in any court for any corrupt practice or offence against this Part committed at or in relation to the election before the time of his giving his evidence, that court shall, on production and proof of the certificate, stay the proceedings, and may, in its discretion, award to him such costs as he has been put to therein (5).

(7.) The giving of or refusal to give any such certificate by the election court shall be final and conclusive (6).

(8.) A statement made by any person in answer to a question put to him by or before an election court shall not, except in cases of indictment for perjury (7), be admissible in evidence in any proceeding, civil or criminal.

(9.) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions at the assizes, may be allowed to him by a certificate of the election court, or of the prescribed officer (8), and if

(1) See General Rule 8, *post*, p. 372.

(2) See section 97, *post*.

(3) For form, see General Rule 54, *post*, p. 377.

(4) For definition, see section 77, *ante*.

(5) See *R.* v. *Hulme*, L. R. 5 Q. B. 377, 39 L. J. Q. B. 149, 22 L. T. N. S. 673, 18 W. R. 830.

(6) See *R.* v. *Hall*, L. R. 7 Q. B. D. 575, 50 L. J. Q. B. 763, 45 L. T. N. S. 69, dissenting from *R.* v. *Price*, L. R. 6 Q. B. 411, 24 L. T. N. S. 387.

(7) That is, perjury committed before the election court, not perjury committed elsewhere: *R.* v. *Buttle*, L. R. 1 C. C. R. 248, 39 L. J. M. C. 115, 22 L. T. N. S. 728, 18 W. R. 956. The answers cannot be given in evidence upon an *ex officio* information by the Attorney-General for perjury: *R.* v. *Slator*, L. R. 8 Q. B. D. 267, 51 L. J. Q. B. 246, 30 W. R. 410, 46 J. P. 694.

(8) See section 77, *ante*, and General Rule 53, *post*, p. 377.

Secs. 94–97.

the witness was called and examined by the court, shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

Withdrawal of petition.

95.—(1.) A petitioner shall not withdraw an election petition (1) without the leave of the election court (1) or High Court on special application, made in the prescribed manner, and at the prescribed time and place (2).

(2.) The application shall not be made until the prescribed notice of the intention to make it has been given in the borough (3).

(3.) On the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner (4), and the court may, if it thinks fit, substitute him accordingly.

(4.) If the proposed withdrawal is in the opinion of the court (1) induced by any corrupt bargain or consideration, the court may by order direct that the security given on behalf of the original petitioner shall remain as security for any costs that may be incurred by the substituted petitioner, and that to the extent of the sum named in the security, the original petitioner and his sureties shall be liable to pay the costs of the substituted petitioner.

(5.) If the court does not so direct, then security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner before he proceeds with his petition and within the prescribed time after the order of substitution.

(6.) Subject as aforesaid, a substituted petitioner shall, as nearly as may be, stand in the same position and be subject to the same liabilities as the original petitioner.

(7.) If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent.

(8.) Where there are more petitioners than one, an application to withdraw a petition shall not be made except with the consent of all the petitioners.

Abatement of petition.

96.—(1.) An election petition (3) shall be abated by the death of a sole petitioner or of the survivor of several petitioners (5).

(2.) The abatement of a petition shall not affect the liability of the petitioner or of any other person to the payment of costs previously incurred.

(3.) On the abatement of a petition the prescribed notice thereof shall be given in the borough, and, within the prescribed time after the notice is given, any person who might have been a petitioner in respect of the election may apply to the election court or High Court in the prescribed manner and at the prescribed time and place to be substituted as a petitioner; and the Court may, if it thinks fit, substitute him accordingly.

(4.) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

Withdrawal and substitution of respondents.

97.—(1.) If before the trial of an election petition (1) a respondent other than a returning officer—

(*a.*) Dies (6), resigns, or otherwise ceases to hold the office to which the petition relates; or

(*b.*) Gives the prescribed notice that he does not intend to oppose the petition (7);

the prescribed notice thereof shall be given in the borough, and within the prescribed time (8) after the notice is given any person who might have been a petitioner in respect of the election may apply to the election court or High Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed three.

(2.) A respondent who has given the prescribed notice (7) that he does not

(1) For definition, see section 77, *ante*.
(2) See section 77, *ante*, and General Rules 58, 59, *post*, pp. 377, 378.
(3) See section 77, *ante*, and General Rules 60 and 46.
(4) See General Rule 61, *post*, p. 378.
(5) See General Rules 63 and 64, *post*, p. 378.
(6) See General Rule 64, *post*, p. 378.
(7) See section 77, *ante*, and General Rules 65, 66, *post*, p. 378.
(8) See section 77, *ante*, and General Rule 67, *post*.

ntend to oppose the petition shall not be allowed to appear or act as a party gainst the petition in any proceedings thereon [1].

Costs on election petitions.

98.—(1.) All costs, charges, and expenses of and incidental to the presentation f an election petition, and the proceedings consequent thereon, except such as are y this Act otherwise provided for, shall be defrayed by the parties to the petition n such manner and proportions as the election court determines [2]; and in articular any costs, charges, or expenses which in the opinion of the court have een caused by vexatious conduct, unfounded allegations, or unfounded objections n the part either of the petitioner or of the respondent, and any needless expense curred or caused on the part of petitioner or respondent, may be ordered to be frayed by the parties by whom it has been incurred or caused, whether they are not on the whole successful.

(2.) The costs may be taxed in the prescribed manner [3], but according to the me principles as costs between solicitor and client in an action in the High ourt, and may be recovered as the costs of such an action, or as otherwise escribed [4].

(3.) If a petitioner neglects or refuses for three months after demand to pay to y person summoned as a witness on his behalf, or to the respondent, any sum rtified to be due to him for his costs, charges, and expenses, and the neglect or fusal is, within one year after the demand, proved to the satisfaction of the gh Court, every person who has under this Act entered into a recognisance lating to the petition shall be held to have made default in the recognisance, and e prescribed officer shall thereon certify the recognisance to be forfeited, and it ll be dealt with as a forfeited recognisance relating to a parliamentary election tition.

Reception of and attendance on the election court.

99.—(1.) The town clerk shall provide proper accommodation for holding the ection courts [5]; and any expenses incurred by him for the purposes of this ction shall be paid out of the borough fund or borough rate [6].

2.) All chief and head constables, superintendents of police, head-boroughs, lers, constables, and bailiffs shall give their assistance to the election court the execution of its duties, and if any gaoler or officer of a prison makes ault in receiving or detaining a prisoner committed thereto in pursuance of s Part, he shall be liable to a fine not exceeding five pounds for every day ing which the default continues.

3.) The election court may employ officers and clerks as prescribed.

4.) A shorthand writer [7] shall attend at the trial of an election petition, and l be sworn by the election court faithfully and truly to take down the dence given at the trial. He shall take down the evidence at length. A transcript he notes of the evidence taken by him shall, if the election court so directs, mpany the certificate of the election court. His expenses, according to a scribed scale, shall be treated as part of the expenses incurred in receiving court.

Rules of procedure and jurisdiction.

00.—(1.) The judges for the time being on the rota for the trial of parliatary election petitions, may from time to time make, revoke, and alter general

As to all respondents giving notice of intention not to oppose petition, see General R 47, *post*, p. 376.

The decision of the election court is final and cannot be reviewed: *Lovering* v. *Dason*, L. R. 10 C. P. 726, 44 L. J. C. P. 321, 32 L. T. N. S. 823. See *R.* v. *Maidenhe ante*, p. 293.

seems the order must be made a rule of the Superior Court: *Pare* v. *Hartshorn*, 31 T. N. S. 486, 23 W. R. 138.

See section 77, *ante*, and General Rule 68, *post*, p. 379.

The Court will not interfere with the discretion of the master as to counsel's fees and refreshers, unless it be manifest that he has failed to exercise it in a reasonable mar er: *Hargreaves* v. *Scott*, L. R. 4 C. P. D. 21, 40 L. T. N. S. 25, 27 W. R. 323.

For definition, see section 77, *ante*.

See Fifth Schedule, Part II., 2, and section 140 (2), *post*.

See General Rule 52, *post*, p. 376.

Secs. 100, 101.

rules for the effectual execution of this Part, and of the intention and object thereof, and the regulation of the practice, procedure, and costs of municipal election petitions, and the trial thereof, and the certifying and reporting thereon (1).

(2.) All such rules shall be laid before both Houses of Parliament within three weeks after they are made, if Parliament is then sitting, and if not, within three weeks after the beginning of the then next session of Parliament, and shall, while in force, have effect as if enacted in this Act.

(3.) Subject to the provisions of this Act, and of the rules made under it, the principles, practice, and rules for the time being observed in the case of parliamentary election petitions, and in particular the principles and rules with regard to agency and evidence, and to a scrutiny, and to the declaring any person elected in the room of any other person declared to have been not duly elected, shall be observed, as far as may be, in the case of a municipal election petition.

(4.) The High Court shall, subject to this Act, have the same powers, jurisdiction, and authority with respect to a municipal election petition (2) and the proceedings thereon as if the petition were an ordinary action within its jurisdiction (3).

(5.) The duties to be performed by the prescribed officer under this Part shall be performed by the prescribed officer of the High Court.

(6.) The general rules in force at the commencement of this Act with respect to matters within this Part shall, until superseded by rules made under this section (4), and subject to any amendment thereof by rules so made, have effect, with the necessary modifications, as if made under this section.

Expenses of election court.

101.—(1.) The remuneration and allowances to be paid to a commissioner for his services in respect of the trial of an election petition (2), and to any officers, clerks, or shorthand writers employed under this Part, shall be fixed by a scale made and varied by the election judges on the rota for the trial of parliamentary election petitions, with the approval of the Treasury. The remuneration and allowances shall be paid in the first instance by the Treasury, and shall be repaid to the Treasury, on their certificate, out of the borough fund or borough rate (5).

(2.) But the election court may in its discretion order that such remuneration and allowances, or the expenses incurred by a town clerk for receiving the election court, shall be repaid wholly or in part, to the Treasury or the town clerk, as the case may be, in the cases, by the the persons, and in the manner following (namely) (6):

(*a.*) When in the opinion of the election court a petition is frivolous and vexatious, by the petitioner;

(1) See the General Rules, *post*, pp. 371—379.

(2) For definition, see section 77, *ante*.

(3) As to the power of the Superior Court under the corresponding provision in 35 & 36 Vict. c. 60, s. 25 (5), see *per* Lord Coleridge, C.J., in *Yates* v. *Leach*, L. R. 9 C. P. at p. 608, reported also 43 L. J. C. P. 377, 30 L. T. N. S. 790. See also *Maude* v. *Lowley*, *ante*, p. 291, and *Lovering* v. *Dawson*, *ante*, p. 297; and as to power of amendment, see *Clarke* v. *Wallond*, *ante*, p. 292.

(4) See these *post*, pp. 371—379.

(5) The act of making this certificate is not a judicial act, and, therefore, where the Treasury have cancelled a certificate, they have power to make a second certificate: *R.* v. *Maidenhead*, *ante*, p. 293.

The Treasury may obtain a peremptory *mandamus* compelling the treasurer of the borough to repay them the amount of the remuneration and allowances out of the borough fund or rate: *Ibid.*

A retrospective rate may be levied for the purpose: *Ibid.*

(6) The election court is a court of record, and its judgment or order must be in writing;—oral evidence of what was said in delivering judgment is inadmissible: *R.* v. *Maidenhead*, *ante*, p. 293.

(*b.*) When in the opinion of the election court a respondent has been personally guilty of corrupt practices at the election, by that respondent.

(3.) An order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs; but a deposit made or security given under this Part shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied (1).

Acts done pending a petition not invalidated.

102. Where a candidate who has been elected to a corporate office (2) is, by a certificate of an election court (2) or a decision of the High Court, declared not to have been duly elected, acts done by him in execution of the office, before the time when the certificate or decision is certified to the town clerk, shall not be invalidated by reason of that declaration (3).

Provisions as to elections in the room of persons unseated on petition.

103. Where on an election petition (2) the election of any person to a corporate office has been declared void, and no other person has been declared elected in his room, a new election shall be held to supply the vacancy in the same manner as on a casual vacancy (4); and for the purposes of the election any duties to be performed by a mayor, alderman, or other officer, shall, if he has been declared not elected, be performed by a deputy, or other person who might have acted for him if he had been incapacitated by illness (5).

Prohibition of disclosure of vote.

104. A person who has voted at a municipal election by ballot shall not in any proceeding to question the election be required to state for whom he has voted.

PART V.

Corporate Property and Liabilities.

Corporate Land.

Power to purchase land for town hall, &c.

105. A municipal corporation may contract for the purchase of and hold any land not exceeding in the whole five acres, either in or out of the borough, and thereon, or on any land belonging to or held in trust for the corporation, may build a town hall, council house, justices' room, with or without a police station and cells, a lock-ups, or a quarter and petty sessions-house, or an assize court-house, with or without judges' lodgings, or a polling station, or any other building necessary or proper for any purpose of the borough (6).

Power to borrow with approval of Treasury.

106. The council may, with the approval of the Treasury (7), borrow at interest on the security of any corporate land, or of any land proposed to be purchased by the council under this Act, or of the borough fund or borough rate, or of all or any of those securities, such sums as the council from time to time think requisite for the purchase of land, or for the building of any building which the council are by this Act authorised to build (8).

(1) See General Rules 16—23, *post.*

(2) For definition, see section 77, *ante.*

(3) Compare section 42 (1), *ante.*

(4) See sections 40 and 66, *ante.*

(5) See section 67, *ante.*

(6) As to power to borrow and application of Lands Clauses Acts, see the two next sections.

Further as to power to purchase lands, see the Public Health Act, 1875, s. 175, *ante.*

As to rating of corporate property, see *Mayor, &c. of Worcester* v. *Droitwich Union*, L. R. 1 Ex. D. 49, 46 L. J. M. C. 241, 36 L. T. N. S. 186, 25 W. R. 336; *Overseers of Chorlton* v. *Chorlton Union*, 51 L. J. Q. B. 458, 47 L. T. N. S. 96.

As to liability to income tax, see *Coomber* v. *Justices of Berks*, L. R. 10 Q. B. D. 267, 52 L. J. Q. B. 81, 47 L. T. N. S. 687, 31 W. R. 356.

(7) See section 236, and *Arnold* v. *Mayor of Gravesend*, 25 L. J. Ch. 776, 27 L. T. 282, 27 Jur. N. S. 706, 4 W. R. 763.

(8) See sections 120 and 112, *post.*

Secs. 107—110.

Power to acquire land with the approval of the Treasury.
8 & 9 Vict. c. 18.
23 & 24 Vict. c. 106.
32 & 33 Vict. c. 18.

107.—(1.) Where a municipal corporation has not power to purchase or acquire land, or to hold land in mortmain, the council may, with the approval of the Treasury, purchase or acquire any land in such manner and on such terms and conditions as the Treasury approve, and the same may be conveyed to and held by the corporation accordingly.

(2.) The provisions of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (1), relating to the purchase of land by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein by persons under disability, shall extend to all purchases of land under this section.

Restrictions on alienation of corporate land without approval of Treasury.

108.—(1.) The council shall not, unless authorised by Act of Parliament, sell, mortgage, or alienate any corporate land without the approval of the Treasury (2).

(2.) The council shall not, unless authorised by Act of Parliament, lease or agree to lease any corporate land without the approval of the Treasury, except as follows:

(*a.*) They may make a lease or agreement for a lease for a term not exceeding thirty-one years from the date of the lease or agreement, so that there be reserved and made payable during the whole of the term such clear yearly rent as to the council appears reasonable, without any fine.

(*b.*) They may make a lease or agreement for a lease for a term not exceeding seventy-five years from the date of the lease or agreement, and either at a reserved rent or on a fine, or both, as the council think fit,—

(i.) Of tenements or hereditaments, the greater part of the yearly value of which, at the date of the lease or agreement, consists of any building or buildings; or

(ii.) Of land proper for the erection of any houses or other buildings thereon, with or without gardens, yards, curtilages, or other appurtenances to be used therewith; or

(iii.) Where the lessee or intended lessee agrees to erect a building or buildings thereon of greater yearly value than the land—of land proper for gardens, yards, curtilages or other appurtenances to be used with any other house or other building erected or to be erected on any such land, belonging either to the corporation or to any other proprietor, or proper for any other purpose calculated to afford convenience or accommodation to the occupiers of any such house or building.

Power to dispose of land with approval of Treasury.

109. The council may, with the approval of the Treasury (3), dispose of any corporate land either by way of absolute sale, or by way of exchange, mortgage, charge, demise, lease, or otherwise, in such manner and on such terms and conditions as the Treasury approve (4).

Council may renew leases, &c.

110. In the following cases,—

(*a.*) Where a body corporate of a borough was on the fifth of June, one thousand eight hundred and thirty-five, bound or engaged by any covenant or agreement, expressed or implied, or was enjoined by any deed, will, or other document, or was sanctioned or warranted by ancient usage or by custom or practice, to make any renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, and years determinable after the lapse of any number of years, at a fine certain, or under any special or specific terms or conditions:

(*b.*) Where a body corporate of a borough theretofore ordinarily made renewal of any lease for years, or for life or lives, or for years determinable with any life or lives at any fixed or determinate or known or accustomed period, or after the lapse of any number of years, or on the dropping of any life or lives, on the payment of an arbitrary fine,—

Then, notwithstanding anything in this Act, the council of the borough may

(1) See these Acts, *post.*
(2) See the next section, and see section 236, *post.*
(3) See section 236, *post.*
(4) See section 115, *post.*

enew the lease for such term or number of years, either absolutely or determinable ith any life or lives, or for such life or lives, and at such rent, and on the pay- ent of such fine or premium, either certain or arbitrary, and with or without any venant for the future renewal thereof, as the council could or might have done this Act had not been passed (1).

Working Men's Dwellings.

Sites for working men's dwellings.

111.—(1.) If a municipal corporation determines to convert any corporate land to sites for working men's dwellings, and obtains the approval of the Treasury (2) r so doing, the corporation may, for that purpose, make grants or leases for terms nine hundred and ninety-nine years, or any shorter term, of any parts of the rporate land (3).

(2.) The corporation may make on the land any roads, drains, walls, fences, or her works requisite for converting the same into building land, at an expense t exceeding such sum as the Treasury approve (2).

(3.) The corporation may insert in any grant or lease of any part of the land this section referred to as the site) provisions binding the grantee or lessee to ild thereon as in the grant or lease prescribed, and to maintain and repair the ilding, and prohibiting the division of the site or building, and any addition to alteration of the character of the building, without the consent of the corpora- n, and for the re-vesting of the site in the corporation, or its re-entry thereon, breach of any provision in the grant or lease.

(4.) Every such provision shall be valid in law to all intents, and binding on parties (4).

(5.) All costs and expenses incurred or authorised by a corporation in carrying o execution or otherwise in pursuance of this section, shall be paid out of the rough fund and borough rate, or by money borrowed by the corporation under s Part.

(6.) In this section the term working men's dwellings means building suitable the habitation of persons employed in manual labour and their families; but use of part of a building for purposes of retail trade or other purposes, approved the council, shall not prevent the building from being deemed a dwelling.

Repayment of Loans.

Power for Treasury to impose conditions as to repayment of money borrowed.

112.—(1.) Where the Treasury approve a mortgage or charge under this Part y may, as a condition of their approval, require that the money borrowed on security of the mortgage or charge be repaid, with all interest thereon, int hirty rs, or any less period, and either by instalments or by means of a sinking fund, oth (5).

2.) In that case the sums required for providing for the repayment of the prin- l and interest of the money borrowed shall be by virtue of this Act a charge all or any of the following securities, namely, the land comprised in the mort- e (without prejudice to the security thereby created), or any other corporate l, or the borough fund, or the borough or other rates legally applicable to pay- t of the money borrowed or of the expenses which the money is borrowed to ay, as the Treasury direct.

Provisions as to sinking fund.

13.—(1.) Where money borrowed under this Part is directed to be repaid by ns of a sinking fund, the council shall, out of the rents and profits of the land

) See *A.-G* v. *Corporation of Great Yarmouth*, 21 Beav. 625; and see, further, the ng clause, section 128, *post*.

) See section 236, *post*.

) For forms of grants, leases, &c., see Forms L, M, N, O, in Eighth Schedule, III., *post*.

But as to relief against forfeiture, see the Conveyancing and Law of Property Act, , 44 & 45 Vict. c. 59, s. 14.

See, also, sections 126, 127, *post*.

Secs. 113—115.

on which, or out of the borough fund or rates on which the sums required for the sinking fund are charged under this Act, invest such sums, at such times, and in such government annuities, as the Treasury direct, and shall also from time to time invest in like manner all dividends of those annuities.

(2.) The annuities shall, in the books of the Bank of England, be placed to the account of the corporation, and in the matter of this Act or of any previous Act under which the investment is made.

(3.) The dividends of the annuities shall be received and invested by such persons as the council by power of attorney under the corporate seal from time to time appoint.

(4.) No transfer shall be made of the annuities, or of any part thereof, without the consent in writing of the Treasury addressed to the chief accountant of the Bank of England (1).

(5.) The direction in writing of the council by power of attorney under the corporate seal, with the consent in writing of the Treasury (1), shall be sufficient authority to the Bank for permitting any such transfer.

Purchase or Compensation Money.

Provision for replacing purchase or compensation money paid to treasurer.

114.—(1.) Where purchase money or compensation has been paid to the Bank of England under an Act of Parliament in respect of land or any interest therein purchased or taken from a municipal corporation, or in respect of permanent damage to land of a municipal corporation, and the Treasury approve of the payment of the money or compensation, or of any money to arise from the sale of any Government securities in which the same has been invested, to the corporation or the treasurer, the Treasury may, as a condition of their approval, require provision to be made for raising and for investing in Government annuities a sum equivalent to the amount of money so paid.

(2.) The foregoing provisions of this part applicable in the case of a sinking fund (2), as regards the mode of investing, payment of dividends, and transfer of annuities, shall be applicable in the case of investments under this section.

(3.) The Treasury shall, when it appears to them that an amount of annuities equivalent to the amount so paid has been raised by investment, direct that the accumulation shall cease; and the annuities and the dividends thereof shall thenceforth be applicable as if the annuities had arisen from investment under the Act of Parliament under which the purchase money or compensation became payable.

(4.) But this section shall not apply to money payable to a municipal corporation when provision for the application of the money, or of the price or compensation from which the money is derived, is contained in any local Act of Parliament relating thereto, and the money is to be paid to the corporation to be applied in conformity with that provision.

Investment of proceeds of sale or exchange authorised by Treasury.

115.—(1.) Where the Treasury approve of the sale or exchange of any corporate land or of any interest therein, their approval may be subject to such conditions as they think fit in relation to the investment for the benefit of the corporation of the money arising from the sale or exchange.

(2.) If the Treasury direct the money to be invested in Government annuities, the foregoing provisions of this part respecting the mode of investing, payment of dividends, and transfer of annuities shall be applicable, but not so as to make any accumulation necessary.

(3.) If the Treasury consent to the application of the money or of any part thereof for the benefit of the inhabitants of the borough, they may, as a condition of their consent, require the like provision to be made as they are authorised to require in the case of their approval of payment to a municipal corporation or the treasurer.

(1) Under 5 & 6 Will. IV. c. 76, s. 94, it was held that this consent was sufficiently signified by a letter signed by their secretary: *Arnold* v. *Mayor, &c., Gravesend, ante* p. 299.

(2) See the preceding section.

116. The Treasury may at any time approve of the application of any annuities arising from investments under either of the two last preceding sections, or of the money to arise from the sale thereof, or any part thereof respectively, for the benefit of the inhabitants of the borough; and, as a condition of their approval, may require the like provision to be made as they are authorised to require in the case of their approval of payment to a municipal corporation or the treasurer, and so from time to time, and the provisions of this part shall be applicable accordingly; but it shall not be imperative on the Treasury to impose the condition aforesaid where by reason of the application of the annuities or money to improvement of the property of the corporation or for the permanent benefit of the borough, or otherwise, under the special circumstances of the case, the Treasury in their discretion think fit to dispense with the condition.

Power for Treasury to authorise application of certain investments for benefit of borough.

Misappropriation.

117. If any person authorised to receive money to arise from the sale of any annuities or securities purchased or transferred under the foregoing provisions of this part, or under any Act repealed by this Act, or any dividends thereon, or any other such money as aforesaid, appropriates the same otherwise than as directed by this Act, or by the Treasury in pursuance thereof, he shall be guilty of a misdemeanour, and shall be subject in respect thereof to the provisions of the Larceny Act, 1861, applicable to a person guilty of a misdemeanour under section seventy-five of that Act, or to the provisions of any enactment for the time being substituted for that section (1).

Penalty for misappropriation of moneys.

24 & 25 Vict. c. 96, s. 75.

(1) The Larceny Act, 1861, section 75, provides that "whosoever having been entrusted either solely or jointly with any other person, as a banker, merchant, broker, or attorney, or other agent, with any money or security for the payment of money, with any direction in writing to apply, pay, or deliver such money or security or any part thereof respectively, or the proceeds or any part of the proceeds of such security, for any purpose or to any person specified in such direction, shall, in violation of good faith and contrary to the terms of such direction, in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such money, securities, or proceeds, or any part thereof respectively, and whosoever having been intrusted either solely or jointly with any other person, as a banker, merchant, broker, attorney, or other agent with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom or any part thereof, or of any foreign State, or in any stock or fund of any body corporate, company, or society, for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall in violation of good faith and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been entrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so entrusted, such chattel or security or the proceeds of the same or any part thereof, or the share or interest in the stock or fund to which such powers of attorney shall relate or any part thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding seven years and not less than three years—or to be imprisoned for any term not exceeding two years, with or without hard labour and with or without solitary confinement. But nothing in this section contained relating to agents shall affect any trustee in or under any instruments whatsoever or any mortgagee of any property real or personal in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney, or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security according to the tenour and effect thereof, in such manner as he might have done if this Act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession upon which he shall have any lien, claim or demand entitling him so to do,

Secs. 118, 119.

Corporate Stock.

Transfer of and other dealings with corporate stock.

118.—(1.) Any stocks, funds, or public securities (in this section referred to as stock) standing in the books of the Bank of England or of any other public company or society in the name of a municipal corporation, under any style or title of incorporation, and the dividends and interest thereof and all bonuses and accretions thereto, belonging to the municipal corporation, without being subject to any trust for charitable purposes, may be transferred by and paid to such persons as the council appoint by an instrument under the corporate seal, signed and sealed also by the clerk to the trustees of the municipal charities, who shall on request seal and sign it (1).

(2.) Any stock and money so standing belonging to the trustees of the municipal charities solely on charitable trusts (2) may be transferred by and paid to persons appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk, and being also sealed with the corporate seal, which seal the mayor shall on request cause to be affixed thereto.

(3.) The dividends and interest of any stock and money so standing, belonging partly to the municipal corporation but subject to charitable trusts, may be paid to persons authorised to have the same paid to them by an instrument in writing under the corporate seal, and appointed under the hands and seals of the greater part of the trustees, the appointment being attested under the hand and seal of their clerk.

(4.) In every case the receipt of the persons authorised to give a receipt to the company or society by an instrument under the corporate seal, and signed and sealed by the clerk to the trustees of the municipal charities, shall be an effectual discharge to the company or society.

(5.) So much of the money so paid as is held on charitable trusts shall be paid over to the trustees of the municipal charities, and so much as the municipal corporation is entitled to beneficially shall go to the borough fund.

(6.) But the company or society shall not be bound to see to the application of that money, or to the validity of the appointment of the clerk to the trustees of the municipal charities, or to the execution of any instrument by any of them, or to inquire whether or not the stock or money is charged with or held on any charitable trust.

(7.) Every person authorised to so receive any money shall account to the council and to the trustees of the municipal charities for all money received by him, and on his failure so to account a court of summary jurisdiction may, on complaint either of the council or of the trustees, by summary order require him to do so.

Borough Bridges.

Maintenance of borough bridges.

119.—(1.) Every bridge which is either wholly or in part in a borough and which the borough and not the county wherein the borough is situate is legally bound to maintain or repair shall, as to the whole of the bridge if it is wholly in the borough, or as to such part only as is in the borough, be maintained, altered, widened, repaired, improved, or rebuilt under the sole management and control of the council.

(2.) For that purpose the council shall have all the powers which the justices of a county have with respect to a county bridge (3), but the notices required in the case of a county bridge shall not be required in the case of a borough bridge.

(3.) All expenses incurred for the purposes of this section shall be paid out of the borough fund or borough rate, or out of money borrowed on the security thereof.

unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim, or demand."

(1) Compare section 310 of the Public Health Act, 1875, *ante.*

(2) See sections 133 *et seq., post.*

(3) As to county bridges, see *post.*

(4.) The council, with the consent of the Treasury (1), may from time to time borrow on that security such sums as they deem requisite for any of those purposes, and may mortgage the borough fund and borough rate for the purpose of securing the repayment, with interest, of any money so borrowed (2).

Loans for Municipal Buildings.

Power to borrow for buildings.

120. The council of a borough may borrow money from the Public Works Loan Commissioners for the purpose of building, enlarging, repairing, improving, and fitting up any building which they are by this Act authorised to build (3), and may levy a rate or an increase of the borough rate for the purpose of paying the principal and interest of the loan, and may mortgage the rate or borough rate to the Commissioners in accordance with the Public Works Loans Act, 1875, or any amendment thereof, in such manner and form as the Commissioners direct (4).

38 & 39 Vict. c. 89, s. 40.

Advowsons and similar Rights.

Obligations and powers in respect of advowsons, &c.

121.—(1.) Notwithstanding any sale by a municipal corporation of any advowson, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, whether the sale is made before or after the commencement of this Act, the corporation and its property shall continue liable to the same obligation (if any) of providing for and maintaining or contributing to the maintenance of any priest, curate, preacher, or minister, as if the sale had not been made; and that liability may be enforced by the same means, at the instance of the Crown or otherwise, as if this Act had not been passed, and the advowson or right had remained vested in the corporation.

(2.) Where a municipal corporation holds land subject to an obligation to provide a priest, curate, preacher, or minister, nothing in this Act shall preclude the corporation from augmenting or endowing his office, either by assigning to him and his successors in office a competent portion of the land, or by charging thereon an annual stipend, either in money or in kind, for his and their use and benefit, except that no such augmentation or endowment shall be valid without the approval of the Treasury.

(3.) Where a municipal corporation sells a right of nomination to an ecclesiastical preferment not being a benefice or perpetual curacy, that preferment shall, from and after the sale, be a benefice presentative, and the holder thereof and his successors shall be a body corporate, having perpetual succession and capable of taking and holding in perpetuity all property granted to or purchased for them by the Governors of the Bounty of Queen Anne, or by other persons contributing with those governors as benefactors.

Regulations as to sale of ecclesiastical patronage belonging to municipal corporation.

122.—(1.) Where at the passing of the Municipal Corporations Act, 1835, a body corporate, or any particular class, number, or description of members thereof, or the governing body thereof, were in their corporate capacity, and not as trustees of a charity, seised or possessed of any manor or land whereto any advowson, or right of nomination or presentation to any benefice or ecclesiastical preferment was appendant or appurtenant, or of any advowson in gross, or of any right of nomination or presentation to a benefice, ecclesiastical preferment, or office of priest, curate, preacher, or minister, the advowson or right, if not sold before the commencement of this Act, shall be sold at such time and in such manner as the Ecclesiastical Commissioners for England direct, so that the best price be obtained for the same.

(2.) Upon any such sale the council shall, with the consent in writing of those Commissioners, signed by any three or more of them, convey, under the corporate seal, the advowson or right to the purchaser, or as he directs, and the advowson or right shall vest accordingly.

(3.) The proceeds of sale shall be paid to the treasurer and invested in Govern-

(1) See section 236, *post.*
(2) For forms of mortgage, &c., see Eighth Schedule, Part IV. *post.*
(3) See section 105, *ante.*
(4) These Acts will be found *post.*

Secs. 122—124.

ment securities, and the income thereof shall go to the borough fund [1]; or those proceeds, or any part thereof, may be applied towards the liquidation of any debt contracted by the body corporate before the passing of the Municipal Corporations Act, 1835.

(4.) Any vacancy arising before the sale shall be supplied by the presentation or nomination of the bishop or ordinary of the diocese in which the benefice or preferment is situate [2].

Special Rates.

Power to continue rates for special purposes.

123. Where before the passing of the Municipal Corporations Act, 1835, a rate might be levied in a borough for the purpose of watching [3] conjointly with any other purpose, nothing in this Act shall prevent the levying and collecting of such a rate for that other purpose solely, or affect the powers given in any Act anterior to the Municipal Corporations Act, 1835, as far as they relate to that other purpose; but where the amount of that rate might not before the passing of the Municipal Corporations Act, 1835, exceed a given rate in the pound on the value of property rateable thereto, the rate to be levied for the other purpose solely shall not exceed such proportion of that given rate as appears to have been expended for that other purpose by an account of the average yearly expenditure during the last seven years before the passing of the Municipal Corporations Act, 1835, or during those of the same seven years during which the rate was levied.

Misapplication of Corporate Property.

Prohibition of expenditure of corporate funds on parliamentary elections.

124.—(1.) It shall not be lawful for a municipal corporation, or the council of a borough, or a corporate officer, or a trustee, or other person acting for a municipal corporation, to pay or apply any money, stocks, funds, securities, or personal property, of or held in trust for the corporation, in payment of any expenses occasioned by a parliamentary election or incurred by any person offering himself as a candidate at or before a parliamentary election.

(2.) Any bond, covenant, recognisance, or judgment given by a corporation, council, officer, trustee, or person as aforesaid, for securing payment of such expenses, shall be void.

(3.) Any payment, application, bond, covenant, recognisance, or judgment made or given by a corporation, council, officer, trustee, or person as aforesaid, for inducing any person to labour in a parliamentary election at a future time, or to pay or incur expenses as aforesaid at a future time, shall be deemed to be forbidden and declared void by this section, although colourably made or given for any other cause or consideration.

(4.) Any mortgage or other disposition of corporate land for securing or satisfying any expenses or engagements incurred or to be incurred as aforesaid, and any estate or charge thereby created, shall be void.

(5.) Any resolution, bye-law, or other proceeding of a council, purporting to direct or authorise any payment or thing forbidden by this section, or made or adopted for evading the provisions thereof, shall be void.

(6.) If any member of a municipal corporation authorises or directs any payment or application forbidden by this section, or assents to, or concurs or participates in, any affirmative vote or proceeding relating thereto, or signs or seals in his individual capacity, or affixes the corporate seal to, any instrument by this section declared void, he shall be guilty of a misdemeanour, and, on conviction thereof in the High Court, shall, in addition to such punishment as the Court awards, be for ever disabled to take, hold, or exercise any office in the same corporation.

(7.) If any corporate officer, trustee, or other person as aforesaid, makes, or concurs in making, any payment or application of money or property as aforesaid, he shall be deemed to have done so in his own wrong, and he shall be individually liable to repay and make good the amount or value thereof to the corporation, not-

(1) As to obtaining a charging order upon proceeds of sale standing to the credit of a corporation at Bank of England, see *A.-G.* v. *Thetford*, 2 L. T. N. S. 370, 8 W. R. 467.

(2) See *Hine* v. *Reynolds*, 2 M. & G. 71, 2 Sc. N. R. 394.

(3) See sections 197—200, *post*.

withstanding any release or pretended indemnity given to him in the name or on behalf of the corporation.

(8.) Any two or more burgesses may bring and prosecute any action in the name of the corporation against any officer, trustee, or person making any illegal payment or application as aforesaid, as if they, their executors and administrators, were jointly and severally appointed the irrevocable attorneys of the corporation for that purpose; but the plaintiffs shall, on the application of the defendant, give reasonable security, as the Court direct, for costs, as between solicitor and client.

(9.) Nothing in this section shall affect the provisions of the Ballot Act, 1872, or of any other Act for the time being in force regulating the payment by the returning officer or otherwise of expenses relating to parliamentary elections (1).

Transitory Provisions.

Transfer of investments made before 1860 in names of trustees.

125.—(1.) In the several cases following:

(*a.*) Where before the fifteenth of May, one thousand eight hundred and sixty, the Treasury, on approving of a mortgage of corporate land, had required a sinking fund in names of trustees;

(*b.*) Where before the same day the Treasury, on approving of the payment to a corporation or their treasurer of purchase money for or compensation in respect of corporate land, or of money arising from sale of Government securities in which the same had been invested, had required provision for raising by investments in names of trustees an amount equivalent to the amount so paid;

(*c.*) Where before the same day the Treasury, on approving of a sale or alienation of corporate land, had required the investment of the proceeds in names of trustees;

The Treasury, if they have not so done before the commencement of this Act, may require any securities in which any such investments had been made to be transferred into the name of the corporation in the matter of this Act, or may require any money applicable for the purposes of such sinking fund to be invested in the purchase of Government annuities in the name of the corporation and in the matter of this Act.

(2.) The order in writing of the Treasury for that purpose shall be a sufficient discharge to the trustees from all claims in respect of the transfer of the securities in pursuance of the order.

(3.) The Treasury may, in the cases aforesaid, give such directions as they might give in the analogous cases in this Part provided for (2), arising after the commencement of this Act, or as near thereto as circumstances require, and the provisions of this Part shall apply accordingly.

(4.) Where any such transfer as aforesaid has before the commencement of this Act been made into the name of the corporation in the matter of any Act repealed by this Act, this Act shall, if the Treasury so direct, be substituted in the title of the account for that Act.

Scheme respecting mortgage debts incurred before 1860.

126. Where in a borough any mortgage debt had been before the fifteenth of May, one thousand eight hundred and sixty, incurred (3), for discharge of which no adequate provision then existed, the council, if they have not so done before the commencement of this Act, may submit to the Treasury any scheme for the discharge thereof by instalments, or a sinking fund (4), or both, extending over any term of years, and if the Treasury approve of the scheme (5), the sums required for discharge of the debt as proposed therein shall by virtue of this Act become

(1) This sub-section (9) is new. As to the rest of the section the previous enactment was 2 & 3 Will. IV. c. 69, which is repealed as to boroughs within the present Act, see First Schedule, Part II., *post*.

(2) See sections 113, 114, 115, and 116, *ante*.

(3) The day on which the royal assent was given to 23 & 24 Vict. c. 16, ss. 6, 10 and 11 of which contained the previous enactment on the subject of this and the two following sections of the present Act.

(4) See sections 112 and 113, *ante*.

(5) See section 236, *post*.

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charged on all or any part of the corporate land, or the borough fund, or borough rate, or any other rate applicable to discharge of the debt, or on all or any of those securities, as the Treasury direct, and the provisions of this Part applicable for repayment of money borrowed on mortgage by a sinking fund, or instalments, or both, except the limitation to a period of thirty years (1), shall apply for discharge of the debt.

Consolidation of debts incurred before 1860.

127. Where in a borough debts had from time to time, before the fifteenth of May, one thousand eight hundred and sixty, been incurred under Acts of Parliament, with different periods assigned for discharge thereof, the council, if they have not so done before the commencement of this Act, may with the consent of the Treasury (2), and with the previous consent in writing of the persons or bodies corporate to whom the debts are owing, consolidate the debts into one, and provide for discharge of the consolidated debt by annual instalments, or a sinking fund, or both, extending over a period not exceeding thirty years, and make the instalments or payments a charge on the borough fund, or borough rate, or any other rate applicable to the discharge of the debts, or on all or any of those securities, as the Treasury direct.

Saving for sales, &c. in pursuance of past contracts and resolutions.

128. Nothing in this Act shall affect any power to sell, mortgage, alienate, or lease corporate lands in pursuance of an agreement made on or before the fifth day of June, one thousand eight hundred and thirty-five, or of a resolution entered in the books of a body corporate on or before that date (3).

Saving for rates in respect of past debts.

129. Nothing in this Act shall prevent the levying or collection of any rate for the purpose of paying any debt contracted before the commencement of this Act or any interest thereon.

Saving for rights of creditors in respect of tolls or dues.

130. It shall not be lawful for the council of a borough of which the body corporate had before the passing of the Municipal Corporations Act, 1835, contracted any lawful debt chargeable on any tolls or dues belonging or payable to that body corporate, or to any member or officer thereof in his corporate capacity, or towards the satisfaction whereof such tolls or dues, or any part thereof, were or was applicable before the passing of that Act, to alter or reduce the amount to be levied and payable of such tolls or dues, or to grant for any consideration any remission thereof or exemption therefrom or of or from any part thereof, except with the consent in writing, under the hands of a majority in number and amount, of the creditors to whom the debt is due, until after the debt and all arrears of interest due thereon have been fully paid and satisfied.

Saving for lawful debts contracted before 5 & 6 Will. IV. c. 76.

131.—(1.) Notwithstanding anything in this Act, the application of the borough fund to the several payments specified in the Fifth Schedule or otherwise authorised by this Act shall be subject to the payment of any lawful debt (4) due from the municipal corporation to any person which was contracted before the passing of the Municipal Corporations Act, 1835, and is unredeemed, or of so much thereof as the council from time to time are required or deem it expedient to redeem, and to the payment from time to time of the interest on so much thereof as remains unredeemed.

(2.) The council may from time to time execute under the corporate seal any deed or obligation in the name of the corporation for securing repayment and satisfaction of any such debt or obligation contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

(3.) Money borrowed by a council for the purpose of being applied, and applied, in or towards satisfaction and discharge of any such pre-existing debt or obligation, shall be deemed to be a debt contracted by or on behalf of the corporation before the passing of the Municipal Corporations Act, 1835.

Saving against new

132. Nothing in this Act shall make liable to the payment of any debt con-

(1) Section 112 (1), *ante*. (2) Section 236, *post*. (3) See section 110, *ante*.

(4) See *Holdsworth* v. *Mayor, &c., Dartmouth*, 11 A. & E. 490, 3 P. & D. 308; *Pallister* v. *Mayor, &c., of Gravesend*, 9 C. B. 774; *Arnold* v. *Mayor, &c., of Gravesend*, 2 K. & J. 574, 2 Jur. N. S. 703, 25 L. J. Ch. 776; *Payne* v. *Mayor, &c., of Brecon*, 3 H. & N. 572, 27 L. J. Ex. 495; *Nowell* v. *Mayor, &c., Worcester*, 9 Ex. 457; and *Kendall* v. *King*, 17 C. B. 483.

tracted by any body corporate of a borough before the passing of the Municipal Corporations Act, 1835, any part of the real or personal estate of that body corporate which before the passing of that Act was not liable thereto or authorise the levy of any rate within any part of any borough for the purpose of paying any debt contracted before the passing of that Act, which before the passing of that Act could not lawfully be levied therein towards payment of the same.

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liability to debts contracted before 5 & 6 Will. IV. c. 76.

PART VI.

Charitable and other Trusts and Powers.

Charitable Trusts.

133.—(1.) Where at the passing of the Municipal Corporations Act, 1835, the body corporate of a borough, or any one or more of the members thereof, in his or their corporate capacity, stood solely, or together with any person or persons elected solely by that body corporate, or solely by any particular number, class, or description of members thereof, seised or possessed, for any estate or interest, of land, in whole or in part in trust or for the benefit of any charitable uses or trusts, and the legal estate in that land was, at the passing of the Municipal Corporations Act, 1835, vested in the body corporate or person or persons so seised or possessed thereof, and was by the Charitable Trusts Act, 1853 (1), vested in the trustees appointed by the Lord Chancellor under the Municipal Corporations Act, 1835, or such of them as should be surviving and continuing trustees under that appointment, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances, and on such and the same trusts, as the same were subject to before such vesting, then, in every case, on the death, resignation, or removal of any trustee, and on any appointment of a new trustee, the legal estate in that land and in all other lands subject to any such charitable uses or trusts for the time being vested in the trustees or any of them, or in any persons or the heirs or devisees of any person deceased, resigned, or removed, shall vest in the persons who after such death, resignation, or removal, and such

Administration of charitable trusts and vesting of legal estate.

16 & 17 Vict. c. 137, s. 65.

(1) By the Charitable Trusts Act, 1853, 16 & 17 Vict. c. 137, s. 65, it is provided that the legal estate in all lands which at the time of the passing of the Act 5 & 6 Will. 4, c. 76, was vested in the body corporate of any borough which became subject to the provisions of the said Act, or in any one or more of the members of such body corporate, in his or their corporate capacity solely or together with any person or persons elected solely by such body corporate, or solely by any particular number, class, or description of members of such body corporate, in whole or in part in trust, or for the benefit of any charitable uses or trusts whatsoever, and which legal estate shall not have been since duly conveyed or assured to and vested in the trustees appointed by the Lord Chancellor under the provisions of the said Act or such of them as shall be surviving and continuing trustees or otherwise lawfully conveyed, aliened, or disposed of by such body corporate, or member or members thereof, shall from and immediately after the passing of this Act, and without any actual conveyance, assignment, or other assurance thereof, be vested in the trustees so appointed, or such of them as shall be surviving and continuing trustees under such appointment as aforesaid, according to the respective estates and interests therein, and subject to such and the same charges and incumbrances, and upon such and the same trusts as the same were respectively subject to previously to such vesting, and in every case upon the death, resignation, or removal of any of the trustees, and upon any appointment of any new trustee or trustees respectively, the legal estate in the same lands and in all other lands subject to any such charitable uses or trusts which may for the time being be vested in the trustees or any of them, or in any persons or the heirs or devisees of any person who may have died, resigned, or been removed, shall vest in the persons who after such death, resignation, or removal, and such appointment of such new trustee or trustees respectively shall continue or be the trustees for the time being without any conveyance or assurance whatsoever.

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appointment of a new trustee, continue or are the trustees for the time being, without any conveyance or assurance.

(2.) Nothing in this section shall take away, abridge, or prejudicially affect any power, authority, or jurisdiction of the Charity Commissioners for England and Wales (1).

Special Trusts and Powers.

Corporation to be trustee where corporators trustees.

134. The municipal corporation of a borough shall be trustees (2) for executing by the council the powers and provisions of all Acts of Parliament made before the passing of the Municipal Corporations Act, 1835 (other than Acts made for securing charitable uses and trusts), and of all trusts (other than charitable uses and trusts) of which the body corporate of the borough, or any of the members thereof in their corporate capacity, was or were sole trustees (2) before the first election of councillors in the borough under the Municipal Corporations Act, 1835 (3).

Appointment of members of council to be trustees in cases of joint trusts and other cases.

135.—(1.) In every borough in which the body corporate, or a particular or limited number, class, or description of members thereof, or of persons appointed by the body corporate, was or were before the passing of the Municipal Corporations Act, 1835, trustees (2) jointly with other trustees (2) for the execution of any Act of Parliament, or of any trust, or in which the body corporate, or any particular or limited number, class, or description of members or nominees thereof, by any statute, charter, bye-law, or custom, before the passing of the Municipal Corporations Act, 1835, was or were lawfully appointed to or exercised any powers, duties, or functions, not otherwise in the Municipal Corporations Act, 1835, or this Act, provided for, and the continuance of which is not inconsistent with the provisions of the Municipal Corporations Act, 1835, or this Act, the council, on the day prescribed in any Act of Parliament as aforesaid, or in the deed or will by which the trust is created, for a new election, nomination, or appointment of trustees, or on which a new election, nomination, or appointment has usually been made (and if there is no day prescribed or usually observed, then on or within ten days after the first of January in every year), shall appoint the like number of members of the council, or as near as may be to the like number of members of the council, as there were theretofore members or nominees of the body corporate of the borough who in right of their office were such trustees, or charged with the execution of such powers, duties, and functions, in room of the members or nominees of the body corporate ceasing to be trustees, or ceasing to exercise such powers, duties, and functions by virtue of the Municipal Corporations Act, 1835.

(2.) In every case of extraordinary vacancy among the trustees or persons so appointed, the council shall forthwith appoint one other member of the council in the room of the person by whom the vacancy has been made, to hold his trust or office for such time as that person would regularly have held it (4).

Local Acts.

Transfer of

136.—(1.) The trustees (2) appointed or acting by or under any local (5) Act of

(1) These powers, &c., are derived from 16 & 17 Vict. c. 137, 18 & 19 Vict. c. 124, 21 & 22 Vict. c. 94, 23 & 24 Vict. c. 136, 25 & 26 Vict. c. 112, 32 & 33 Vict. c. 110, 36 & 37 Vict. c. 87, 37 & 38 Vict. c. 87, 42 & 43 Vict. c. 66, and 45 & 46 Vict. c. 65.

(2) See the interpretation clause, *ante*, p. 270.

(3) See *R.* v. *Mayor, &c., of Poole*, 7 A. & E. 738, 3 N. & P. 125; and *Staniland* v. *Hopkins*, 9 M. & W. 178.

(4) It would seem from *Staniland* v. *Hopkins*, *supra* (decided under the corresponding sections of the previous enactment, *viz.*, 5 & 6 Will. IV. c. 76, ss. 72, 73), that the provisions of this section do not apply to any case provided for by section 134, *ante*.

(5) The introduction of this word precludes any question such as that raised in *Swinford* v. *Keble*, L. R. 1 Q. B. 549, 35 L. J. Q. B. 185, 13 L. T. N. S. 770, 14 W. R. 858.

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Parliament for the time being in force, for paving, lighting, supplying with water or gas, cleansing, watching, regulating, or improving, a borough, or any part thereof, or for providing or maintaining a cemetery or market in or for a borough, or any part thereof, whether in any such case their powers under the local Act do or do not extend beyond the borough, may, if they think fit, at a meeting called for this purpose, transfer to the municipal corporation of the borough, with the consent of the council, but not otherwise, all the rights, powers, estates, property, and liabilities for the time being vested in or imposed on the trustees under the local Act (1).

Powers of local authorities to municipal corporations.

(2.) The transfer shall be made in writing under the common seal of the trustees if they are a corporation, and if not, then by deed executed by the trustees, or by any two of them acting by their authority and on their behalf.

(3.) On the transfer being made, the municipal corporation shall become and be the trustees for executing by the council the powers and provisions of the local Act; and all the rights, powers, estates, and property vested in the transferring trustees shall vest in the corporation; and all the liabilities and obligations of the transferring trustees shall be transferred to and borne by the corporation, and the transferring trustees shall be discharged therefrom.

Power for council to extend local lighting Act.

137.—(1.) Where at the passing of the Municipal Corporations Act, 1835, there was a local Act of Parliament for lighting part of a borough then incorporated, the council may, if they think fit, make an order that any specified part of the borough not within the provisions of any such local Act shall, after a day fixed in the order, be within those provisions; and after that day the part so specified shall be within those provisions, as far as relates to lighting, or to any rate authorised to be levied for lighting.

(2.) But the part so specified shall be lighted in like manner as those parts of the borough which before the making of the order were within those provisions; and any rate raised for the purpose of defraying the expenses of lighting the part so specified shall not exceed the average expense in the pound of lighting the other parts of the borough (2).

Exercise of powers under local Acts.

138. Everything provided under any local Act of Parliament in force on the twentieth of August, one thousand eight hundred and thirty-six, to be done exclusively by a particular or limited number, class, or description of the members of any body corporate named in the schedules to the Municipal Corporations Act, 1835, the continuance of which was not inconsistent with the provisions of that Act, and everything provided in any such local Act to be done by the justices, or by some particular class or description, or members of such body corporate, being justices, at a Court of Quarter Sessions, which did not relate to the business of a court of criminal or civil judicature (3), if the same respectively has been lawfully continued to be done up to the commencement of this Act by the council, or a committee thereof, shall be continued thereafter to be done by the council at a quarterly meeting, or by any three of a committee of the council appointed at such a meeting.

PART VII.

Borough Fund: Borough Rate: County Rate.

Borough Fund.

Payments to borough fund.

139. The rents and profits of all corporate land, and the interest, dividends, and annual proceeds (4) of all money, dues, chattels, and valuable securities belonging

(1) See the Public Health Act, 1875, sections 10 and 303, *ante*, pp. 50 and 209.

(2) See the Public Health Act, 1875, sections 161 *et seq.*, *ante*, p. 132.

(3) In *Palmer* v. *Powell*, 6 M. & W. 627, 4 Jur. 825, it was held that the regulation of the fees of the Court of Requests, at Bristol, was a matter relating to the business of a court of civil judicature, and not within the province of the town council.

(4) See *Ex parte Corporation of Hythe*, 4 Y. & Coll. 55.

Secs. 139—143.

or payable to a municipal corporation, or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this Act (except where and as far as the application thereof is otherwise provided for) shall go to the borough fund (1).

Application of borough fund.

140.—(1.) The borough fund shall be applicable to and charged with the several payments specified in the Fifth Schedule.

(2.) The payments specified in Part I. of that schedule may be made without order of the council; those specified in Part II. may not be made without such order.

(3.) No other payment shall be made out of the borough fund, except—

(*a.*) Under the authority of an Act of Parliament; or

(*b.*) By order of the council; or

(*c.*) By order of the court of quarter sessions for the borough; or

(*d.*) By order of a justice in pursuance of this Act; or

(*e.*) In cases in which the court of quarter sessions for a county, or a justice acting in and for a county in the discharge of his judicial duty, might make an order for the payment of money on the treasurer of the county.

(4.) Saving, nevertheless, in relation to the application of the borough fund as authorised by this section, or otherwise by this Act, all rights, interests, and demands of all persons in or on the real or personal estate of the municipal corporation, by virtue of any legal proceeding, or of any mortgage, or otherwise (2).

Orders for payment of money.

141.—(1.) An order of the council for payment of money out of the borough fund shall be signed by three members of the council, and countersigned by the town clerk (3).

(2.) Any such order may be removed into the Queen's Bench Division of the High Court by writ of *certiorari* (4), and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court.

Payments to and by treasurer.

142.—(1.) All payments to and out of the borough fund shall be made to and by the treasurer.

(2.) All payments to the treasurer shall go to the borough fund.

Application of surplus of borough fund.

143.—(1.) If the borough fund is more than sufficient for the purposes to which it is applicable under this Act, or otherwise by law, the surplus thereof shall be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough (5).

(1) The borough fund was originally instituted by the corresponding section of the Act of 1835, 5 & 6 Will. IV. c. 76, s. 92.

As to jurisdiction of Court of Chancery in cases of misapplication of corporate property, see *Parr* v. *A.-G.*, 8 C. & F. 409, 6 Jur. 245; *A.-G.* v. *Corporation of Lichfield*, 11 Beav. 120, 17 L. J. Ch. 472; *A.-G.* v. *Corporation of Liverpool*, 1 Myl. & Cr. 171.

(2) This sub-section is in accordance with *Arnold* v. *Mayor, &c., of Gravesend, ante*, p. 308.

As to inability of corporation to borrow, except in accordance with express statutory powers, and as to illegality of payment of interest upon moneys borrowed without statutory authority, see *R.* v. *Reed*, L. R. 5 Q. B. D. 483, 49 L. J. Q. B. 600, 42 L. T. N. S. 835, 28 W. R. 787.

(3) As to power of burgess to make copy of or take extract from such order, see section 233, *post*.

(4) *Certiorari* is excluded except as regards order for payment of money.

The limit of six months, within which application for *certiorari* must be made under 13 Geo. II. c. 18, s. 5, does not apply; but the application must be made within a reasonable time under all the circumstances: *R.* v. *Mayor, &c., Sheffield*, L. R. 6 Q. B. 652, 40 L. J. Q. B. 247, 24 L. T. N. S. 659, 19 W. R. 1159.

As to the "discretion of the Court," see *R.* v. *Prest*, 16 Q. B. 33, 20 L. J. Q. B. 17, 15 Jur. 554.

As to appeal to Court of Appeal and House of Lords, see Judicature Act, 1873, section 19, and Appellate Jurisdiction Act, 1876, section 3.

As to jurisdiction of Chancery Division to restrain payment by injunction, see *A.-G.* v. *Mayor of Brecon*, L. R. 10 Ch. D. 204, 48 L. J. Ch. 153, 40 L. T. N. S. 52, 27 W. R. 332.

(5) As to expenditure of surplus in defence of corporate rights, see *A.-G.* v. *Mayor of*

Secs. 143, 144.

(2.) If the surplus arises from the rents and profits of the property of the municipal corporation, and not from a borough rate, and the borough is a sanitary district under the Public Health Act, 1875, then the municipal corporation, as the sanitary authority for the borough, may apply the surplus in payment of any expenses incurred by them as such sanitary authority, before or after the commencement of this Act, in improving the borough, or any part thereof, by drainage, enlargement of streets, or otherwise, under the Public Health Act, 1875, or any Act thereby repealed (1).

Borough Rate.

Power for council to make borough rate and assess contribution thereto.

144.—(1.) If the borough fund is insufficient (2) for the purposes to which it is applicable under this Act or otherwise by law, the council shall from time to time estimate, as correctly as may be, what amount, in addition to the borough fund, will be sufficient for those purposes.

(2.) In order to raise that amount, the council shall, subject to the provisions of this Act, from time to time order a rate, called a borough rate, to be made in the borough (3).

(3.) A borough rate may be made retrospectively, in order to raise money for the payment of charges and expenses incurred, or which have come in course of payment, at any time within six months before the making of the rate (4).

(4.) The council shall assess the contributions to the borough rate on the several parishes and parts of parishes in the borough in proportion to the total annual value of the hereditaments in each parish or part which are rateable to the poor, or in respect of which a contribution is made to the poor rate.

(5.) That value shall be estimated according to the valuation list (if any) in force for the time being, and if there is none, according to the last poor rate.

(6.) But if for any reason the council think that the valuation list or poor rate is not a fair criterion of value they may cause an independent valuation to be made.

(7.) For the purpose of assessing a borough rate, or for the purpose of an independent valuation, the council from time to time may cause any of the books of assessment of any rates or taxes, parliamentary or parochial, on any property, and the valuation by which the assessment is made, in the hands of the overseers, to be brought before them, and may take copies thereof or extracts therefrom, or may

Norwich, 2 Myl. & Cr. 406; *R.* v. *Tamworth*, 19 L. T. N. S. 433, 17 W. R. 231; in opposing a waterworks bill in Parliament, *A.-G.* v. *Mayor, &c., of Wigan*, 1 Kay 268, 5 D. M. & G. 52; in prosecuting for a riot and assault upon the mayor, while acting in revising burgess lists, *R.* v. *Lichfield*, 4 Q. B. 893, D. & M. 491; in resisting *mandamus* to compensate dismissed officer, *R.* v. *Lichfield*, 10 Q. B. 534, 16 L. J. Q. B. 333; in resisting *mandamus* to mayor to hold fresh revision courts, *Lewis* v. *Mayor, &c., of Rochester*, 9 C. B. N. S. 401, 30 L. J. C. P. 169, 3 L. T. N. S. 300, 9 W. R. 100, 7 Jur. N. S. 680. See further the Borough Funds Act, *post*, and *A.-G.* v. *Mayor of Brecon*, *ante*, p. 312. See also *R.* v. *Mayor, &c., of Liverpool*, 28 L. T. N. S. 500, 21 W. R. 674.

Expenditure of the borough fund has been held illegal in the following instances:—Purchase of a gold chain for the mayor, *A.-G.* v. *Mayor of Batley*, 26 L. T. N. S. 392; expenses incurred in resisting legal proceedings by way of *quo warranto* against a councillor, *R.* v. *Mayor, &c., of Bridgwater*, 10 A. & E. 281; see also *R.* v. *Mayor, &c., of Leeds*, 4 Q. B. 769, Dav. & M. 143; in resisting criminal information against alderman for misconduct, *R.* v. *Paramore*, 10 A. & E. 286; expenses of prosecution for libel on behalf of police inspector, *R.* v. *Mayor, &c., of Liverpool*, 41 L. J. Q. B. 175, 20 W. R. 389.

The "surplus" must be a surplus arising from rents, &c. (see section 139, *ante*), and not from rates, &c. (see section 144, *post*): *R.* v. *Mayor, &c., of Sheffield*, L. R. 6 Q. B. 652, 40 L. J. Q. B. 247, 24 L. T. N. S. 659, 19 W. R. 1159.

(1) See *ante*, pp. 52—137.

(2) See *R.* v. *Mayor of Poole*, 1 Q. B. 616, 1 G. & D. 728, 10 L. J. Q. B. 198.

(3) A rate may be valid, though not made in public: *Jones* v. *Johnson*, 7 Exch. 452, 21 L. J. M. C. 102, 16 Jur. 840 (Ex. Ch.).

(4) See *Jones* v. *Johnson*, *supra*.

Secs. 144—146.

direct any person to take copies of or extracts from such books being in his hands, without having the same brought before the council, or may call before them any overseer to give evidence respecting the same; and may cause copies of the total amount assessed in each parish in respect of any tax payable to the Crown, and the total amount of the valuation of the property on which that assessment was made in any past year, to be made out by the clerk to the commissioners of each district.

(8.) The overseers and such persons as they select, by warrant of the council, signed by the mayor and sealed with the corporate seal, may enter on, view, and examine any land chargeable to the borough rate, in order to ascertain the annual value at which it ought to be charged; but no such entry shall in any case be made unless fourteen days previous notice in writing, signed by the mayor and sealed with the corporate seal, of the intention to make the entry, has been given to the overseers and to the persons on whose land the entry is to be made.

(9.) If on any occasion the overseers of a parish (1) think that their parish is aggrieved by a borough rate, on account of the proportions assessed as the contributions of the respective parishes being unequal, or on account of some parish being without sufficient cause omitted, or on account of any other just cause of complaint, they may appeal to the recorder at the next quarter sessions for the borough, or if there is none, to the next quarter sessions for the county wherein the borough is situate, or whereto it is adjacent, against such part of the rate only as affects their parish (2).

(10.) The recorder or quarter sessions shall hear and finally determine the appeal, and either confirm such parts of the rate as are appealed against, or correct any inequalities, disproportions, or omissions proved to exist therein, as to him or them appears just.

(11.) The expenses of the appeal shall be paid by such parishes or persons and in such proportions as the recorder or court having cognizance of the appeal directs.

(12.) If any person having custody of any book for which the council call under this section, fails to produce it to the council, or to permit any copy thereof or extract therefrom to be made or taken, or to give such evidence as the council require, he shall, on summary conviction, be liable to a fine not exceeding ten pounds.

(13.) If any clerk to the commissioners of a district fails to make any copy, which he is required to make under this section, within a reasonable time after his receipt of the order to make it, he shall, on summary conviction, be liable to a fine not exceeding twenty pounds.

Collection of borough rate in undivided parish.

145.—(1.) Where a parish is wholly in a borough, the council may from time to time, if they think fit, order the overseers to pay the contribution of the parish to the borough rate out of the poor rate made or to be made for the parish.

(2.) The overseers shall pay the contribution to the council or as they order.

(3.) If the overseers fail to pay as ordered, the amount may be levied off the goods of them or any of them, by distress, by virtue of a warrant signed by the mayor and sealed with the corporate seal, or signed by two justices in and for the borough (3).

Collection of borough rate in divided parish.

146.—(1.) Where a parish is partly in and partly out of a borough, the overseers, on receipt of an order for payment of money for the contribution of the part in the borough towards a borough rate, which order the council may make as if the whole parish was in the borough, shall assess on and levy from the occupiers

(1) It seems that the right of appeal is confined to the overseers: *R.* v. *Bath*, 9 A. & E. 871, 1 P. & D. 622, 8 L. J. M. C. 96; *R.* v. *JJ. of Westmoreland*, 10 B. & C. 226.

(2) Notice of appeal is necessary: *R.* v. *Carmarthen*, 7 A. & E. 756, 3 N. & P. 19.

(3) See section 148, *post*.

It seems that, this being the only remedy given, a *mandamus* to the overseers will not be issued: *R.* v. *Hunslet*, 1 E. & E. 775, 28 L. J. M. C. 180, 7 W. R. 411.

As to levy where overseer is out of office before distress warrant is executed, see *Jones* v. *Johnson*, *ante*, p. 313.

of hereditaments rateable to the poor rate in that part of the parish the amount necessary for the contribution, either as a separate rate, for which the overseers shall have all the powers which belong to them for levying a poor rate, or with and as part of the poor rate to which occupiers in that part of the parish are liable in common with occupiers in the other part (1).

(2.) Any person rated under this section may appeal against the rate in like manner and with the like consequences, and subject to the like provisions and regulations, as in appeals against a poor rate (2).

(3.) The overseers shall pay the amount of the contribution to the council, or as they order, and in default thereof shall be subject to all provisions and penalties provided by law concerning non-payment of contribution to a borough rate (3).

(4.) Every overseer and collector shall account for the money collected and expended under this section to the auditor of the district comprising the parish in the like manner, and with the like incidents, consequences, liabilities, and power of appeal as in the case of the poor rate (4); and the Local Government Board shall have the like power to make orders to regulate the mode of accounting as they have in regard to other local rates.

(5.) If any balance is found in the hands of any such overseer or collector he shall apply it towards the next rate required under this section, or pay it to his successor in office.

(6.) In default of his so applying it while in office, or making payment to his successor within seven days after the balance is found, the auditor shall proceed to recover it.

(7.) The officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect the rate under this section, and shall receive thereout such remuneration for the additional duty as the overseers, with the consent of the vestry, determine.

(8.) The collector or other person appointed shall, for the purposes of this section, have all the powers of overseers.

(9.) The overseers, in estimating the amount of their assessment under this section, may include a sum for costs of assessment and collection, and a reasonable sum for rates excused or irrecoverable.

Rating of owners instead of occupiers for

147. Where the vestry of a parish has made or makes, before or after the commencement of this Act, under section four of the Poor Rate Assessment and Collection Act, 1869 (5), an order, as in that section provided, to the effect that

(1) As to undivided parish, see preceding section.

(2) See 17 Geo. II. c. 38, s. 4; 6 & 7 Will. IV. c. 96, ss. 6, 7; 12 & 13 Vict. c. 45, s. 1; 25 & 26 Vict. c. 103; and 27 & 28 Vict. c. 34. As to the meaning of "next sessions," where appeal is to be made to the "next sessions," see *R.* v. *JJ. of Surrey*, L. R. 6 Q. B. D. 100, 50 L. J. M. C. 10, 43 L. T. N. S. 500, 29 W. R. 261.

(3) See section 145 (3), *ante*.

(4) See 7 & 8 Vict. c. 101, ss. 32, 33, 35—36, *post;* 11 & 12 Vict. c. 91, ss. 4, 5, 8, *post;* and 12 & 13 Vict. c. 103, ss. 9—11, *post*.

(5) *I.e.*, 32 & 33 Vict. c. 41, s. 4, by which it is provided that "the vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section three of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments instead of the occupiers, on all rates made after the date of such order, and thereupon and so long as such order shall be in force the following enactments shall have effect:—

(1.) The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate.

(2.) If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term, not being less than one year, in respect of all such rateable hereditaments of which he is the owner, whether the same be occupied or not, the overseers shall rate such owner accordingly, and allow him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated.

(3.) The vestry may by resolution rescind any such order after a day to be fixed by

Secs. 147—152.

the owners, instead of the occupiers, of such rateable hereditaments, as therein mentioned, shall be rated to the poor rate in respect thereof, every such order, while in force after the commencement of this Act, shall be deemed to apply to and include rating to the borough rate, with the same incidents, conditions, powers, liabilities, and remedies as if the borough rate were a poor rate.

borough rate in certain cases.

32 & 33 Vict. c. 41.

148. Any warrant required for the levy or collection of a borough rate may be issued by the mayor, signed by him, and sealed with the corporate seal (1).

Warrants for levy of borough rate.

149. All sums levied in pursuance of the borough rate shall go to the borough fund; and, subject to the foregoing provisions of this Part, the same shall be applied to all purposes to which the borough fund is applicable under this Act (2), or otherwise by law; and, as regards a borough named in the schedules to the Municipal Corporations Act, 1835, to all purposes to which, before the passing of that Act, a borough rate was by law applicable in the borough, or a county rate was applicable in a county.

Borough rate to go to borough fund; and its application.

County Rate.

General exemption of quarter sessions boroughs from county rate.

150.—(1.) Where a borough has a separate court of quarter sessions, the justices of a county wherein the borough or any part thereof is situate shall not assess any hereditaments in the borough to any county rate; and, except as is expressly by this Act provided (3), every part of the borough shall be wholly free from contributing to any rate or assessment of any kind of and for that county (4).

(2.) But nothing in this section shall prevent the levy or collection of arrears of any county rate made before the grant of a separate court of quarter sessions.

Liability of quarter sessions borough for prosecution expenses of county.

151. The municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay such sums, if any, as are expended out of the county rate of the county in which the borough is situate, and are not otherwise paid or chargeable, in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of all offenders committed for trial from the borough to the assizes for the county (5).

Liability of certain quarter sessions boroughs to other county expenses.

152.—(1.) If the whole or any part of the area for the time being comprised in a borough (6) having a separate court of quarter sessions was, before the eleventh of July, one thousand eight hundred and thirty-two, chargeable with or liable to contribute to the county rate of the county in which it is situate, the municipal corporation shall, in addition to its liability to pay for the purposes mentioned in the last foregoing section, continue liable to contribute to the county rate for other purposes (in this Act referred to as general county purposes), as if this Act had not been passed (7).

them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect—provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included."

(1) See *Jones* v. *Johnson*, *ante*, p. 313. (2) See section 140, *ante*.

(3) See the next two sections.

(4) As to notice of grant of separate quarter sessions, see section 162 (4), *post*.

It seems that boroughs may still be liable to contribute to rates assessed on the *hundred* under 7 & 8 Geo. IV. c. 31, in respect of damage caused by riot: *Birley* v. *Salford*, 11 M. & W. 391, 12 L. J. M. C. 118.

(5) See the Prisons Act, 1877, 40 & 41 Vict. c. 21, ss. 4 and 57; and see *Prison Commissioners* v. *Corporation of Liverpool*, L. R. 5 Q. B. D. 332, 49 L. J. Q. B. 431, 42 L. T. 839 (C. A.), affirming judgment of Q. B. Division, 27 W. R. 799; *Mullins* v. *Treasurer of Surrey*, L. R. 7 App. Cas. 1, 51 L. J. Q. B. 145, 45 L. T. N. S. 625, 30 W. R. 157, and *R.* v. *Mews*, L. R. 6 Q. B. D. 47, 50 L. J. M. C. 4, 43 L. T. N. S. 403, 29 W. R. 66.

(6) This is in accordance with *R.* v. *Monck*, L. R. 2 Q. B. D. 544, 46 L. J. M. C. 251, 36 L. T. N. S. 720, affirming judgment of Q. B. Division, 24 W. R. 248. See the case.

(7) In *Guardians of Birmingham* v. *Bacchus or Beamont*, 2 E. & E. 181, 29 L. J. M. C. 56, 33 L. T. 318, 6 Jur. N. S. 218 (decided under 18 & 19 Vict. c. 105, s. 14, now repealed), it was held that where lunatics, whose settlement cannot be ascertained, are sent to

Secs. 152, 153.

38 & 39 Vict. c. 63.

(2.) General county purposes shall not include the costs arising out of coroners' inquests, or the expenses incurred under the Sale of Food and Drugs Act, 1875 (1), in respect of the county, or, in the case of a borough having its own inspector of weights and measures, the expenses relating to the inspection of weights and measures for the county, or payments to or in respect of special constables.

Mode of accounting by borough to county.

153.—(1.) The treasurer of each county shall, not more than twice in every year, send to the council of each borough situate in the county and having a separate court of quarter sessions an account showing separately—

(*a.*) The sums, if any, expended out of the county rate in respect of the costs arising out of the prosecution, maintenance, conveyance, transport, or punishment of offenders committed for trial from the borough to the assizes for the county (2); and

(*b.*) If the borough is liable to contribute to the county rate for general county purposes, all sums expended out of the county rate for general county purposes, and all sums received in aid or on account of the county rate, and the proportion chargeable on the borough of the sums so expended after deduction of the sums so received (3);

and shall make an order on the council for the payment of the sum appearing by this account to be due from the municipal corporation of the borough.

(2.) The council shall thereupon forthwith order the sum so appearing to be due, with all reasonable charges of making and sending the account, to be paid to the treasurer of the county out of the borough fund.

(3.) If the order is not complied with, two justices for the county may, on the complaint of the treasurer of the county, made within one month after the issue of the order, issue and send to the treasurer of the borough a warrant requiring him to pay to the treasurer of the county, besides the sum mentioned in the order, the additional sum mentioned in the warrant, the same being calculated in the proportion of one shilling to every ten on the sum mentioned in the order; and until payment thereof the treasurer of the county shall have, in respect of the warrant, all the powers for the recovery thereof which are given against a guardian or overseer for the recovery of county rates and surcharges (4).

(4.) If any difference arises concerning the account, it shall be decided by the arbitration of a barrister, named, on the application either of the treasurer of the county or of the treasurer of the borough, by the Secretary of State. The arbitrator may, if he thinks fit, adjourn the hearing from time to time, and may require all such information to be afforded by either party as he thinks fit. He shall by his award in writing determine the amount to be paid by the council to the treasurer of the county, and his award shall be final and conclusive. He shall also assess the costs of the arbitration and determine by whom and out of what fund they shall be paid.

an asylum from a borough having a separate court of quarter sessions, the borough is liable if it does not contribute to the county rate, but not liable if it does contribute.

As to charges in respect of disturnpiked and main roads, see 41 & 42 Vict. c. 77, s. 13, *post.*

(1) See this Act *post.*

(2) See section 151. (3) See section 152.

(4) By 15 & 16 Vict. c. 81, s. 28—

"If any overseer, petty constable, peace officer, or other person as aforesaid, refuse, make default, or neglect to pay to the treasurer of the county or place, within the time limited as aforesaid, the sum or sums of money specified in the said warrants, and if the clerk of the peace or treasurer of the county or place make complaint thereof, then any justice of the peace of such county or place may by warrant under his hand levy the same by distress and sale of the goods of the offender; and the justices assembled as aforesaid may pay to any clerk, constable, messenger, or other person who may have been employed in making such complaint, or in obtaining, drawing, or executing such warrant, such reasonable compensation out of the county stock as to the said justices may seem fit."

Secs. 154—157.

PART VIII.

Administration of Justice.

County Justices.

Jurisdiction of county justices in borough.

154.—(1.) Where a borough has not a separate court of quarter sessions, the justices of the county in which the borough is situate shall exercise the jurisdiction of justices in and for the borough as fully as they can or ought in and for the county (1).

(2.) No part of a borough having a separate court of quarter sessions shall be within the jurisdiction, exerciseable out of quarter sessions (2), of the justices of a county, where the borough was exempt therefrom before the passing of the Municipal Corporations Act, 1835.

Borough Justices.

Mayor and last mayor to be borough justices.

155.—(1.) The mayor shall, by virtue of his office, be a justice for the borough, and shall, unless disqualified to be mayor, continue to be such a justice during the year next after he ceases to be mayor (3).

(2.) The mayor shall have precedence over all other justices acting in and for the borough, and be entitled to take the chair at all meetings of justices held in the borough at which he is present by virtue of his office of mayor; except that he shall not by virtue of this section have precedence over the justices acting in and for the county in which the borough or any part thereof is situate, unless when acting in relation to the business of the borough, or over any stipendiary magistrate engaged in administering justice (4).

Separate commission of peace.

156. It shall be lawful for the Queen, on the petition of the council of a borough, to grant to the borough a separate commission of the peace (5).

Qualification of borough justice.

157.—(1.) It shall be lawful for the Queen, from time to time, to assign to any persons Her Majesty's commission to act as justices in and for each borough having a separate commission of the peace.

(2.) A justice for a borough shall not be capable of acting as such until he has taken the oaths required to be taken by justices, except the oath as to qualification by estate, and made before the mayor or two other members of the council a declaration as in the Eighth Schedule (6).

(1) See *Mayor of Reigate* v. *Hart*, L. R. 3 Q. B. 248, 37 L. J. M. C. 70, 16 W. R. 896. Also, *Wakefield Board* v. *W. Riding and Grimsby Ry.*, 6 B. & S. 794, 35 L. J. M. C. 69, 12 Jur. N. S. 936.

(2) The words "exerciseable out of quarter sessions" are inserted in accordance with the decision in *R.* v. *Deane*, 2 Q. B. 96, 1 G. & D. 292. See also *R.* v. *Cockburn or Recorder of Bristol*, 4 E. & B. 265, 24 L. J. M. C. 43. A "non-intromittant clause" is a clause exempting a smaller jurisdiction from being included in a larger: Wharton's Law Lexicon, *sub. verb.* See 3 Steph. Black., p. 38, note (*d*), 8th ed.; and *R.* v. *Bridgwater*, 10 A. & E. 711.

(3) As to the oath to be taken by justices, see section 157 (2), *post.*

In *Wilson* v. *Strugnell*, 7 Q. B. D. 548, 50 L. J. M. C. 145, 45 L. T. N. S. 218, 45 J. P. 831, it was held *per* Stephen, J., under the corresponding section, s. 57 of 5 & 6 Will. IV. c. 76, that the mayor in a borough, without a commission of the peace, might take the recognisance of a person charged with embezzlement for his appearance before the justices of the county at their next meeting.

Quære whether mayor and ex-mayor are constituted justices of the *quorum*: *R.* v. *Llangian*, 4 B. & S. 249, 32 L. J. M. C. 225, 8 L. T. N. S. 422, 11 W. R. 776.

(4) See further, section 15 (5), *ante.* But see the saving clause as to the vice-chancellors of the universities, section 257 (2), *post.*

(5) See sections 187 and 250 (5), *post.*

(6) By the Promissory Oaths Act, 1868, 31 & 32 Vict. c. 72, s. 6, justices of the peace for counties and boroughs are required to take the oath of allegiance and judicial oath.

(3.) He must, while acting as such, reside in or within seven miles (1) of the borough, or occupy a house, warehouse, or other property in the borough.

(4.) He need not be a burgess or have such qualification by estate as is required for a justice of a county.

Jurisdiction of borough justices.

158.—(1.) A justice for a borough shall, with respect to offences committed and matters arising within the borough, have the same jurisdiction and authority as a justice for a county has under any local or general Act with respect to offences committed and matters arising within the county; except that he shall not, by virtue of his being a justice for the borough, act as a justice at any court of gaol delivery or quarter sessions, or in making or levying any county or borough rate (2).

(2.) A justice shall not be disabled from acting in the execution of this Act by reason of his being liable to the borough rate (3).

Clerk to borough justices.

159.—(1.) The justices for a borough shall from time to time appoint a fit person to be their clerk, to be removable at their pleasure (4).

(2.) They shall not appoint or continue as their clerk an alderman or councillor of the borough, or the clerk of the peace of the borough, or of the county in which the borough is situate, or the partner of any such clerk of the peace.

(3.) The clerk to the justices shall not, by himself or his partner or otherwise, be directly or indirectly employed or interested in the prosecution of any offender committed for trial by those justices, or any of them, at any court of gaol delivery or quarter sessions.

(4.) If any person acts in contravention of the last foregoing provision of this section, he shall for every offence be liable to a fine not exceeding one hundred pounds, recoverable by action.

(5.) One moiety of any fine so recovered shall, with costs, be paid to the person bringing the action to recover it.

(6.) Nothing in this Act shall prevent the justices for a borough from re-appointing as their clerk any person being clerk of the peace of the borough or of the county in which the borough is situate, or partner of any such clerk of the peace, if the person re-appointed was, on the sixth of August, one thousand eight

Section 2 prescribes the form of the oath of allegiance, which is as follows:—

"I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors, according to law. So help me God."

Section 3 prescribes the form of the judicial oath, which is as follows:—

"I, , do swear that I will well and truly serve Her Majesty Queen Victoria in the office of . So help me God."

By section 11, "When an oath is required to be taken under this Act, every person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath may make a solemn affirmation in the form of the oath hereby appointed, substituting the words 'solemnly, sincerely, and truly declare and affirm' for the word 'swear,' and omitting the words 'So help me God.'"

By 34 & 35 Vict. c. 48, s. 2, it is enacted that "each such officer shall take the said oaths before such persons as Her Majesty may from time to time appoint; or, in England, before the Lord High Chancellor of Great Britain, or in the Court of Chancery, Queen's Bench, Common Pleas, or Exchequer, in open court, or in open court at the general or quarter sessions of the peace for the county, borough, or place in which the person taking the oaths acts as justice."

(1) See section 231, *post*.

(2) See *Re Bathwick Paving Act*, 18 L. J. Q. B. 301, S. C. *nom. R.* v. *Sutcliffe*, 13 Q. B. 833.

As to licensing, see section 246, *post*.

(3) See *R.* v. *Handsley*, L. R. 8 Q. B. D. 383, 30 W. R. 368. And see also the Public Health Act, 1875, section 258, and notes thereto, *ante*.

(4) Therefore, an information in the nature of *quo warranto* will not lie for his office: *R.* v. *Fox*, 8 E. & B. 939, 27 L. J. Q. B. 151, 30 L. T. 285, 6 W. R. 282.

The clerk must be paid by fees and not by salary: 40 & 41 Vict. c. 43, s. 2. As to payment thereof, see Fifth Schedule, Part I., r. 1, *post*.

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hundred and sixty-one, or has not ceased to be at the time of re-appointment, the clerk of those justices (1).

Justices' room.

160.—(1.) The council of a borough having a separate commission of the peace shall provide and furnish a suitable justices' room, with offices, for the business of the borough justices (2).

(2.) No room in a house licensed for the sale of intoxicating liquors may be used for this purpose.

Stipendiary Magistrate.

Appointment of stipendiary magistrate.

161.—(1.) If the council desire the appointment of a stipendiary magistrate for the borough, they may present a petition for the appointment to the Secretary of State, and thereupon it shall be lawful for the Queen to appoint to that office a barrister of seven years standing (3).

(2.) He shall hold office during Her Majesty's pleasure.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) There shall be paid to him such yearly salary, not exceeding, except with the consent of the council, that mentioned in the petition, as Her Majesty from time to time directs.

(5.) It shall be paid by four equal quarterly payments, and in the same proportion up to the time of his death or ceasing to act.

(6.) On a vacancy, a new appointment shall not be made until the council again make application as before the first appointment.

(7.) More than one stipendiary magistrate may be appointed for a borough.

Borough Quarter Sessions: Recorder: Clerk of the Peace.

Grant of separate court of quarter sessions.

162.—(1.) It shall be lawful for the Queen, on the petition to Her Majesty in Council of the council of a borough, to grant that a separate court of quarter sessions be holden in and for the borough.

(2.) The petition shall set forth the grounds of the application and the salary which the council are willing to pay to the recorder.

(3.) The grant may be made on and subject to such terms and conditions, if any, as to Her Majesty in Council seem fit.[4]

(4.) Within ten days after receipt of the grant the council shall send a copy thereof, sealed with the corporate seal, to the clerk of the peace of the county, or each county if more than one, in which the borough or any part thereof is situate.

The recorder.

163.—(1.) It shall be lawful for the Queen from time to time to appoint for a borough having a separate court of quarter sessions a barrister of five years' standing to be recorder of the borough.

(2.) He shall hold office during good behaviour.

(3.) He shall, by virtue of his office, be a justice for the borough.

(4.) He shall not act as recorder, or as a justice, until he has taken the oaths required to be taken by a borough justice (5), and made before the mayor or two other members of the council a declaration as in the Eighth Schedule.

(5.) He shall have precedence in all places within the borough next after the mayor.

(6.) He shall not, during his office, be eligible to serve in Parliament for the borough, or be an alderman, councillor, or stipendiary magistrate of the borough; but he may be appointed revising barrister for the borough, and shall be eligible to serve in Parliament except for the borough.

(7.) There shall be paid to him such yearly salary, not exceeding that stated in the petition on which the grant of a separate court of quarter sessions was made,

(1) See *Brown* v. *Evans*, 35 L. T. N. S. 877, 24 W. R. 937.

(2) As to purchase of land for justices' room, see section 105, *ante*.

(3) The Stipendiary Magistrates Act, 1863, 26 & 27 Vict. c. 97, does not apply to municipal corporations. See the definition of "city" or "place" in section 2.

(4) This proviso is new.

(5) See section 157 (2) and note thereto, *ante*.

as Her Majesty directs (1); but the same may at any time be increased by resolution of the Council, approved by the Secretary of State, without the resignation and re-appointment of the recorder being necessary.

(8.) A person may be appointed recorder of two or more boroughs conjointly.

164.—(1.) The council of a borough having a separate court of quarter sessions shall from time to time appoint a fit person to be the clerk of the peace for the borough.

The clerk of the peace.

(2.) The clerk of the peace shall hold office during good behaviour (2).

(3.) The clerk of the peace may from time to time, by writing signed by him, appoint a fit person to act as deputy for him, in case of his illness, incapacity, or absence.

(4.) The appointment of the deputy shall be signified in writing, signed by the clerk of the peace, to the council, and shall be recorded in their minutes.

(5.) Where a table of the fees to be taken by the clerk of the peace has been made by the council and confirmed by the Secretary of State, and is for the time being in force, the clerk of the peace, if paid by fees, may take the fees to which he appears by that table to be entitled (3).

(6.) The council may from time to time make a new table of the fees to be taken by the clerk of the peace, but shall submit every such table to the Secretary of State for confirmation, and he may confirm and allow the same, either as submitted, or with such alterations, additions, or abatements, as he thinks proper, and any such table shall be of no validity until it is so confirmed.

Recorder to hold court of quarter sessions.

165.—(1.) The recorder shall hold, once in every quarter of a year, or oftener, if and as he thinks fit, or the Secretary of State directs, a court of quarter sessions in and for the borough.

(2.) He shall sit as sole judge of the court.

(3.) The court shall be a court of record, and shall have cognizance of all crimes, offences, and matters cognizable by courts of quarter sessions for counties in England; and the recorder shall, notwithstanding his being sole judge, have power to do all things necessary for exercising that jurisdiction as fully as those courts (4).

(4.) But the recorder shall not, by virtue of his office, have power—

(*a.*) To allow, apportion, make, or levy any borough rate; or

(*b.*) Subject to the provisions of this Act respecting appeals from a rate (5), to do any Act in relation to the allowance, apportionment, making, or levying of any rate whatsoever; or

(*c.*) To grant any license or authority to any person to keep an inn, alehouse, or victualling house to sell exciseable liquors by retail (6); or

(*d.*) To exercise any power by this Act specially vested in the council.

(1) As to enforcing payment of salary, see *Addison* v. *Mayor of Preston*, 12 C. B. 108, 21 L. J. C. P. 146, 16 Jur. 643, and Fifth Schedule, Part I., r. 1, *post.*

(2) Under the previous enactment, 5 & 6 Will. IV. c. 76, s. 103, it was held that the recorder might remove the clerk of the peace for misconduct in his office by virtue of 1 W. & M. Sess. I. c. 21, s. 6: *R.* v. *Hayward*, 2 B. & S. 585, 31 L. J. M. C. 177, 6 L. T. N. S. 285, 10 W. R. 558. The power of removal for misconduct not in his office appears to be vested in two of the borough justices: Clerks of Peace Removal Act, 1864, 27 & 28 Vict. c. 65, ss. 2, 4.

(3) See *Corporation of Liverpool* v. *Wright*, Johns. 359, 28 L. J. Ch. 868, 5 Jur. N. S. 1156.

(4) The previous enactment was 5 & 6 Will. IV. c. 76, s. 105.

Notwithstanding 8 & 9 Will. III. c. 30, s. 6, the recorder has jurisdiction to hear appeals against orders of removal made by borough justices: *R.* v. *JJ. of Salop*, 2 Q. B. 85, 10 L. J. M. C. 138, 1 G. & D. 146, 5 J. P. 484.

The recorder can reserve a case for the Court of Crown Cases Reserved: *R.* v. *Masters*, 1 Den. C. C. R. 332. He may sit during the assizes: *Smith* v. *R.*, 13 Q. B. 738, 18 L. J. M. C. 207.

As to power for recorder to form a second court, see section 168, *post.*

(5) See section 144 (9), (10), (11), *ante.*

(6) Under the previous enactment (see note (4), *supra*) it was held that the recorder has no power to hear an appeal against the decision of borough justices to grant an alehouse license: *R.* v. *Deane*, *ante*, p. 318; *R.* v. *Cockburn* or *Recorder of Bristol*, *ib.*

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Power to appoint deputy recorder.

166.—(1.) The recorder may, in case of sickness or unavoidable absence, appoint, by writing signed by him, a barrister of five years standing to act as deputy recorder at the quarter sessions then next ensuing or then being held, and not longer or otherwise.

(2.) But the sessions shall not be illegal, nor shall the acts of a deputy recorder be invalid, by reason of the cause of the absence of the recorder not being unavoidable.

Powers of mayor in absence of recorder and deputy recorder.

167.—(1.) In the absence of the recorder and deputy recorder, the mayor shall, at the times for the holding of the court of quarter sessions, open the court, and adjourn the holding thereof, and respite all recognisances conditioned for appearing thereat, until such day as he then and there, and so from time to time, causes to be proclaimed.

(2.) But nothing in this section shall authorise the mayor to sit as a judge of the court for the trial of offenders, or, save as aforesaid, to do any other act in the character of a judge of the court.

Power for recorder to form a second court.

168.—(1.) If at any time it appears to the recorder that the quarter sessions are likely to last more than three days, including the day of assembling, he may in his discretion, but subject to the provisions of this section, order a second court to be formed, and appoint by writing signed by him a barrister of five years standing to preside therein, and try such felonies and misdemeanours as shall be referred to him therein.

(2.) The barrister so appointed shall be styled assistant recorder, and shall have and exercise the same powers, subject to the same regulations (save as regards the making of a declaration as in the Eighth Schedule) as the recorder; and the proceedings had by and before the assistant recorder shall be as effectual as if had by or before the recorder, and shall be enrolled and recorded accordingly.

(3.) But the assistant recorder shall not have any power or jurisdiction except while the recorder is sitting in quarter sessions; save that the assistant recorder may finish any case in which the prisoner has pleaded, and in the trial whereof the assistant recorder is actually engaged at the time when the recorder ceases to sit, and may sentence any prisoner tried before him, but not then sentenced (1).

(4.) If at any time during the sitting of the second court the recorder is of opinion that it is no longer required, he may direct the assistant recorder at a proper opportunity to adjourn it.

(5.) Where a second court is so formed, the clerk of the peace shall, on the request of the recorder, appoint an assistant, and the recorder shall appoint an additional crier for the second court.

(6.) The recorder shall not exercise the powers given by this section unless—

(*a.*) It has been before each quarter sessions certified to him in writing signed by the mayor or two aldermen or the town clerk that the council have resolved that it will be expedient that those powers be exercised; and

(*b.*) The name of the barrister to be appointed has at some previous time been approved by the Secretary of State as that of a fit person to be from time to time so appointed.

(7.) Where a resolution of the council is so certified, the resolution and certificate shall, if the resolution so provides, continue in force during twelve months from the date of the resolution, and during such continuance no fresh resolution or certificate shall be necessary.

(8.) An assistant recorder, assistant clerk of the peace, and additional crier shall have remuneration as appearing by the Fourth and Fifth Schedules.

(9.) The powers given to the recorder by this section may be exercised by the deputy recorder (2).

(10.) Appointments made and certificates given under this section shall not be subject to any stamp duty or other tax.

Liability of borough having quarter sessions for prosecutor's expenses.

169. A municipal corporation of a borough having a separate court of quarter sessions shall be liable to pay the costs and expenses attending the prosecution of any felony committed or supposed to have been committed in the borough, and of

(1) This clause is new.

(2) This clause is new. As to appointment of deputy recorder, see section 166, *supra*.

any other offence committed or supposed to have been committed in the borough the costs and expenses attending the prosecution whereof are by law payable as in the case of a felony (1). The amount of those costs and expenses shall be ascertained as directed by law, and the order of the Court for the payment thereof shall be directed to the treasurer of the borough (2).

Sheriff.

Appointment of sheriff in counties of cities and counties of towns.

170.—(1.) The council of every borough being a county of itself,[3] and of the city of Oxford, shall on the ninth of November in every year appoint a fit person to execute the office of sheriff (4).

(2.) The appointment shall be made at the quarterly meeting of the council immediately after the election of the mayor.

(3.) The sheriff shall hold office until the appointment of his successor.

(4.) He shall have the same duties and powers as the sheriff or the person filling the office of sheriff in the respective borough or city would have had if this Act had not been passed (5).

Coroner.

Appointment, fees, &c., of borough coroner in boroughs having separate quarter sessions.

171.—(1.) The council of a borough having a separate court of quarter sessions shall, within ten days next after receipt of the grant thereof by the council, and thenceforward from time to time, appoint a fit person, not an alderman or councillor of the borough, to be coroner of the borough; and thereafter no person other than the coroner so appointed shall take in the borough any inquisition belonging to the office of coroner (6).

(2.) The coroner shall hold office during good behaviour.

(3.) A vacancy in the office shall be filled up within ten days after it occurs.

(4.) The coroner shall have, by order of the recorder, remuneration as appearing in the Fourth and Fifth Schedules.

Power of borough coroner to appoint a deputy.

172.—(1.) In case of illness or unavoidable absence, the coroner shall appoint by writing signed by him a fit person, being a barrister or solicitor, and not an alderman or councillor of the borough, to act for him as deputy coroner during his illness or unavoidable absence, but not longer or otherwise (7).

(2.) The mayor or two justices for the borough shall on each occasion certify by writing, signed by him or them, the necessity for the appointment of a deputy coroner. This certificate shall state the cause of absence of the coroner, and shall be openly read to every inquest jury summoned by the deputy coroner.

Returns by borough coroners.

173. On or before the first of February in every year the coroner shall send to the Secretary of State a return in writing, in such form as the Secretary of State directs, of the particulars of each case in which the coroner or his deputy was

(1) See section 84 (1), *ante*.

(2) See *R.* v. *Treasurer of Oswestry*, 12 Q. B. 239.

(3) These are: Berwick, Bristol, Canterbury, Chester, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, York, Carmarthen, Haverfordwest, Kingston-upon-Hull, Newcastle-upon-Tyne, Nottingham, Poole, and Southampton. See 5 & 6 Will. IV. c. 76, s. 61, which was the previous enactment on this subject. As to Coventry, see now 5 & 6 Vict. c. 110, s. 1.

(4) A sheriff is not disqualified from being councillor. See section 12 (1), *ante*.

(5) As to execution of writs of the High Court of Justice, see *Grainger* v. *Taunton*, 3 Bing. N. C. 64.

Generally as to the law with regard to sheriffs, see Atkinson on Sheriffs, Watson on Office of Sheriff, and Churchill's Sheriff Law.

(6) Generally as to the office of coroner, see Jervis on Coroners, and see *Re Hull*, L. R. 9 Q. B. D. 689.

The office is not a corporate office. See the interpretation clause, *ante*, p. 270, and *R.* v. *Grimshaw*, 5 D. & L. 249.

(7) The acts of a deputy are not to be invalidated by defect in appointment. See section 237, *post*; and see *R.* v. *Perkin*, 7 Q. B. 165, as to duties of deputy.

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called upon to hold an inquest during the year ending on the then last thirty-first of December.

Acting of county coroner in borough.

174.—(1.) Where a borough has not a separate court of quarter sessions no person other than the coroner for the county or district in which the borough is situate shall take in the borough any inquisition belonging to the office of coroner (1).

(2.) That coroner shall, for every inquisition duly taken by him within the borough, be entitled to such rateable fees and salary as would be allowed and due to him, and to be allowed and paid in like manner, as for any other inquisition taken by him within the county or district.

Borough Civil Court (2).

Judge of borough civil court where there is a recorder.

175.—(1.) The recorder, if there is one, shall continue to be the judge of the borough civil court, except in the following cases, that is to say, where the court is regulated by a local Act of Parliament, or where a barrister of five years standing acted at the passing of the Municipal Corporations Act, 1835, as judge or assessor of the court.

(2.) The recorder, if judge, may, in case of his illness or unavoidable absence, appoint by writing signed by him a barrister of five years standing to act for him as deputy judge of the court at the court or courts then next to be holden, or then being holden, and not longer or otherwise (3).

(3.) The recorder on every occasion of his appointing a deputy judge shall forthwith send to the Secretary of State a statement of his reason for so doing.

(4.) A court shall not be illegal, nor shall the acts of the deputy judge be invalid, by reason of the absence of the recorder not being unavoidable.

(5.) The recorder, where judge and the deputy judge, shall have such remuneration as the council fix by bye-law.

(6.) Where the recorder is judge, the court may in his absence be holden for all purposes within the competency of the court, except the trial of issues of fact or of law, before any person, being a barrister of five years standing or a solicitor of five years practice, from time to time appointed for that purpose by the recorder by writing signed by him.

(7.) Where the recorder or his deputy is judge, all orders, affidavits, and matters, except the trial of issues in law or in fact, relating to the business of the court, if not regulated by a local Act, may be made, sworn, or done in or out of court in the absence of the recorder and his deputy by or before the registrar or such other person, being a barrister of five years standing, or a solicitor of five years practice, as the recorder appoints by writing signed by him.

Judge of borough civil court where there is no recorder.

176. Where there is a borough civil court, but no recorder, such officer of the borough as by the charter constituting the court, or by custom, is the judge of the court, shall continue to be and act as such judge; and the council, whether the court is regulated by a local Act or not, shall have power for that purpose to appoint the necessary officer (4).

Tenure of judge.

177. Every judge or assessor of a borough civil court, other than the mayor, shall hold his office during good behaviour.

Registrar and other officers and fees.

178.—(1.) Except where the town clerk acts as registrar, the council shall from time to time appoint a registrar of the borough civil court.

(2.) The council shall from time to time appoint other requisite officers and servants of the court.

(3.) The fees to be taken by the registrar and other officers of the court shall be

(1) As to county coroners, see 7 & 8 Vict. c. 92, and 23 & 24 Vict. c. 116; as to payment of their expenses, see 7 Will. IV. & 1 Vict. c. 68, ss. 1, 2, 3, and the first part of s. 4 (the remainder of the Act is repealed); as to appointment of deputy, see 6 & 7 Vict. c. 83.

(2) See the interpretation clause, *ante*, p. 270.

(3) As to power of judge of local court of record to appoint a deputy, see 35 & 36 Vict. c. 86, s. 7.

(4) See *Addison* v. *Mayor of Preston*, *ante*, p. 321.

from time to time fixed by the council, subject to the approval of the Secretary of State (1).

(4.) If and as far as the fees are not so fixed, they shall be those usually taken before the passing of the Municipal Corporations Act, 1835.

Solicitors.

179.—(1.) The registrar of a borough civil court, or any other officer of the court, shall not himself, or by any partner or clerk, practise as a solicitor or attorney, in the court; nor shall any partner or clerk of the registrar act as agent for any other solicitor or attorney in the court.

(2.) Unless so disqualified, every solicitor of the Supreme Court of Judicature may practise as solicitor in the court.

Time of holding court.

180.—(1.) Each borough civil court shall be holden for trial of issues of fact and of law four times at least in each year, and with no greater interval than four months between two successive courts.

(2.) Subject as aforesaid, where the recorder is judge, the court shall be holden at such times as the recorder thinks fit, or as the Secretary of State from time to time directs (2).

Procedure.

181. Every personal action brought in a borough civil court shall be commenced by writ of summons.

Power for judge to make rules of procedure.

182.—(1.) Subject to the provisions of this Act (3), the judge of a borough civil court may from time to time make rules for regulating the times of holding the court and the procedure, practice, and pleadings therein, and the fees of solicitors therein, and may by any rule revoke or alter any former rule.

(2.) But where there is a recorder and he is not the judge of the court, every rule made by the judge shall be subject to the approval of the recorder in writing signed by him; save that this provision shall not apply where the recorder acts as deputy of the judge.

(3.) In every case (whether the recorder is judge or not) rules made by the judge under this section shall be subject to the approval of three judges of the High Court.

Jurisdiction of court.

183.—(1.) Where by the Municipal Corporations Act, 1835, jurisdiction was conferred on a borough civil court whereof the recorder is judge, or wherein a barrister of five years standing acts as judge or assessor, to try personal actions wherein the sum sought to be recovered does not exceed twenty pounds, and actions of ejectment between landowner and tenant wherein the annual rent of the property whereof possession is sought to be recovered does not exceed twenty pounds, no fine having been reserved or made payable, then that court shall continue to have that jurisdiction.

(2.) Any action wherein the title to land of any tenure, or to any tithe, toll, market, fair, or other franchise is in question, shall not be tried in a borough civil court which before the passing of the Municipal Corporations Act, 1835, had not authority to try actions wherein such titles were in question. If it appears to such a Court that such a title is in question in an action the jurisdiction of the court in the matter of the action shall cease; and the court may, if it thinks fit, award costs against the party commencing the action.

Saving for borough civil courts and for 35 & 36 Vict. c. 86.

184.—(1.) Nothing in this Act shall take away or abridge in respect of local extent, amount, or otherwise, any power, jurisdiction, or authority of a borough civil court, or of a judge, or assessor, or registrar thereof, or of any deputy of a judge, or assessor, or registrar thereof, or affect the constitution or procedure thereof; and, subject to the express provisions of this Act, such power, jurisdiction, authority, constitution, and procedure, shall continue and be as if this Act had not been passed (4).

(2.) Nothing in this Act shall affect the Borough and Local Courts of Record Act, 1872.

(1) As to posting the table of fees, see section 234.

(2) In *R.* v. *Mayor of Wells*, 4 Dowl. P. C. 562, it was held that when a charter was granted to a corporation to hold a court for the trial of causes, the disuse of the court for 200 years, and the want of funds to hold it, were no answer to a rule for a *mandamus* commanding the corporation to hold it.

(3) See section 180 (1), *ante*.

(4) See further the saving clauses, sections 250 and 260, *post*.

Secs. 185—188.

Power to extend jurisdiction of borough civil court.

185. It shall be lawful for the Queen, by Order in Council, on the joint petition of the justices of a county in quarter sessions and of the council of a borough, to grant that the jurisdiction of the borough civil court shall extend over any district adjacent to the borough within the jurisdiction of those quarter sessions; and the same shall extend accordingly.

Borough Juries (1).

Provisions as to juries in boroughs.

186.—(1.) Every burgess of a borough having a separate court of quarter sessions or a borough civil court shall, unless by law exempt or disqualified, be qualified and liable to serve on grand juries in the borough, and on juries for the trial of issues joined in either of those courts.

(2.) The clerk of the peace shall give public notice of the time and place of holding the court of quarter sessions ten days at least before the holding thereof, and shall, seven days at least before the holding thereof, summon a sufficient number of persons, qualified and liable, to serve as grand jurors at the sessions.

(3.) The clerk of the peace and registrar of the borough civil court respectively shall also summon a sufficient number of (2) persons, qualified and liable to serve as jurors at every such sessions, and at the holding of every such civil court for the trial of causes, if there is any cause then to be tried.

(4.) The summons may be made by showing to the person to be summoned, or, if he is absent from his usual place of abode, by leaving with some person therein inhabiting a notice containing its substance, and signed by the clerk of the peace or registrar, as the case may be.

(5.) The clerk of the peace and registrar shall make out lists containing the surnames and other names, abodes, and descriptions of the persons summoned by them respectively.

(6.) No person shall be summoned under this section to serve as a juror more than once in any year, unless every person qualified and liable so to serve has been already summoned once in that year.

(7.) If any person, having been duly summoned under this section, fails to attend according to the summons, or, being thrice called, does not answer to his name, or after his appearance wilfully withdraws himself from the court, he shall (unless some reasonable excuse is proved by him to the satisfaction of the court) be liable to pay a fine of such amount as the court thinks fit (3).

(8.) If the person on whom any such fine is imposed refuses to pay it to the person authorised by the court to receive it, the court may then, or at the next sitting, by order of the court signed by the clerk of the peace or registrar, cause to be levied, by distress and sale of the goods of the person on whom the fine is imposed, the fine and the reasonable charges of the distress and sale.

33 & 34 Vict. c. 77.

(9.) Nothing in this Act shall affect the Juries Act, 1870 (1).

Exceptional Provisions.

Grants to boroughs not affected by subsequent grants to counties.

187. The grant to a borough of a separate commission of the peace, or of a separate court of quarter sessions, shall not be prejudicially affected by any subsequent grant to or for any county of a commission of the peace or other commission.

Trial of offences committed in

188.—(1.) Until Her Majesty is pleased to direct a commission of oyer and terminer and gaol delivery to be executed within any borough being a county of a city or county of a town (4), all bills of indictment for offences committed within

(1) As to juries generally, see the Juries Act, 1870, 33 & 34 Vict. c. 77, *post*, pp. . In addition to the persons exempt under that Act by 34 & 35 Vict. c. 103, s. 30, income tax commissioners, and by 41 & 42 Vict. c. 33, s. 30, dentists, if they so desire, are exempted.

(2) The words "sufficient number of" are new. In the previous enactment (5 & 6 Will. IV. c. 76, s. 121) the words were, "not less than thirty-six nor more than sixty persons."

(3) See section 139, *ante*.

(4) See note (3) to section 170, *ante*.

that borough shall be preferred, and all proceedings thereon shall be had, in the manner authorised by the Act of the thirty-eighth year of the reign of King George the Third, chapter fifty-two, "to regulate the trial of causes, indictments, and other proceedings which arise within the counties of certain cities and towns corporate within the kingdom" (1).

counties of cities and counties of towns.

(2.) For the purposes of that Act each borough named in the Sixth Schedule shall be considered as next adjoining the county named in conjunction therewith.

Jurisdiction in places separated from borough.

189. Where under any Act a place has ceased or ceases to be part of a borough or the liberties thereof, all matters by virtue of a local Act of Parliament or otherwise cognizable by a justice or by the quarter sessions having jurisdiction within that place shall be cognizable by the justices or the quarter sessions of the county, liberty, or jurisdiction within which the place is situate, in the same manner and subject to the same provisions as they were within the jurisdiction of the justices or the quarter sessions for that place.

(1) The Act provides as follows:—

Section 1. Whereas there at present exists in the counties of cities and of towns corporate within this kingdom an exclusive right that all causes and offences which arise within their particular limits should be tried by a jury of persons residing within the limits of the county of such city or towns corporate, which ancient privilege, intended for other and good purposes, has in many instances been found by experience not to conduce to the ends of justice; and whereas it will tend to the more effectual administration of justice in certain cases if actions, indictments, and other proceedings the causes of which arise within the counties of cities and towns corporate were tried in the next adjoining counties: In order, therefore, to remedy this mischief for the future, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, in every action, whether the same be transitory or local, which shall be prosecuted or depending in any of His Majesty's Courts of Record at Westminster, and in every indictment removed into His Majesty's Court of King's Bench by writ of *certiorari*, and in every information filed by His Majesty's Attorney or Solicitor-General or by the leave of the Court of King's Bench, and in all cases where any person or persons shall plead to or traverse any of the facts contained in the return to any writ of *mandamus*, if the venue in such action, indictment, or information be laid in the county of any city or town corporate within that part of Great Britain called England, or if such writ of *mandamus* be directed to any person or persons, body politic and corporate, that it shall and may be lawful for the Court in which such action, indictment, information, or proceeding shall be depending, at the prayer and instance of any prosecutor or plaintiff, or of any defendant, to direct the issue or issues joined in such action, indictment, information, or proceeding to be tried by a jury of the county next adjoining to the county of such city or town corporate, and to award proper writs of *venire* and *distringas* accordingly, if the said Court shall think it fit and proper so to do.

Section 2. And be it further enacted by the authority aforesaid, that it shall and may be lawful for any prosecutor to prefer his, her, or their bill or bills of indictment for any offence or offences committed or charged to be committed within the county of any city or town corporate sworn and charged to inquire for the King for the body of such adjoining county at any sessions of oyer and terminer or general gaol delivery, and that every such bill of indictment found to be a true bill by such jury shall be valid and effectual in law as if the same had been found to be a true bill by any jury sworn and charged to inquire for the King for the body of the county of such city or town corporate.

As to local venue in *actions*, see now Rules of Supreme Court, 1883, Order XXXVI., r. 1., *ante*, p. 190.

PART IX.

Police.

Watch Committee; Constables.

Council to appoint watch committee.

190.—(1.) The council shall from time to time appoint, for such time as they think fit, a sufficient number not exceeding one-third (1) of their own body, who, with the mayor, shall be the watch committee.

(2.) The watch committee may act by a majority of those present at a meeting thereof, but shall not act unless three are so present.

Appointment, duties, and powers of borough constables.

191.—(1.) The watch committee shall from time to time appoint a sufficient number of fit men to be borough constables (2).

(2.) A borough constable shall be sworn in before a justice having jurisdiction in the borough, and when so sworn shall, in the borough, in the county in which the borough or any part thereof is situate, and in every county being within seven miles from any part of the borough, and in all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities, as any constable has and is liable to for the time being in his constablewick, at common law or by statute, and shall obey all such lawful commands as he receives from any justice having jurisdiction in the borough or in any county in which the constable is called on to act (3).

(3.) The watch committee may from time to time frame such regulations as they deem expedient for preventing neglect or abuse, and for making the borough constables efficient in the discharge of their duties.

(4.) The watch committee, or any two justices having jurisdiction in the borough, may at any time suspend, and the watch committee may at any time dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same.

(5.) When a borough constable is so dismissed, or ceases to belong to the constabulary force of the borough, all powers vested in him as a constable by virtue of this Act shall immediately cease.

3 & 4 Vict. c. 88.

(6.) Nothing in this section shall interfere with the operation of an Act of the session of the third and fourth years of Her Majesty's reign "to amend the Act for the establishment of county and district constables" (4), and throughout that

(1) The words "not exceeding one-third" are new. As to the other committees, see section 22 (2), *ante;* and see *Cook* v. *Ward*, *ante*, p. 156.

(2) As to consolidation of borough and adjoining county police establishments, see 3 & 4 Vict. c. 88, s. 14, *post*, p. 90, and 19 & 20 Vict. c. 69, s. 5.

As to payment of borough police, see Fifth Schedule, Part II., r. 5, *post*.

(3) See also section 226, *post*, and *Maberley* v. *Titterton*, *post*, p. 341.

(4) By which it is enacted as follows:—

Section 14. "It shall be lawful for the justices of any county in which constables shall have been appointed under the said Act, and for the council of any incorporated borough situated in or adjoining to such county, to agree together for the consolidation of the county and borough police establishments; and in every such case all the constables appointed either for the county or the borough shall have all the powers, privileges, and duties throughout the county and the borough which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables as well as to the county constables, except as is herein otherwise provided; and every such agreement which shall have been agreed to by the justices of the county in general or quarter sessions assembled on the one hand, and by the mayor, aldermen, and burgesses of the borough, by their council, on the other hand, shall be binding on both parties as soon as a memorandum of such agreement, under the hands of two or more justices of the county and countersigned by the clerk of the peace, shall be delivered to the council of the borough, and a counterpart thereof, under the common

Act a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

Secs. 193—195.

192. The watch committee shall, on the first of January, the first of April, the first of July, and the first of October in every year, send to the Secretary of State a copy of all rules from time to time made by the watch committee or the council for the regulation and guidance of the borough constables.

Quarterly returns as to borough constables.

193. A borough constable may, while on duty, apprehend any idle and disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony, and deliver him into the custody of the borough constable in attendance at the nearest watch-house, in order that he may either be secured until he can be brought before a justice, or, where the constable in attendance is empowered and thinks fit to take bail, give bail for his appearance before a justice (1).

Power for constables to apprehend disorderly persons, &c.

194. If a borough constable is guilty of neglect of duty, or of disobedience to a lawful order, he shall for every such offence be liable on summary conviction to imprisonment for any time not exceeding ten days, or, in the discretion of the court, to a fine not exceeding forty shillings, or to be dismissed from his office (2).

Penalties on constables for neglect of duty.

195.—(1.) If any person assaults or resists a borough constable in the execution of his duty, or aids or incites any person so to assault or resist, he shall for every such offence be liable on summary conviction to a fine not exceeding five pounds (3).

Penalty for assaults on constables.

seal of the borough, shall be delivered to the justices; and when any such agreement shall have been made between any county and any borough, either party shall be empowered to put an end thereunto without the consent of the other party after six months notice in writing shall have been given to the other party; such notice, if given by the county, to be under the hands of two or more justices, and countersigned by the clerk of the peace, or if given by the borough, to be under the common seal of the borough: provided always, that no such notice shall be given by the justices or by the borough unless in either case such notice shall be agreed upon by a majority of three-fourths of the justices attending at any general or quarter sessions, or three-fourths of the council of the borough."

Section 15. "In all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables, he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough without the consent of the chief constable; and so much of the said Act for regulating corporations as empowers the said committee, or any two justices of the peace having jurisdiction within the borough, to dismiss any constable, shall be suspended, as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force."

(1) As to taking bail, see section 227, *post.*

(2) See section 191 (4), *ante.*

(3) By the Borough Constables Act, 1883, 46 & 47 Vict. c. 44, it is provided that "nothing in section 195 of the Municipal Corporations Act, 1882, shall be taken to have repealed section 20 of the Town Police Clauses Act, 1847, or section 12 of the Prevention of Crimes Act, 1871."

The Towns Police Clauses Act, 10 & 11 Vict. c. 89, will be found *post.*

Section 12 of the Prevention of Crimes Act, 1871, 34 & 35 Vict. c. 112, is as follows:—

"Where any person is convicted of an assault on any constable when in the execution of his duty, such person shall be guilty of an offence against this Act, and shall, in the discretion of the court, be liable either to pay a penalty not exceeding twenty pounds, and

Secs. 195—197.

(2.) But nothing in this section shall prevent any prosecution by way of indictment (1) against any such offender, except that he shall not be prosecuted both by indictment and in a summary manner for the same offence.

Special Constables.

Appointment of special constables. 1 & 2 Will. IV. c. 41.

196.—(1). Two or more of the justices having jurisdiction in a borough shall, in October in every year, appoint, by precept signed by them, so many as they think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough.

(2.) Every such special constable shall make a declaration to the effect of the oath (2) set forth in the Act of the session of the first and second years of the reign of King William the Fourth, chapter forty-one, "for amending the laws relative to the appointment of special constables, and for the better preservation of the peace," and shall have the powers and immunities, and be liable to the duties and penalties, enacted by that Act.

(3.) He shall act when so required by the warrant of a justice having jurisdiction in the borough, but not otherwise.

(4.) The warrant shall recite that in the opinion of the justice the ordinary police force of the borough is insufficient at the date of the warrant to maintain the peace of the borough.

(5.) Nothing in this section shall make any person having a right to vote at a parliamentary election liable or compellable to serve as a special constable at or during the election.

(6.) Special constables shall be entitled to remuneration as appearing by the Fourth and Fifth Schedules.

Watch Rate.

Levy of watch rate.

197.—(1.) Where at the commencement of this Act any rate might be levied in a borough, or in any part of a borough, for the purpose of watching solely by day or by night, or for the purpose of watching by day or by night conjointly with any other purpose, the council may from time to time make and levy a watch rate on the occupiers of all hereditaments within such parts of the borough as are watched by day and by night, and as are from time to time, by order of the council, declared liable to watch rate.

(2.) The watch rate shall be made on an estimate of the net annual value of the several hereditaments rated thereto, that is to say, of the rent at which, one year with another, they might in their actual state be reasonably expected to let from year to year, the probable annual average cost of the repairs, insurances, and other expenses necessary to maintain them in their actual state, and all rates, taxes, and public charges, except tithes or tithe commutation rentcharge (if any), being paid by the tenant (3).

in default of payment to be imprisoned, with or without hard labour, for a term not exceeding six months, or to be imprisoned for any term not exceeding six, or in case such person has been convicted of a similar assault within two years, nine months, with or without hard labour."

(1) As to indictment for assault on constable, see 24 & 25 Vict. c. 100, s. 38.

(2) The oath was as follows:—

"I, A. B., do swear that I will well and truly serve our Sovereign Lord the King in the office of special constable for the parish [or township] of , without favour or affection, malice or ill-will; and that I will to the best of my power cause the peace to be kept and preserved, and prevent all offences against the persons and properties of His Majesty's subjects; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law. So help me God."

(3) Compare the definition of net annual value in the Public Health Act, 1875, *ante*, p. 45.

(3.) The watch rate may be made by one rate made yearly, or by two or more rates made half-yearly or otherwise, and may be of any amount, in the discretion of the council, not exceeding in any year eightpence in the pound on the net annual value of the hereditaments rated thereto.

(4.) For the purposes of the watch rate the council and all persons concerned, including overseers, shall have all powers given to them in respect of the borough rate for ordering, making, assessing, levying, raising, collecting, or paying the same, or as near thereto as the nature of the case admits.

(5.) The provision of this Act relating to orders of vestries for the rating, in some cases, of owners, instead of occupiers, shall extend to the watch rate.

(6.) Nothing in the foregoing provisions of this section (except the general power to levy a watch rate) shall apply to any borough in which the borough fund is sufficient with the aid of the amount only of watch rate which could for the time being be raised therein under the Municipal Corporations Act, 1835, and without the aid of any borough rate, to defray the expenses of the constabulary force of the borough, with all other expenses legally payable out of the borough fund; but nothing in the present provision shall affect any benefit or right reserved by Part X.,[1] or make the borough fund liable to any expenses with which it would not be otherwise chargeable.

(7.) Nothing in this section shall affect the liability of the borough fund to make good any deficiency of the watch rate towards the expenses of the police.

(8.) Nothing in this section shall make liable to watch rate any hereditaments exempted by any local Act from payment of watch rate ([2]).

(9.) Nothing in this section shall alter the comparative liability to watch rate of any hereditaments which are under any local Act in respect of any watch rate entitled to any deduction from, or chargeable with any increase on, an equal pound rate; but the like comparative deductions and increased charges shall be made under this section.

Watch rate in divided parish.

198.—(1.) Where part only of a parish is liable to watch rate, the overseers shall not pay out of the poor rate the amount of the watch rate charged by the council on that parish, but shall make a separate rate or assessment on the part or parts only of the parish liable to watch rate; which rate shall be made in like manner and under like regulations and with like means and remedies for recovery thereof as in the case of a rate levied in respect of the contribution towards a borough rate ([3]).

(2.) No such separate rate shall be demanded, collected, or payable until it has been allowed by two justices usually acting in and for the borough and has been published, as a poor rate is by law required to be allowed and published ([4]).

(3.) Any person who thinks himself aggrieved by such a separate rate may appeal to the recorder at the next quarter sessions for the borough, or if there is none to the next court of quarter sessions for the county wherein the borough is situate, or whereto it is adjacent; and the recorder or court shall hear and determine the same, and shall award relief in the premises as in cases of appeal against a poor rate.

(4.) Every such separate rate may be of the rate in the pound necessary for raising the sum charged by the council, but not exceeding twopence in the pound beyond the rate in the pound at which the council have computed the watch rate charged by them.

(5.) The overseers shall account for money collected under such a separate rate as for money collected under a poor rate; and if there is a surplus in their hands,

([1]) Sections 201—209, *post.*

([2]) See *Hallett* v. *Churchwardens of Brighton*, 7 E. & B. 342, 26 L. J. M. C. 61, S. C. *nom. R.* v. *Hallett*, 28 L. T. 248, 5 W. R. 198, 21 Jur. 237; but see also *Great Western Ry.* v. *Town Council of Maidenhead*, 11 C. B. N. S. 653, 31 L. J. M. C. 113.

([3]) See section 146, *ante.*

([4]) As to allowance of poor rate by justices of the peace, see 43 Eliz. c. 2; as to publication, see 17 Geo. II. c. 3, and 7 Will. IV. & 1 Vict. c. 45, s. 2; and see *R.* v. *Dyott*, L. R. 9 Q. B. D. 47, 51 L. J. M. C. 104, 30 W. R. 799.

Secs. 198—201.

they shall pay it to the treasurer, to go to the borough fund, to the credit of the place for which the rate was made, and in part payment of the next watch rate laid on that place by the council.

(6.) The council or a committee appointed for this purpose, on application on behalf of any person rated to such a separate rate to be discharged therefrom, and on proof of his inability through poverty to pay the amount charged on him, may order that he be excused from the payment thereof, and may strike out his name therefrom (1), and the sum at which he was rated shall not thereafter be collected, nor shall any person be charged with it or be liable to account for it or for omitting to collect or receive it.

(7.) The overseers making any such separate rate may, by warrant from two justices usually acting in and for the borough, levy on every person refusing to pay the rate the amount charged on him, with the costs and charges of recovering and enforcing payment thereof, to be ascertained by the justices, by distress and sale of the offender's goods, rendering to him the overplus; and in default of such distress two justices may commit him to prison, there to remain without bail until payment of the amount and arrearages.

Warrant for levy of watch rate.

199. Any warrant required for the levy or collection of a watch rate or separate rate may be issued by the mayor, signed by him, and sealed with the corporate seal.

Watch rate to go to borough fund.

200. All money raised by a watch rate, or by a separate rate as last aforesaid, shall go to the borough fund.

PART X.

Freemen.

Definition of freeman.

201. In this Part the term freeman includes any person of the class whose rights and interests were reserved by the Municipal Corporations Act, 1835, under the name either of freemen or of burgesses (2).

Freedom not by gift or purchase.

202. No person shall be admitted a freeman by gift or by purchase.

(1) As to the power of urban authorities to reduce or remit rates, see Public Health Act, 1875, section 225, *ante*, p. 168.

(2) By section 2 of the Municipal Corporations Act, 1835, it was enacted that "Every person who now is or hereafter may be an inhabitant of any borough, and also every person who has been admitted, or who might hereafter have been admitted, a freeman or burgess of any borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and enjoy and be entitled to acquire and enjoy the same share and benefit of the lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels, securities for money or other personal estate of which any person or any body corporate may be seised or possessed in whole or in part for any charitable uses or trusts as fully and effectually and for such time and in such manner as he or she by any statute, charter, bye-law, or custom in force at the time of passing this Act might or could have had acquired or enjoyed in case this Act had not been passed: Provided always, that the total amount to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses, which on the fifth day of June were defrayed out of or chargeable upon the same: Provided also, that nothing hereinbefore contained shall be construed to apply to any claim, right, or title of any burgesses or freemen or of any person to any discharge or exemption from any tolls or dues levied wholly or in part by or to the use or benefit of any borough or body corporate, and that after the passing of this Act, no person shall

Secs. 202—204.

The freemen's roll.

Admission to freedom.

203. The town clerk of every borough for which at the commencement of this Act there is a Freemen's Roll shall continue to keep a list, called the Freemen's Roll (1).

204. Where a person is entitled to be admitted a freeman for the purposes of this Part in respect of birth (2), servitude (3), or marriage, and claims accordingly, have or be entitled to claim thenceforward any discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any body corporate, except as hereinafter is excepted: Provided nevertheless, that every person who on the fifth day of June in this present year was an inhabitant or was, or was entitled to be, admitted a freeman or burgess of any borough, or who on the said fifth day of June was the wife or widow, son or daughter of any freeman or burgess of any borough, or who on the fifth day of June was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or body corporate as fully and for such time and in such sort as he or she by any statute, charter, bye-law, or custom in force on the said fifth day of June might or would have had, acquired, and enjoyed the same if this Act had not been passed, and no further or otherwise: Provided also, that where by any statute, charter, bye-law, or custom in force within any borough at the time of passing this Act, any person whose rights in this behalf are herein reserved would have been liable in case this Act had not been passed to pay any fine, fee, or sum of money to any body corporate in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough appointed under the provisions of this Act on account of the borough fund hereinafter mentioned: Provided also, that nothing in this Act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved who shall not have first fulfilled every condition which if this Act had not passed would have been a condition precedent to his or her being entitled to the benefit of such rights so far as the same is capable of being fulfilled according to the provisions of this Act, or to strengthen, confirm, or affect any claim, right, or title of any burgesses or freemen of any borough or body corporate, or of any person, to the benefit of any such rights as are hereinbefore reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this Act had not been passed."

The effect of the saving of rights in this section is to legalize the beneficial interests therein mentioned, without reference to the legality of their origin, and in particular to obviate any objection which might otherwise arise in respect of the tendency towards a perpetuity of any such beneficial interest: *Prestney* v. *Mayor, &c., of Colchester and Attorney-General*, L. R. 21 Ch. D. 111, 51 L. J. Ch. 805, Hall, V.-C. An action to establish such rights may be brought by parties claiming to be entitled without an information by the Attorney-General: *Ibid.*

In an action by some (on behalf of all) of the freemen of a borough to establish the right of all the individual freemen to share for their private benefit the net proceeds of certain properties vested in the corporation, it is sufficient to aver that at the time of the passing of the Act, the rents, tolls, and profit claimed by them were not nor ever had been nor ought to have been held and applied for public purposes, but then were and always had been held, &c., for the particular benefit of the freemen, without pleading that such rents, &c., had been enjoyed or acquired by virtue of any specific statute, charter, bye-law, or custom, or expressly averring that any custom to such effect existed: *Ibid.*

The word "custom" in the section is not used in a technical sense, but is merely equivalent to "usage": *Ibid.*

See also *Hopkins* v. *Mayor, &c., of Swansea*, 4 M. & W. 621, affirmed in Exch. Ch. 8 M. & W. 901.

(1) As to inspection and obtaining copies of this Roll, see section 233 (5), *post.*

(2) See *Maldon Case*, F. and Fitz. Election Cases, 641.

(3) There must be a service for the required period under a binding deed duly stamped: *R.* v. *Inman*, 4 B. & Ald. 55; *R.* v. *Rowe*, 4 Burr. 2287; *R.* v. *St. Paul's*

Secs. 204—209.

the mayor shall examine into the claim, and on its being established the claimant shall be admitted and enrolled by the town clerk on the Freemen's Roll (1).

Reservation of rights of property to freemen and others.

205.—(1.) Every person who had before the passing of the Municipal Corporations Act, 1835, been admitted a freeman, or if that Act had not been passed might have been so admitted otherwise than by gift or purchase, and

(2.) Every person who for the time being is—

(*a.*) An inhabitant of a borough, or

(*b.*) Wife, widow, son, or daughter of a freeman, or

(*c.*) Husband of a daughter or widow of a freeman, or

(*d.*) Bound an apprentice,—

shall, subject to the provisions of this Part, have and enjoy and be entitled to acquire and enjoy the same share and benefit of the hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any borough or body corporate, and of any property held in whole or in part for any charitable uses or trusts, as if the Municipal Corporations Act, 1835, or this Act, had not been passed (2).

Limit of value and saving as to conditions precedent.

206.—(1.) The total amount to be divided among the persons whose rights are by the last foregoing section reserved shall not exceed the surplus remaining after payment of the interest of all lawful debts chargeable on the property out of which the sums so to be divided have arisen, together with the salaries of municipal officers and all other lawful expenses which, on the fifth of June, one thousand eight hundred and thirty-five, were defrayed out of or chargeable on the same.

(2.) Where, if the Municipal Corporations Act, 1835, or this Act, had not been passed, any such person would have been liable by statute, bye-law, charter, or custom, to pay any fine, fee, or sum of money to any body corporate, or to any member, officer, or servant thereof, in consideration of his freedom, or of his or her title to those reserved rights, or there was any condition precedent to any person being entitled to those rights, he or she shall not have any benefit in respect of those rights until he or she has paid that fine, fee, or sum to the treasurer on account of the borough fund, or has fulfilled that condition, as far as it is capable of being fulfilled according to the provisions of this Act (3).

Saving for power to question right.

207. Nothing in this Act shall strengthen or confirm any claim, right, or title of any freeman or of any person to the benefit of any right in this Part reserved, but the same may in every case be brought in question, impeached, and set aside, as if this Act had not been passed.

Reservation of beneficial exemptions to freemen and others.

208.—(1.) Nothing before in this Part contained shall apply to any claim, right, or title of a freeman, or of any person to any discharge or exemption from any tolls or dues levied wholly or in part by or for the use or benefit of any borough or body corporate.

(2.) No person shall have any such discharge or exemption except a person who, on the fifth of June, one thousand eight hundred and thirty-five, was an inhabitant, or was admitted or entitled to be admitted a freeman, or was the wife, widow, son, or daughter of a freeman, or was bound an apprentice; and every such person shall be entitled to the same discharge or exemption as if the Municipal Corporations Act, 1835, or this Act, had not been passed.

(3.) But nothing in this Act shall affect the right of any person claiming such discharge or exemption otherwise than as inhabitant or freeman, or member of a municipal corporation, or widow or kin of such an inhabitant, freeman or member.

Reservation of parliamentary franchise, &c.

209.—(1.) Every person who, if the Municipal Corporations Act, 1835, had not been passed, would have enjoyed as a freeman, or might thereafter have acquired, in respect of birth or servitude, as a freeman, the right of voting in a parliamentary

Bedford, 6 T. R. 452; further as to apprenticeships, see Archbold's Justice of the Peace, *tit.* "Apprentice," Vol. I. p. 60, 7th ed.; Burn's Justice of the Peace, Vol. IV. pp. 450 *et seq.*, 30th ed.; Petersdorff's Abridg., Vol I., *tit.* "Apprentice."

(1) As to inspection and obtaining copies of this Roll, see section 233 (5), *post.*

(2) See *Hopkins* v. *Mayor of Swansea*, *ante*, p. 333, and *Nash* v. *Coombs*, L. R. 6 Eq. 51, 16 W. R. 663.

(3) See *Prestney* v. *Mayor, &c., of Colchester and the Attorney-General*, *ante*, p. 333.

election, shall be entitled to enjoy or acquire that right as if that Act or this Act had not been passed (1).

(2.) No stamp duty shall be chargeable on the admission of any person as a freeman in respect of birth or servitude in a parliamentary borough (2).

(3.) The town clerk shall do all things appertaining by law to the registration of freemen for parliamentary elections.

PART XI.

Grant of Charters.

Power to Crown in granting charter to borough to extend to it the provisions of the Municipal Corporations Acts.

210. If on the petition to the Queen (3) of the inhabitant householders (4) of any town or towns or district in England, or of any of those inhabitants, praying for the grant of a charter of incorporation, Her Majesty, by the advice of Her Privy Council, thinks fit by charter to create such town, towns, or district, or any part thereof specified in the charter, with or without any adjoining place, a municipal borough, and to incorporate the inhabitants thereof, it shall be lawful for Her Majesty by the charter to extend to that municipal borough and the inhabitants thereof so incorporated the provisions of the Municipal Corporations Acts (5).

Reference to Committte of Council, and notice of petition for charter.

211.—(1.) Every petition for a charter under this Act shall be referred to a Committee of the Lords of Her Majesty's Privy Council (in this Part called the Committee of Council).

(2.) One month at least before the petition is taken into consideration by the Committee of Council, notice thereof and of the time when it will be so taken into consideration shall be published in the *London Gazette*, and otherwise in such manner as the Committee direct for the purpose of making it known to all persons interested (6).

Power by charter to settle wards, and by fixing dates and otherwise to adapt the Municipal Corporations Acts to first constitution of new borough.

212.—(1.) Where Her Majesty by a charter extends the Municipal Corporations Acts to a municipal borough, it shall be lawful for Her Majesty, by the charter, to do all or any of the following things:

(*a.*) To fix the number of councillors, and to fix the number and boundaries of the wards (if any), and to assign the number of councillors to each ward; and

(*b.*) To fix the years, days, and times for the retirement of the first aldermen and councillors; and

(*c.*) To fix such days, times, and places, and nominate such persons to perform such duties, and make such other temporary modifications of the Municipal Corporations Acts, as may appear to Her Majesty to be necessary or proper for making those Acts applicable in the case of the first constitution of a municipal borough.

(2.) The years, days, times, and places fixed by the charter, and the persons nominated therein to perform any duties, shall, as regards the borough named in

(1) As to the right of freeman to vote at parliamentary elections, see the Reform Act, 1832, 2 Will. IV. c. 45, s. 32. The six months there mentioned is now to be computed by reference to the 15th instead of the last day of July: 41 & 42 Vict. c. 26, s. 7.

(2) As to stamp duty in *non*-parliamentary boroughs, see 33 & 34 Vict. c. 97, ss. 29, 30 and Schedule, *tit.* "Admissions."

(3) Generally as to the power of the Crown to grant charters, see Kyd on Corporations, Vol. I., pp. 41 *et seq.*, Steph. Black., Vol. III., pp. 8, 9, 18, 8th ed.

(4) See *Rutter* v. *Chapman*, 8 M. & W. 1 Exch. Ch.; *R.* v. *Mayor, &c., of Aberavon*, 11 L. T. N. S. 417, 13 W. R. 90; and section 213 (4), *post.*

(5) As to questioning validity of charter, see section 216 (1), *post;* and see *R.* v. *Jones*, 8 L. T. N. S. 503, and *A.-G.* v. *Avon Corporation*, 33 Beav. 67, 8 L. T. N. S. 594, 11 W. R. 709, 9 Jur. N. S. 1117.

As to expenses of charter, see Fifth Schedule, Part II., r. 10, *post.*

(6) As to procedure for scheme of grant of new charter, see Seventh Schedule, *post.*

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the charter, be respectively substituted in the Municipal Corporations Acts for the years, days, times, places, officers, and persons therein mentioned, and the persons so nominated shall have the like powers, and be subject to the like obligations and penalties, as the officers and persons mentioned in those Acts for whom they are respectively substituted.

(3.) Subject to the provisions of the charter authorised by this section, the Municipal Corporations Acts shall, on the charter coming into effect, apply to the municipal borough to which they are extended by the charter; and, where the first mayor, aldermen, and councillors, or any of them are named in the charter, shall apply as if they were elected under the Municipal Corporations Acts, and, where they are not so named, shall apply to their first election.

Scheme or continuance or abolition of and adjustment of rights of existing local authority and officers.

213.—(1.) Where a petition for a charter is referred to the committee of council, and it is proposed by the charter to extend the Municipal Corporations Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property, and liabilities of any then existing local authority (1) whose district (2) comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority.

(2.) The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition, total or partial, of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority, and the authority or authorities so created, and for the continuance, modification, transfer, vesting, and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property, and liabilities of the existing local authority, and may contain such provisions as appear to the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid (3).

(3.) The scheme, when settled by the Committee of Council, shall be published in the *London Gazette*, and shall not be of any effect unless confirmed as hereinafter mentioned.

(4.) Where, within one month after the publication of the scheme in the *London Gazette*, a petition against it by any local authority affected thereby, or by not less than one-twentieth of the owners and ratepayers of the borough (such twentieth to be one-twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the borough and the owners and ratepayers in all cases to include women not under coverture) has been received by the Committee of Council, and is not withdrawn, the scheme shall require the confirmation of Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the Committee of Council may, if they think fit, submit the scheme for confirmation, either to Parliament or to Her Majesty in Council, and in the latter case it shall be lawful for Her Majesty to confirm the scheme by Order in Council.

(5.) A scheme, when confirmed by Parliament or by Order in Council, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act.

(6.) A local authority for the purposes of this Part means a sanitary authority (not being the mayor, aldermen, and burgesses of a borough subject to the Municipal Corporations Acts), also the corporation of a borough not subject to the Municipal Corporations Acts, a burial board, trustees, commissioners or other persons who, as a public body and not for their own profit, act under any Act for paving, lighting, supplying with water or gas, cleansing, watching, regulating or improving any town or place, or for providing or maintaining a cemetery or market

(1) See sub-section 6, *infra*. (2) See sub-section 7, *infra*.

(3) As to procedure for scheme of grant of new charter, see Seventh Schedule, *post*.

in or for any town or place, and any commissioners, trustees, or other persons (not being justices) maintaining any police force, and any other authority not in this section excepted, and not being a school board, and having powers of local government and of rating for public purposes (1).

(7.) The district of a local authority for the purposes of this section means the area within which such authority can exercise any powers or rights.

Supplemental provisions as to scheme and charter. 24 & 25 Vict. c. 47.

214.—(1.) A scheme shall, before being settled by the Committee of Council, be referred for consideration to the Secretary of State and the Local Government Board, and, if and as far as it is intended to affect any authority which is a harbour authority within the meaning of the Harbours and Passing Tolls, &c., Act, 1861, to the Board of Trade.

(2.) A scheme shall in every case provide for placing the new borough within the jurisdiction of the council as the sanitary authority.

(3.) The regulations contained in the Seventh Schedule with respect to the scheme shall be observed.

(4.) If the Committee of Council are satisfied that a local authority (2) or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order those costs to be so paid, and they shall be paid accordingly (3).

Provision as to police force in new borough.

215. Nothing in any scheme or in the Municipal Corporations Acts shall authorise the establishment in a borough to which a charter is granted under this Act of a new separate police force not consolidated with the county police force, unless the district incorporated by the charter contained twenty thousand inhabitants or upwards, according to the census taken next before the date of the incorporation (4).

Validity of charters.

216.—(1.) A charter creating a municipal borough which purports to be granted in pursuance of the royal prerogative and in pursuance of or in accordance with this Act, shall after acceptance be deemed to be valid and within the powers of this Act and Her Majesty's prerogative, and shall not be questioned in any legal proceeding whatever (5).

(2.) Every such charter shall be laid before both Houses of Parliament within one month after it is granted, if Parliament is then sitting, or if not, within one month after the beginning of the then next sitting of Parliament.

Power to settle scheme in case of recent charters.

217. Where a charter was granted to a borough within seven years before the fourteenth of August, one thousand eight hundred and seventy-seven, the Committee of Council, on the petition to the Queen of the council of the borough, or of any existing local authority whose district comprises the whole or any part of the area of the borough, either with or without any adjoining or other place, may settle a scheme under this Act in like manner as if the petition for the grant of a charter to the borough had been referred to the Committee of Council after the commencement of this Act, and the provisions of this Act with respect to a scheme shall apply accordingly, with the necessary modifications (6); and if within one month after the publication of the scheme in the *London Gazette* a petition against the scheme from the council of the borough has been received by the Committee of Council and is not withdrawn the scheme shall require the confirmation of Parliament.

(1) By section 15 (1) of the Municipal Corporations Act, 1883, *post* p. 387, the bodies referred to in the First Schedule to that Act are to be deemed to be local authorities within the meaning of this section.

(2) See section 213 (6), *ante*.

(3) As to charging the costs of promoting or opposing parliamentary and other proceedings, see 35 & 36 Vict. c. 91, and section 242 (2) and the Ninth Schedule, *post*.

(4) See notes (2) and (4), *ante*, p. 328.

(5) See further Seventh Schedule, r. 9, *post*; and as to charters granted before this Act, see section 250 (1), *post*, and *R.* v. *Jones*, *A.-G.* v. *Avon Corporation*, *ante*, p. 335.

(6) See the three preceding sections and the notes thereto.

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Power to amend scheme.

218.—(1.) Where a scheme for a borough has been confirmed under this Part, or any former enactment, and the municipal corporation of the borough or one-twentieth of the owners and ratepayers of the borough (estimated as in this Part mentioned [1]), or a local authority affected by the scheme, petition the Queen for an amending scheme, the petition shall be referred to a Committee of the Lords of Her Majesty's Privy Council (included in the term the Committee of Council in this Part), and shall be proceeded on, and this Part shall apply thereto, as nearly as may be, as if the same were a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated.

(2.) The Committee of Council, if they think fit to submit the amending scheme for confirmation, shall submit the same to Parliament, or they may submit the same to Her Majesty in Council, if the original scheme was confirmed by Order in Council; and in the latter case it shall be lawful for Her Majesty to confirm the amending scheme by Order in Council.

(3.) An amending scheme, when confirmed by Parliament, or by Order in Council, as the case may require, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the amending scheme were part of this Act.

PART XII.

Legal Proceedings.

Prosecution of offences and recovery of fines.

219.—(1.) In summary proceedings for offences and fines under this Act the information shall be laid within six months after the commission of the offence [2].

(2.) Any person aggrieved by a conviction of a court of summary jurisdiction under this Act may appeal therefrom to a court of quarter sessions [3].

(3.) Any fine incurred under this Act and not recoverable summarily may be recovered by action in the High Court.

Exclusion of *certiorari*.

220. A conviction, order, warrant, or other matter made or done or purporting to be made or done by virtue of this Act, shall not be quashed for want of form, and shall not, unless it is an order of the council for payment of money out of the borough fund, be removed by *certiorari* or otherwise into the High Court [4].

Application of penalties in quarter sessions boroughs.

221.—(1.) Where by any Act passed or to be passed, any fine, penalty, or forfeiture is made recoverable in a summary manner before any justice or justices and payable to the Crown or to any body corporate, or to any person whomsoever, the same if recovered and adjudged before any justice of a borough having a separate court of quarter sessions shall, notwithstanding anything in the Act under

[1] See section 213 (4), *ante*.

[2] See the notes to section 252 of the Public Health Act, 1875, *ante*, p. 182.

[3] As to procedure, see the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49 s. 31.

[4] Under the corresponding provision in the previous enactment (5 & 6 Will. IV. c. 76, s. 132) it was held that an order of the quarter sessions of a borough with reference to an appeal against a borough rate could not be removed by *certiorari*: *R.* v. *JJ. of Ripon*, 7 A. & E. 417. The order must be "made or done *by virtue of this Act*." See *R.* v. *JJ. of Lancashire*, 11 A. & E. 144, and *R.* v. *Terret*, 2 T. R. 735. But the section does not apply where there is a total absence of jurisdiction: *Ex parte Bradlaugh*, 3 Q. B. D. 509, 47 L. J. M. C. 105, 38 L. T. N. S. 680, 26 W. R. 758; or where the Court is so improperly constituted as to invalidate the decision: *R.* v. *Cheltenham Commissioners*, 1 Q. B. 467; or where the conviction, &c., was obtained by fraud: *R.* v. *Gillyard*, 12 Q. B. 527.

As to removal of an order of council by *certiorari*, see section 141 (2), *ante*.

which it is recovered, be recovered for and adjudged to be paid to the treasurer of the borough (1).

(2.) But this section shall not apply to a fine, penalty, or forfeiture, or part thereof, where the Act under which it is recovered—

(*a.*) Directs payment thereof to the informer or to any person aggrieved; or

(*b.*) If passed since the Municipal Corporations Act, 1835, directs that the same shall go in any other manner and not to the borough fund (2); or

(*c.*) Relates to the customs, excise, or post office, or to trade or navigation, or to any branch of the revenue of the Crown (3).

Duties of clerk of peace as to fines and forfeitures.

222. Where the offices of town clerk and clerk of the peace for a borough are not held by the same person, the clerk of the peace shall perform all duties imposed on the town clerk by the Act of the third year of King George the Fourth, chapter forty-six, "for the more speedy return and levying of fines, penalties, and forfeitures, and recognisances estreated;" and the clerk of the peace shall make all returns, issue all processes, and do all other acts required by that Act to be made, issued, and done by the town clerk.

Service of summons or warrant.

223. Any summons for appearance, warrant to enforce appearance, warrant for apprehension, or search warrant (4), may, if issued by a justice for a borough (5), be served or executed in any county wherein the borough or any part thereof is situate, or within any distance not exceeding seven miles (6) from the borough, and, within those limits, shall have the same effect as if it had been issued or indorsed by a justice having jurisdiction in the place where it is served or executed, and may be served or executed by the constable or special constable to whom it is directed.

Procedure in penal actions against corporate officers.

224.—(1.) An action to recover a fine (7) from any person for acting in a corporate office without having made the requisite declaration, or without being qualified, or after ceasing to be qualified, or after becoming disqualified, may not be brought except by a burgess of the borough (8), and shall not lie unless the plaintiff has, within fourteen days after the cause of action arose, served a notice in writing personally on the person liable to the fine of his intention to bring the action, nor unless the action is commenced within three months after the cause of action arose (9).

(2.) The court or a judge shall, on the application of the defendant within fourteen days after he has been served with writ of summons in the action, require the plaintiff to give security for costs.

(3.) Unless judgment is given for the plaintiff, the defendant shall be entitled to costs, to be taxed as between solicitor and client.

(4.) Where any such action is brought against a person on the ground of his not

(1) As to the construction of the section, see *A.-G.* v. *Moore*, L. R. 3 Ex. D. 276, 47 L. J. M. C. 33, 37 L. T. N. S. 610, 26 W. R. 238.

Payments to the treasurer go to the borough fund. See section 142 (2), *ante.* See *Mayor of Reigate* v. *Hart*, L. R. 3 Q. B. 244, 37 L. J. M. C. 70, 16 W. R. 896; and *Winn* v. *Mossman*, L. R. 4 Ex. 292, 38 L. J. Ex. 200, 20 L. T. N. S. 672, 17 W. R. 924.

(2) See sections 253, 254 of the Public Health Act, 1875, *ante.*

(3) See *Seaman's Hospital Society* v. *Mayor, &c. of Liverpool*, 4 Exch. 180, 18 L. J. Ex. 371.

(4) A warrant of commitment is not within the section: *R.* v. *Cumpton*, L. R. 5 Q. B. D. 341, 49 L. J. M. C. 41, 42 L. T. N. S. 543, 28 W. R. 539

(5) The mayor of a borough without a commission of the peace is a justice of the peace for the borough: *Wilson* v. *Strugnell*, L. R. 7 Q. B. D. 548, 50 L. J. M. C. 145, 45 L. T. N. S. 218, 45 J. P. 831, 14 Cox C. C. 624.

(6) As to measurement of distances, see section 231, *post.*

(7) See section 41, *ante.*

(8) As to whether it is essential to state in the pleadings that the plaintiff is a burgess, see *Simpson* v. *Ready*, 12 M. & W. 736, 13 L. J. Ex. 193.

(9) Generally as to notice of action, see note (4), *ante*, p. 188.

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being qualified in respect of estate (1), it shall lie on him to prove that he was so qualified.

(5.) A moiety of the fine recovered shall, after payment of the costs of action, be paid to the plaintiff (2).

Quo warranto and *mandamus.*

225.—(1.) An application for an information in the nature of a *quo warranto* against any person claiming to hold a corporate office (3) shall not be made after the expiration of twelve months (4) from the time when he became disqualified after election (5).

(2.) In the case of such an application, or of an application for a *mandamus* to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called the respondent) at any time not less than ten days (4) before the day in the notice specified for making the application (6).

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4.) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the rule for the information or *mandamus* absolute.

(7.) The court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.

(8.) The court may, if it thinks fit, direct that any writ of *mandamus* issued shall be peremptory in the first instance.

Provisions for protection of persons acting under Act.

226.—(1.) An action (7), prosecution, or proceeding against any person (8) for any act done in pursuance or execution or intended execution of this Act, or in

(1) See section 11, *ante*

(2) See section 221, *ante.*

As to action by corporation to recover half the penalty, see *Mayor of Harwich* v. *Gant*, *ante*, p. 289.

(3) See the interpretation clause, section 7, *ante.*

(4) As to computation of time, see section 230, *post.*

(5) See section 87 (1) (*c*) and (2) *ante.*

It is within the discretion of the court to say whether an information in the nature of a *quo warranto* will be granted or refused: *R.* v. *Trevenen*, 2 B. & A. 479; *R.* v. *Parry*, 6 A. & E. 810, 2 N. & P. 414; *R.* v. *Ward*, L. R. 8 Q. B. 210.

An inhabitant of the borough and subject to the government of the council, though not a burgess, may be relator: *R.* v. *Parry*, *supra; R.* v. *Quayle*, 11 A. & E. 508, 5 Jur. 386; *R.* v. *Hodge*, 2 B. & Ald. 344 n.; but see *R.* v. *Thirlwind*, 33 L. J. Q. B. 171.

As to objection that relator has been guilty of acquiescence or concurrence, see *R.* v. *Parry*, *supra; R.* v. *Slythe*, 6 B. & C. 240; *R.* v. *Greene*, 2 Q. B. 460; but see *R.* v. *Benny*, 1 B. & Ad. 684, and *R.* v. *Brame*, 4 A. & E. 664.

As to security for costs, see *R.* v. *Wakelin*, 1 B. & Ad. 50, and *R.* v. *Greene*, 4 Q. B. 646.

As to discretion of court with regard to costs, see *R.* v. *Blizard*, L. R. 2 Q. B. 55, 36 L. J. Q. B. 18, 15 L. T. N. S. 242, 15 W. R. 105.

(6) As to the application of certain Rules of the Supreme Court to *mandamus* and *quo warranto*, and as to title of affidavits, see Rules of the Supreme Court, 1883, Order 68, rr. 2, 4.

(7) As to action of replevin, see *Jones* v. *Johnson*, 6 Ex. 133.

(8) See the interpretation clause, section 7, *ante*, and *Boyd* v. *Croydon Ry.*, 4 Bing. N. C. 669.

By Rules of the Supreme Court, 1883, Order IX., r. 8, "in the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation."

respect of any alleged neglect or default in the execution of this Act (1), shall not lie or be instituted unless it is commenced (2) within six months next after the act or thing is done or omitted, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof (3).

(2.) Where the action is for damages, tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after the tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after the tender or payment, and the defendant shall be entitled to costs, to be taxed as between solicitor and client, as from the time of the tender or payment: but this provision shall not affect costs on any injunction in the action (4).

(3.) Subject and without prejudice to any other powers, the council, where the defendant in any such action, prosecution, or other proceeding is their officer, agent or servant, may, if they think fit, except so far as the court before which the action, prosecution, or other proceeding is heard and determined otherwise directs, pay out of the borough fund or borough rate all or any part of any sums payable by the defendant in or in consequence of the action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise (5).

Power for borough constables to take bail.

227.—(1.) Where a person charged with a petty misdemeanour is brought without the warrant of a justice into the custody of a borough constable during his attendance at a watch-house in the borough (6), at any time (by day (7) or night) at which a justice is not actually sitting for the public administration of justice at the justices' room, or town hall, or other place used for that purpose in the borough, the constable may, if he thinks fit, take bail without fee from that person, by recognisance conditioned for his appearance for examination within two days before a justice in the borough at some time and place therein specified.

(2.) A recognisance so taken shall be of equal obligation on the parties entering into the same, and liable to the same proceedings for the estreating thereof, as if taken before a justice.

(3.) The constable shall enter in a book, kept for that purpose in every watch-house, the name, residence, and occupation of the person entering into the recognisance, and of his surety or sureties, if any, with the condition of the recognisance, and the sums acknowledged.

(4.) The constable shall lay the book before the justice present at the time when and place where the recognisor is required to appear.

(5.) If the recognisor does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognisance to be drawn up and signed by the constable, and shall return the same to the next court of quarter sessions for the borough, or, if the borough has no separate court of quarter sessions, for the county in which the borough is situate, with a certificate at the back thereof, signed by the justice, that the recognisor has not complied with the obligation therein contained.

(6.) The clerk of the peace shall make the like estreats and schedules of every such recognisance as of recognisances forfeited in quarter sessions.

(1) This latter clause meets the case of *King* v. *Burrell*, 12 A. & E. 460.

(2) See *Willace's case*, 1 East P. C. 186, and *per* Lord Ellenborough, 2 M. & Sel. at p. 72.

(3) As to notice of action under section 264 of the Public Health Act, 1875, see *ante*, p. 188.

(4) Under the corresponding section in the previous enactment, 5 & 6 Will. IV. c. 76, s. 133, it was held that where a constable is sued for anything done in the exercise of his general duty as constable, and the plaintiff becomes nonsuit or discontinues, the defendant is entitled to double costs under 21 Jac. I. c. 12, s. 5: *Maberley* v. *Titterton*, 7 M. & W. 540.

(5) This sub-section provides for such a case as that of *R.* v. *Mayor of Exeter*, L. R. 6 Q. B. D. 135, 44 L. T. N. S. 101, 29 W. R. 441, 45 J. P. 158.

(6) See section 193, *ante*.

(7) The power to take bail "by day" is new.

Secs. 227—229.

(7.) If the recognisor applies by any person on his behalf to postpone the hearing of the charge against him, and the justice thinks fit to consent thereto, the justice may enlarge the recognisance to such further time as he appoints.

(8.) When the matter is heard and determined, either by the dismissal of the charge, or by binding over the recognisor to answer the matter of the complaint at quarter sessions, or otherwise, the recognisance for his appearance before a justice shall be discharged without fee.

PART XIII.

General.

Boundaries.

Boundaries of boroughs and transfer of parts to counties.

228.—(1.) Every place at the commencement of this Act included within each borough then existing, and no other place, shall be part of the borough, and in each borough then existing which is a county of itself, shall be part of that county and of no other, as if this Act had not been passed (1).

(2.) Where under the Municipal Corporations Act, 1835, or any Act amending it, any such county or borough does not, at the commencement of this Act, include a place which, before the passing of the Municipal Corporations Act, 1835, was part thereof, that place shall continue to be part of the county wherein it is situate, or with which it has the longest common boundary, as if this Act had not been passed.

(3.) But nothing in this Act shall prevent any gaol, house of correction, lunatic asylum, court of justice, or judges' lodging, which at the passing of the Municipal Corporations Act, 1835, was, and at the commencement of this Act is, taken to be, for any purpose, in any county, from being still, for that purpose, taken to be in that county, as if this Act had not been passed.

(4.) Any gaol, court, depôt for arms, and any land thereto belonging, which at the commencement of this Act is parcel of a county shall continue to be parcel of the county, and under the exclusive jurisdiction of the authorities of the county, as if this Act had not been passed.

(5.) Nothing in this Act shall be construed to affect the assessments of the land tax or assessed taxes, as those assessments exist at the commencement of this Act, or to extend or diminish the jurisdiction of any commissioners of those taxes, as such commissioners then exist; but all lands, and all parishes, parts of parishes, and places shall continue to be charged as at the commencement of this Act towards the land tax charged on the county or other district whereof at the commencement of this Act they are part, and to be subject in that behalf to the jurisdiction of the commissioners of the same county or other district, as if this Act had not been passed.

Adjustment between boroughs and counties on change of boundaries.

229. If any place, which under the Municipal Corporations Act, 1835, or any Act amending it, ceased to be included in a borough or county of a town or city, was before the passing of the Municipal Corporations Act, 1835, liable to contribute to any rate for satisfying any lawful debt to which the ratepayers of that borough or county were then liable, and if after the commencement of this Act any difference arises concerning the proportion of that debt to be contributed in respect of that place, the Secretary of State, on the application of the council, or of the chairman of a public meeting of the ratepayers of the place, may appoint by writing under his hand a barrister not having any interest in the question to arbitrate between the parties, and by his award under his hand and seal to assess the proportion aforesaid, if any; and the arbitrator shall assess the costs of the arbitration, and direct by whom and in what proportion and out of what fund they shall be paid; and the rate aforesaid shall continue to be levied by warrant of the council

(1) See further section 250, *post*.

and to be paid by the place aforesaid to the treasurer of the borough, as if the Municipal Corporations Act, 1835, or any Act amending it, or this Act, had not been passed, until the proportion aforesaid is satisfied, and no longer.

Time (1).

Computation of time.

230.—(1.) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or Monday or Tuesday in Easter week, or a day appointed for public fast, humiliation, or thanksgiving, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being one of the days in this section specified.

(3.) Where by this Act any act or proceeding is directed or allowed to be done or taken within any time not exceeding seven days, the days in this section specified shall not be reckoned in the computation of such time.

Distance.

Measurement of distances.

231. The distances mentioned in this Act shall be measured in a straight line on a horizontal plane, and may be determined by the map made under the survey commonly known as the Ordnance Survey.

Notices.

Notices on town hall.

232. Any notice or other document required by this Act to be fixed on the town hall shall be fixed in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates.

Inspection and Copies.

Inspection of documents.

233.—(1.) The minutes of proceedings of the council shall be open to the inspection of a burgess on payment of a fee of one shilling, and a burgess may make a copy thereof or take an extract therefrom (2).

(2.) A burgess may make a copy of or take an extract from an order of the council for the payment of money.

(3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

(5.) The Freeman's Roll shall be open to public inspection, and the town clerk shall deliver copies thereof to any person on payment of a reasonable price for each copy (3).

(1) Where any particular hour is mentioned, Greenwich time is to be followed: 43 & 44 Vict. c. 9.

(2) As to giving minutes in evidence, see section 22 (5), *ante*.

(3) As to parish burgess lists and lists of claimants and respondents, see section 75 (2), *ante*, and Third Schedule, Part I., rr. 2, 3, 7, 8, *post*.

Secs. 233—238.

(6.) A document directed by this Act to be open to inspection shall be so open at any reasonable time during the ordinary hours of business, and without payment, unless it is otherwise expressed.

(7.) If a person having the custody of any document in this section mentioned—

(*a.*) Obstructs any person authorised to inspect the same in making such inspection thereof as in this section mentioned; or

(*b.*) Refuses to give copies or extracts to any person entitled to obtain the same under this section;

he shall, on summary conviction, be liable to a fine not exceeding five pounds.

Fees.

Tables of fees to be posted.

234. The town clerk of every borough shall cause a true copy of the tables of fees for the time being authorised to be taken by the clerk of the peace (1) (if any) for the borough, by the clerk to the justices (2) (if any) for the borough, and by the registrar and officers of the borough civil court (3) (if any), to be posted conspicuously in the following places:

(*a.*) The room where the business of the town clerk's office is transacted;

(*b.*) The room, if any, where the justices of the borough sit for transacting their business;

(*c.*) The room, if any, where the court of quarter sessions of the borough is held; and

(*d.*) The room, if any, where the borough civil court is held.

Seals and Signatures.

Forgery.

235. If any person forges the seal or signature affixed or subscribed to a bye-law made under this Act, or the signature subscribed to any minute of proceedings of the council, or tenders in evidence any such document with a false or counterfeit seal or signature, knowing it to be false or counterfeit, he shall be liable to imprisonment with hard labour for any term not exceeding two years.

Applications to Treasury.

Notice of application to and correspondence with Treasury.

236.—(1.) Where the council intend to apply to the Treasury for their approval of any sale, loan, or other financial arrangement under this Act, notice of the intention to make the application shall be fixed on the town hall (4) one month at least before the application (5), and a copy of the intended application shall during that month be kept in the town clerk's office, and be open to public inspection (6).

(2.) If the Treasury either refuse their approval or grant it conditionally or under qualifications, notice of the correspondence between the Treasury and the council shall forthwith and during one month be fixed on the town hall, and a copy of the correspondence shall during that month be kept in the town clerk's office, and be open to public inspection.

Deputy.

Acts of deputy not to be invalidated by defect in appointment.

237. No defect in the appointment of a deputy under this Act shall invalidate his acts (7).

Overseers.

Notices to and acting of overseers.

238.—(1.) Every matter by the Municipal Corporations Acts directed to be done by overseers (8) may be lawfully done by the major part of them.

(1) See section 164 (5), *ante.*

(2) See Justices' Clerks Act, 1877, 40 & 41 Vict. c. 43, s. 8.

(3) See section 178 (3), *ante.*

(4) See section 232, *ante.*

(5) As to computation of time, see section 230, *ante.*

(6) See section 233 (6), (7), *ante.*

(7) This provision is new.

(8) See the interpretation clause, section 7, *ante.*

(2.) Any notice by the Municipal Corporations Acts required to be given to overseers may be delivered to any one of them, or left at his place of abode, or at his office for transacting parochial business.

Declarations and Oaths.

Power to administer oaths, &c.

239.—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons (1), they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2.) Nothing in this Act in any case shall require or authorise the taking or making of any oath or declaration that would not have been required or authorised under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868.

31 & 32 Vict. c. 72. 34 & 35 Vict. c. 48.

Forms.

Forms in schedule.

240. The forms in the Eighth Schedule or forms to the like effect, varied as circumstances require, may be used, and shall be sufficient in law (2).

Misnomer or Inaccurate Description.

Misnomer or inaccurate description not to hinder.

241. No misnomer or inaccurate description of any person, body corporate, or place named in any schedule to the Municipal Corporations Act, 1835, or in any roll, list, notice, or voting paper required by this Act, shall hinder the full operation of this Act with respect to that person, body corporate, or place, provided the description of that person, body corporate, or place be such as to be commonly understood (3).

Substitution in former Acts (4).

Provision for references in unrepealed enactments to 5 & 6 Will. IV. c. 76, &c.

242.—(1.) In the several enactments described in Part I. of the Ninth Schedule, a reference to this Act shall be deemed to be substituted for a reference to the Municipal Corporations Act, 1835, and any Act amending it.

(2.) In each of the enactments described in Part II. of the Ninth Schedule, there shall be substituted for the respective provision of the Municipal Corporations Act, 1835, in that part mentioned in connection therewith, such provision of this Act as is also mentioned in connection therewith.

(3.) Where any Act passed before this Act, and not specified in the First or in the Ninth Schedules, refers to the Municipal Corporations Act, 1835, or any Act amending it, or to boroughs or corporations subject to that Act or any Act amending it, the reference shall be deemed to be to this Act or to the corresponding provision of this Act, or to boroughs or corporations subject to this Act (as the case may require).

(4.) All enactments to which this section relates shall, except as in this section provided, continue to operate as if this Act had not been passed.

(1) See sections 35, 157, 163 and 196, *ante*. (2) See further section 72, *ante*.

(3) Under the corresponding section of the previous enactment, 5 & 6 Will. IV. c. 76, s. 142, it was held that this provision cured only an inaccurate description of the real person, and not a description of a person other than the real one: *R.* v. *Coward*, 16 Q. B. 819. It has also been held that an abbreviation by initials is a curable misnomer: *R.* v. *Plenty*, *ante*, p. 286. See also *R.* v. *Bradley*, *ib.*; *R.* v. *Gregory*, 1 E. & B. 600; *R.* v. *Thwaites*, *ib.* 704; *R.* v. *Spratley*, 6 E. & B. 363; and *Soper* v. *Mayor of Basingstoke*, L. R. 2 C. P. D. 441, 46 L. J. C. P. 422, 36 L. T. N. S. 468, 25 W. R. 693. In *Gothard* v. *Clarke*, L. R. 5 C. P. D. 253, 49 L. J. C. P. 474, 42 L. T. N. S. 776, it was held that a wrong statement in a nomination paper of the number on the burgess roll of a nominating burgess was not remedied and could not be amended under the provisions of 41 & 42 Vict. c. 26, s. 41, and 35 & 36 Vict. c. 33, s. 13.

(4) Compare section 313 of the Public Health Act, 1875, *ante*, p. 215.

Secs. 243—248.

Short titles of Acts partly repealed.

243. Such of the Acts specified in the First Schedule as will remain in force to any extent after the commencement of this Act may continue to be cited by the short titles in that schedule mentioned.

Returning Officers at Parliamentary Elections.

Mayor of certain boroughs to be returning officer in parliamentary elections.

244.—(1.) In boroughs, other than cities and towns being counties of themselves (1), the mayor shall be the returning officer at parliamentary elections (2); but this provision shall not extend to the borough of Berwick-upon-Tweed.

(2.) If there are more mayors than one within the boundaries of a parliamentary borough, the mayor of that borough to which the writ of election is directed shall be the returning officer.

(3.) If when a mayor is required to act as returning officer the mayor is absent, or incapable of acting, or there is no mayor, the council shall forthwith choose an alderman to be returning officer.

Disfranchised Parliamentary Boroughs.

Electors in disfranchised boroughs. 30 & 31 Vict. c. 102.

245. Where a borough has, in pursuance of the Representation of the People Act, 1867, or of any Act passed in the session of the thirty-first and thirty-second years of the reign of Her Majesty, ceased to return a member to serve in Parliament, and the persons entitled to vote for the member or members formerly returned by the borough were by law electors for any other purpose, the burgesses of the borough shall be electors for that purpose, and shall in all respects, as regards that purpose, be substituted for the persons so entitled to vote.

Licensing.

Explanation of terms "town corporate," &c. in Licensing Act.

246. In the Act of the ninth year of the reign of King George the Fourth, chapter sixty-one, "to regulate the granting of licences to keepers of inns, alehouses, and victualling houses in England," the expressions "town corporate," "county or place," and "division or place," include every borough having a separate commission of the peace, and the expression "high constable" includes any constable of any such borough to whom the justices of the borough direct their precept under that Act (3).

Freedom of Trading.

Right of free trading in boroughs.

247. Notwithstanding any custom or bye-law (4), every person in any borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade, occupation, mystery, and handicraft for hire, gain, sale, or otherwise within any borough.

Cinque Ports.

Special provisions as to certain of the Cinque Ports.

248.—(1.) The boroughs of Hastings, Sandwich, Dover, Hythe, being four of the Cinque Ports, and the borough of Rye, are in this section referred to as the five boroughs.

(2.) The jurisdiction, powers, and authorities of the court of quarter sessions, recorder, coroner, and clerk of the peace for each of the five boroughs shall extend

(1) See note (3) to section 170, *ante*.

(2) The mayor, if a registered elector, has a casting, but no other vote: 35 & 36 Vict. c. 33, s. 2.

(3) The previous enactment was 24 & 25 Vict. c. 75, s. 4, which was passed in consequence of the doubts created by the conflicting cases of *Candlish* v. *Simpson*, 1 B. & S. 357, 30 L. J. M. C. 178, and *Brown* v. *Nicholson*, 5 C. B. N. S. 468, 28 L. J. M. C. 49. It has been decided in *Winn* v. *Mossman*, L. R. 4 Ex. 292, 38 L. J. Ex. 200, 20 L. T. N. S. 672, 17 W. R. 924, that this enactment only applies to the power of granting and withdrawing licences given by it, and does not affect the application of penalties fixed by its 26th section.

(4) See sections 23, 24 and notes thereto, *ante*, and see the saving clause, section 260 (3), *post*.

the non-corporate members and libe[illegible] thereof (1), and to such corporate members thereof as have not a separate c[illegible] quarter sessions.

(3.) The jurisdiction, powers, and authorities of the persons constituted justices within and throughout the liberties of the Cinque Ports by virtue of their commission, shall extend to all places being within the limits of the five boroughs or of their members or liberties, corporate or non-corporate, and not being within the limits of a borough having a separate commission of the peace.

(4.) The justices for the five boroughs respectively shall have all the jurisdiction, powers, and authorities of justices for a county relating to the granting of licences or authorities to persons to keep inns, ale-houses, or victualling houses, or to sell exciseable liquors by retail within any of the corporate or non-corporate members or liberties of the five boroughs respectively, not being within the limits of a borough having a separate commission of the peace (2).

(5.) The non-corporate members and liberties of the five boroughs and such corporate members thereof as have not a separate court of quarter sessions shall be charged by the respective courts of quarter sessions of the five boroughs, with a due proportion of all those expenses of the five boroughs, to the payment whereof rates in the nature of county rates are applicable; and such rates may be assessed and levied in the manner in which rates of that description were assessed and levied before the passing of the Municipal Corporations Act, 1835, under any enactment then in force, but subject to the operation of any subsequent enactment affecting the same.

(6.) A due proportion of inhabitant householders to serve as grand jurors and jurors at the respective courts of quarter sessions of the five boroughs shall be summoned by the clerks of the peace thereof from the non-corporate members and liberties thereof, and such corporate members thereof as have not a separate court of quarter sessions; and the attendance of such jurors shall be enforced, and their defaults punished, in the manner by this Act directed with respect to jurors in boroughs (3).

(7.) Nothing in this section shall affect the Cinque Ports Act, 1869, or the Acts therein recited (4). 32 & 33 Vict. c. 53.

Cambridge.

249.—(1.) It shall be lawful for the Queen, from time to time, by her commission of the peace for the borough of Cambridge, to constitute the Vice-Chancellor for the time being of the University of Cambridge a justice for that borough. Vice-Chancellor of Cambridge.

(2.) He shall not, by reason of being so constituted, have any greater authority as to the grant of licences to alehouses than any other justice named in the commission.

(3.) But nothing in this section shall affect the rights and privileges which the Vice-Chancellor lawfully has or enjoys, or might have lawfully had or enjoyed if he were not so constituted a justice (5).

Savings.

250.—(1.) Nothing in this Act shall prejudicially affect any charter granted before the commencement of this Act, or take away, abridge, or prejudicially affect any of the rights, powers, privileges, estates, property, duties, liabilities, or obligations vested in or imposed on any municipal corporation existing at the commencement of this Act, or in or on the mayor, or the council of a borough then existing, Saving for existing corporations.

(1) By section 13 (3) of the Municipal Corporations Act, 1883, *post*, p. 386, the non-corporate members of a cinque port are to form part of the body of the county and hundred and other division in which such members are situate.

(2) See 35 & 36 Vict. c. 94, ss. 37, 38.

(3) See section 186, *ante*.

(4) See, further, the saving clause (section 13) in the Municipal Corporations Act, 1883 *post*, p. 386.

(5) See, further, section 257, *post*.

Secs. 250—257.

or any members or committee of the council, by the incorporation of the inhabitants of the borough, or by transfer from any other authority, or otherwise; but every such charter shall continue to operate, and every such corporation shall continue to have perpetual succession and a common seal, and to be capable in law by the council to do and suffer all acts which at the commencement of this Act they and their successors respectively may lawfully do or suffer, and the corporation and all members and officers thereof and their sureties, and every such mayor, and every such council and committee, and every such officer, shall continue to have, enjoy, and be subject to the like rights, powers, offices, privileges, estates, property, duties, liabilities, and obligations, as if this Act had not been passed, without prejudice, nevertheless, to the operation of the repeal of enactments by this Act, and to the other express provisions of this Act.

(2.) Nothing in this Act shall alter the boundaries (1) of any borough existing at the commencement of this Act, or the number, apportionment, or qualification of the aldermen or councillors thereof, or the division thereof into wards.

(3.) Nothing in this Act shall affect the right of the council of a borough to collect by their own officers the borough rate and watch rate, or either of them, where, at the commencement of this Act, they are authorised by law to so collect, and are so collecting, the same.

(4.) Nothing in this Act shall alter the respective jurisdiction of county and borough justices.

(5.) Nothing in this Act shall affect the right of any borough named in Schedule (A.) to the Municipal Corporations Act, 1835, to have a separate commission of the peace.

Saving for local Acts.

251. Nothing in this Act shall alter the effect of any local Act of Parliament (2).

Saving for Prison Acts. 28 & 29 Vict. c. 126. 40 & 41 Vict. c. 21. 13 & 14 Vict. c. 91.

252. Nothing in this Act, except the provision referring to the Ninth Schedule, shall affect the Prison Act, 1865, or the Prison Act, 1877, and nothing in this Act shall affect the Act of the session of the fifth and sixth years of Her Majesty, chapter ninety-eight, "to amend the laws concerning prisons," or revive or restore any enactment which, being contained in that Act, or in the Municipal Corporation (Justices) Act, 1850, or in any other Act, is virtually repealed or superseded by the Prison Act, 1865, or the Prison Act, 1877.

Saving for military and naval officers, &c.

253. Nothing in this Act shall compel the acceptance of any office or duty whatever in any borough by any military, naval, or marine officer in Her Majesty's service on full pay or half pay, or by any officer or other person employed and residing in any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments (3).

Saving for dockyards, barracks, &c.

254. Nothing in this Act shall affect the watching, paving, or lighting, or the internal regulations for the government, of any of Her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments, or make the tenements therein or the inhabitants thereof liable to any rate for watching, paving, or lighting.

Saving as to Admiralty.

255. Nothing in this Act shall affect the authority of justices vested in the Commissioners for executing the office of Lord High Admiral of the United Kingdom, or any authority to appoint coroners to act within the jurisdiction of the Admiralty.

Saving for Lord Warden.

256. Nothing in this Act shall affect the jurisdiction and office of the Lord Warden in his office of Admiral of the Cinque Ports (4).

Saving for universities.

257. Nothing in this Act shall—

(1.) Affect the rights, privileges, duties, or liabilities of the chancellor, masters,

(1) See section 238, *ante*.

(2) See the Public Health Act, 1875, sections 303, 340.

(3) A commissioned officer in full pay in Her Majesty's regular forces is incapable of being nominated or elected to be sheriff, mayor, or alderman, or of holding any office in any municipality in any city or borough: Army Act, 1881, 44 & 45 Vict. c. 58, s. 146. This does not affect the competence or liability to serve of an officer of the auxiliary forces, though his battalion or corps are assembled for annual training at the time of nomination or election, or during tenure of office. *Ibid.*, s. 181 (5).

(4) See section 248, *ante*.

and scholars of the Universities of Oxford and Cambridge respectively, as by law possessed under the respective charters of those universities or otherwise; or

(2.) Entitle the mayors of Oxford and Cambridge respectively to any precedence over the vice-chancellors of those universities respectively (1); or

(3.) Entitle any person to be enrolled a citizen of the city of Oxford or burgess of the borough of Cambridge by reason of his occupation of any rooms, chambers, or premises in any college or hall of either of those universities; or

(4.) Compel any resident member of either of those universities to accept any office in or under the municipal corporation of Oxford or of Cambridge; or

(5.) Authorise the levy of any rate within the precincts of those universities, or of any of the colleges or halls thereof, which now by law cannot be levied therein, or make either of those universities, or the members thereof, liable to any rate to which they are not liable to contribute at the commencement of this Act; or

(6.) Authorise the transfer of any rights or liabilities by a local authority to the municipal corporation of the borough of Cambridge without the consent of the chancellor, master, and scholars of the University of Cambridge; or

(7.) Affect the rights or privileges granted by charter or Act of Parliament to the University of Durham.

Saving for jurisdiction over cathedral precincts.

258. Nothing in this Act shall prevent any jurisdiction or authority exercised in or over the precinct or close of any cathedral from being continued concurrently with the jurisdiction and authority of the justices of the borough in which the precinct or close is situate.

Saving for royal prerogative.

259. Nothing in this Act shall prejudicially affect Her Majesty's royal prerogative (2); and the enabling provisions of this Act shall be deemed to be in addition to, and not in derogation of, the powers exerciseable by Her Majesty by virtue of her royal prerogative.

Saving as to repealed enactments.

260.—(1.) The repeal effected by this Act shall not affect—

(*a.*) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or

(*b.*) Any proceeding or thing pending or in course of being done at the commencement of this Act under any enactment repealed by this Act; or

(*c.*) Any jurisdiction or practice established, confirmed, or transferred, or right or privilege acquired or confirmed, or duty or liability imposed or incurred, or compensation secured, by or under any enactment repealed by this Act; or

(*d.*) Any disability or disqualification existing at the commencement of this Act under any enactment repealed by this Act; or

(*e.*) Any fine, forfeiture, punishment, or other consequence incurred or to be incurred in respect of any offence committed before the commencement of this Act against any enactment repealed by this Act; or

(*f.*) The institution or the prosecution to its termination of any legal proceeding or other remedy for ascertaining, enforcing, or recovering any such jurisdiction, practice, right, privilege, duty, liability, compensation (3), disability, disqualification, fine, forfeiture, punishment, or consequence as aforesaid; or

(*g.*) The terms on which any money has been borrowed before the commencement of this Act under any enactment repealed by this Act.

(2.) The repeal effected by this Act shall not extend to Scotland or Ireland, and shall not, as regards the enactments described in Part II. of the First Schedule, operate in respect of any place other than a borough to which this Act applies, and shall not revive or restore any statute, law, usage, custom, royal, or other charter, grant, letters patent, bye-law, jurisdiction, office, right, title, claim, privilege,

(1) See sections 15 (5) and 155 (2), *ante*.

(2) See the maxim, "*Roy n'est lie per ascun statute, si il ne soit expressement nosme*," and comments thereon.—Broom's "Legal Maxims," p. 73, 4th ed.

(3) See 5 & 6 Will. IV. c. 76, ss. 66, 67.

Sec. 260. liability, disqualification, exemption, restriction, practice, procedure, or other matter or thing abolished by the Municipal Corporations Act, 1835, or not in force or existing at the commencement of this Act, or otherwise affect the past operation of any enactment repealed by this Act.

(3.) All elections, declarations, appointments, bye-laws, rates, tables of fees, and regulations made, or pending, or in the course of being made, and all other things done, or pending, or in the course of being done, under the Municipal Corporations Act, 1835, or any other enactment repealed by this Act, before or at the commencement of this Act, shall for the purposes of this Act be of the like effect as if they had been made or done, or were pending, or in the course of being made or done under this Act, and shall, as far as may be requisite for the continuance, validity, and effect, thereof, be deemed to have been made or done, or may be carried on and be made or done, as the case may require, under this Act.

SCHEDULES.

Sched. 1.

THE FIRST SCHEDULE.

Enactments repealed (1).

Part I.

Enactments repealed generally.

5 & 6 Will. IV. c. 76. -	The Municipal Corporations Act, 1835.
6 & 7 Will IV. c. 77. in part.	An Act for carrying into effect the reports of the Commissioners appointed to consider the state of the Established Church in England and Wales, with reference to ecclesiastical duties and revenues, so far as they relate to episcopal dioceses, revenues, and patronage ; in part, namely,— section twenty-six.
6 & 7 Will. IV. c. 103. in part.	The Municipal Corporation (Boundaries) Act, 1836 ; except section six (Berwick).
6 & 7 Will. IV. c. 104.	The Municipal Corporation (Borough Fund) Act, 1836.
6 & 7 Will. IV. c. 105.	The Municipal Corporation (Justices, &c.) Act, 1836.
7 Will. IV. & 1 Vict. c. 78.	The Municipal Corporation (General) Act, 1837.
7 Will. IV. & 1 Vict. c. 81.	The Municipal Corporation (Watch Rate) Act, 1837.
1 & 2 Vict. c. 31. -	The Municipal Corporation (Benefices) Act, 1838.
1 & 2 Vict. c. 35. -	An Act to repeal the stamp duty now paid on admission to the freedom of corporations in England.
2 & 3 Vict. c. 27. -	The Municipal Corporation (Borough Courts) Act, 1839.
2 & 3 Vict. c. 28. -	The Municipal Corporation (Watch Rate) Act, 1839.
3 & 4 Vict. c. 28. -	The Municipal Corporation (Watch Rate) Act, 1840.
4 & 5 Vict. c. 48. -	An Act to render certain municipal corporations rateable to the relief of the poor in certain cases.
6 & 7 Vict. c. 89. -	The Municipal Corporation Act, 1843.
8 & 9 Vict. c. 110. -	The Municipal Corporation (Rates) Act, 1845.
11 & 12 Vict. c. 93. -	An Act to confirm the incorporation of certain boroughs.
12 & 13 Vict. c. 65. -	An Act to provide a more convenient mode of levying and collecting county rates, county police rates, and district police rates, in parishes situated partly within and partly without the limits of boroughs which are not liable to such rates.
12 & 13 Vict c. 82. - in part.	An Act to relieve boroughs in certain cases from contribution to certain descriptions of county expenditure ; in part, namely,— section one.

(1) See sections 5 and 260, *ante*.

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13 & 14 Vict. c. 42. -	The Municipal Corporation (Incorporation) Act, 1850.
13 & 14 Vict. c. 64. -	The Municipal Corporation (Bridges) Act, 1850.
13 & 14 Vict. c. 91. in part.	The Municipal Corporation (Justices) Act, 1850; in part, namely,— section nine.
13 & 14 Vict. c. 101. in part.	An Act to continue two Acts passed in the twelfth and thirteenth years of the reign of Her Majesty, for charging the maintenance of certain poor persons in unions in England and Wales upon the common fund; and to make certain amendments in the laws for the relief of the poor; in part, namely,— section ten.
15 & 16 Vict. c. 81. in part.	An Act to consolidate and amend the statutes relating to the assessment and collection of county rates in England and Wales; in part, namely,— section thirty-eight.
16 & 17 Vict. c. 79. -	The Municipal Corporation Act, 1853.
16 & 17 Vict. c. 137. -	The Charitable Trusts Act, 1853; in part, namely,— section sixty-five.
20 & 21 Vict. c. 50. -	The Municipal Corporation Act, 1857.
21 & 22 Vict. c. 43. -	An Act to amend the municipal franchise in certain cases.
22 Vict. c. 35.	The Municipal Corporation Act, 1859.
22 & 23 Vict. c. 32. in part.	An Act to amend the law concerning the police in counties and boroughs in England and Wales; in part, namely,— sections five and six.
24 & 25 Vict. c. 75. -	The Municipal Corporations Acts Amendment Act, 1861.
31 & 32 Vict. c. 41. -	The Borough Electors Act, 1868.
32 & 33 Vict. c. 23. -	The Municipal Corporation (Recorders) Act, 1869.
32 & 33 Vict. c. 55. -	The Municipal Corporation (Election) Act, 1869.
32 & 33 Vict. c. 62. in part.	The Debtors Act, 1869; in part, namely,— section twenty-one.
34 & 35 Vict. c. 67. -	The Municipal Corporations Act, 1859, Amendment Act.
35 & 36 Vict. c. 33. in part.	The Ballot Act, 1872; in part, namely,— sections twenty and twenty-one.
35 & 36 Vict. c. 60. -	The Corrupt Practices (Municipal Elections) Act, 1872.
36 & 37 Vict. c. 33. -	The Municipal Corporations Evidence Act, 1873.
37 & 38 Vict. c. 59. -	The Working Men's Dwellings Act, 1874.
38 & 39 Vict. c. 40. -	The Municipal Elections Act, 1875.
39 & 40 Vict. c. 61. in part.	The Divided Parishes and Poor Law Amendment Act, 1876; in part, namely,— section thirty.
40 & 41 Vict. c. 69. -	The Municipal Corporations (New Charters) Act, 1877.
41 & 42 Vict. c. 26. in part.	The Parliamentary and Municipal Registration Act, 1878; in part, namely,— sections twenty, thirty-four, and forty-one.

Part II.

Enactments repealed only as to Boroughs within this Act (1).

1 Edw. I. c. 6. in part.	The Statutes of Westminster, the first. Amerciaments shall be reasonable; in part, namely,— as far as it relates to a city, borough, or town.
1 Edw. I. c. 31. in part.	The Statutes of Westminster, the first. Excessive toll in market town. Murage; in part, namely,— from "Touching citizens" to "the King," inclusive.

(1) See section 243, *ante*.

Sched. 1.		
	15 Rich. II. c. 5. in part.	St. 7 Edw. I. de Religiosis. Converting land to a churchyard declared to be within that statute. Mortmain, where any is seised of lands to the use of spiritual persons. Mortmain to purchase lands to gilds, fraternities, offices, commonalties; or to their use; in part, namely, as far as it relates to mayors, bailiffs, and commons of cities, boroughs, and other towns which have a perpetual commonalty.
	2 & 3 Phil. & Mary, c. 18.	An Act touching commissions of the peace and gaol delivery in towns corporate not being counties in themselves.
	7 Jas. I. c. 5. in part.	An Acte for ease in pleading against troublesome and contencious suites presented against justices of the peace, maiors, constables, and certaine other His Majesties officers for the lawful execution of their office; in part, namely, as far as it relates to mayors of cities or towns corporate.
	21 Jas. I. c. 12. in part.	An Acte for ease in pleading against troublesome and contencious suites; in part, namely,— section three, as far as it relates to mayors of cities or towns corporate.
	11 Geo. I. c. 4. - -	An Act for preventing the inconvenience arising from want of elections of mayors or other chief magistrates of boroughs or corporations being made upon days appointed by charter or usage for that purpose, and directing in what manner such elections shall be afterwards made.
	12 Geo. III. c. 21. -	An Act for giving relief in proceedings upon writs of *mandamus* for the admission of freemen into corporations and for other purposes therein mentioned.
	32 Geo. III. c. 58 -	An Act for the amendment of the law in proceedings upon information in nature of *quo warranto*.
	55 Geo. III. c. 51. -	An Act to amend an Act of His late Majesty King George the Second, for the more easy assessing, collecting, and levying of county rates.
	57 Geo. III. c. 91. -	An Act to enable justices of the peace to settle the fees to be taken by clerks of the peace of the respective counties and other divisions of England and Wales.
	2 & 3 Will. IV. c. 69. -	An Act to prevent the application of corporate property to the purposes of election of members to serve in Parliament.
	3 & 4 Will. IV. c. 31.	An Act to enable the election of officers of corporations and other public companies now required to be held on the Lord's Day to be held on the Saturday next preceding or on the Monday next ensuing.
	4 & 5 Will. IV. c. 27.	An Act for the better administration of justice in certain boroughs and franchises.
	7 Will. IV. & 1 Vict. c. 19.	An Act to empower the recorder or other person presiding at quarter sessions in corporate cities and towns, and justices of the peace for counties, ridings, or divisions, to divide their respective courts in certain cases.
	5 & 6 Vict. c. 104. -	The Municipal Corporation Act, 1842.
	15 & 16 Vict. c. 5. -	The Municipal Corporation Act, 1852.
	23 & 24 Vict. c. 16. -	The Municipal Corporation (Mortgages, &c.) Act, 1860.
	23 & 24 Vict. c. 51. in part.	The Local Taxation Returns Act, 1860; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
	23 & 24 Vict. c. 106. in part.	The Lands Clauses Consolidation Acts Amendment Act, 1860; in part, namely,— section six.
	38 & 39 Vict. c. 89. in part.	The Public Works Loans Act, 1875; in part, namely,— in section forty, the second paragraph (beginning "The council" and ending "this Act"), and the words "and the council respectively" in the last paragraph.
	39 & 40 Vict. c. 20. in part.	The Statute Law Revision Act (Substituted Enactments) Act, 1876; in part, namely,— section three.

Sched I.

40 & 41 Vict. c. 17. -	An Act to amend the law relating to the division of courts of quarter sessions in boroughs.
40 & 41 Vict. c. 66. in part.	The Local Taxation Returns Act, 1877; in part, namely,— so far as it relates to the receipts and expenditure of a municipal corporation.
42 & 43 Vict. c. 30. in part.	The Sale of Food and Drugs Act Amendment Act, 1879; in part, namely,— section eight.
43 Vict. c. 17. - -	The Town Councils and Local Boards Act, 1880.

THE SECOND SCHEDULE (1).

Sched. II.

Meetings and Proceedings of Council.

1. The council shall hold four quarterly meetings in every year for the transaction of general business.

2. The quarterly meetings shall be held at noon (2) on each ninth of November, and at such hour on such other three days before the first of November then next following as the council at the quarterly meeting in November decide (or afterwards from time to time by standing order determine) (3).

3. The mayor may at any time call a meeting of the council (4).

4. If the mayor refuses to call a meeting after a requisition for that purpose, signed by five members of the council, has been presented to him, any five members of the council may forthwith, on that refusal, call a meeting. If the mayor (without so refusing) does not within seven days after such presentation call a meeting, any five members of the council may, on the expiration of those seven days, call a meeting.

5. Three clear days at least before any meeting of the council, notice of the time and place of the intended meeting, signed by the mayor, or if the meeting is called by members of the council, by those members, shall be fixed on the town hall (5). Where the meeting is called by members of the council, the notice shall specify the business proposed to be transacted thereat.

6. Three clear days at least before any meeting of the council, a summons to attend the meeting, specifying the business proposed to be transacted thereat, and signed by the town clerk, shall be left [or delivered by post in a registered letter] at the usual place of abode of every member of the council, three clear days at least before the meeting (6).

7. Want of service of the summons on any member of the council shall not affect the validity of a meeting.

8. No business shall be transacted at a meeting other than that specified in the summons relating thereto, except in case of a quarterly meeting, business prescribed by this Act to be transacted thereat.

9. At every meeting of the council, the mayor, if present, shall be chairman. If the mayor is absent, then the deputy mayor, if chosen for that purpose by the members of the council then present, shall be chairman. If both the mayor and the deputy mayor are absent, or the deputy mayor, being present, is not chosen, then such alderman, or in the absence of all the aldermen, such councillor, as the members of the council then present choose, shall be chairman.

10. All acts of the council, and all questions coming or arising before the council, may be done and decided by the majority of such members of the council as are present

(1) See section 22, *ante*.
(2) Greenwich time: 43 & 44 Vict. c. 9.
(3) The words in brackets are new. As to ninth of November happening to fall on Sunday, &c., see section 230, *ante*.
As to the order of business, see sections 61 (1), (2), 170 (1), (2), 60 (1), (2), *ante*.
(4) See sections 6, 8, *infra*.
(5) See section 232, *ante*.
(6) The words in brackets are new. As to adjourned meeting, see *R.* v. *Grimshaw*, 10 Q. B. 747.

Sched. II. [and vote] at a meeting held in pursuance of this Act, the whole number present at the meeting, whether voting or not, not being less than one-third of the number of the whole council (1).

11. In case of equality of votes, the chairman of the meeting shall have a second or casting vote.

12. Minutes of the proceedings of every meeting shall be drawn up and fairly entered in a book kept for that purpose, and shall be signed in manner authorised by this Act (2).

13. Subject to the foregoing provisions of this schedule, the council may from time to time make standing orders for the regulation of their proceedings and business, and vary or revoke the same.

Sched III.

THE THIRD SCHEDULE.

Elections.

Part I.

Preparation and Revision of Parish Burgess Lists in Boroughs not Parliamentary.

1. On or before each first of September, the overseers (3) of each parish shall make, sign, and deliver to the town clerk a list, called the parish burgess list, of all persons entitled to be enrolled in the burgess roll for the year in respect of property in that parish (4).

2. The overseers (3) shall keep a printed copy of the parish burgess list made by them open to public inspection on the first fifteen days of September.

3. The town clerk shall cause a printed copy of all the parish burgess lists to be fixed on the town hall (5), and to be kept so fixed during the last seven of those fifteen days (6).

4. Every person whose name is not in a parish burgess list, and who claims to have it inserted therein (in this Act referred to as a claimant), shall, on or before the fifteenth of September, give notice in writing of his claim to the town clerk (7).

5. Every person whose name is in a parish burgess list may object to any other person as not being entitled to have his name retained in that or any other parish burgess list (8).

6. Every person so objecting (in this Act referred to as an objector) shall, on or before the fifteenth of September, give to the town clerk (4), and also give to the person objected to, or leave at or on the property for which he appears in the parish burgess list to be rated, notice in writing of the objection.

7. The town clerk shall make two separate lists of the claimants and the persons objected to (in this Act referred to as respondents), and shall cause printed copies thereof

(1) The words in brackets are new. See section 22 (3), *ante.*

(2) See sections 22 (5), 233, and 235, *ante.*

(3) See the interpretation clause, section 7, *ante.*

(4) Delivery to servant at house of town clerk is sufficient: *R.* v. *Mayor of Rochester*, 7 E. & B. 910, E. B. & E. 1024, 27 L. J. Q. B. 45, 4 Jur. N. S. 1227, 6 W. R. 838.

As to penalty for neglect to make, &c., this list, see section 75, *ante.*

(5) See section 232, *ante.*

(6) As to effect of non-compliance with these directions, see *R.* v. *Mayor of Rochester*, *supra.*

(7) See Eighth Schedule, Part II., Form D., *post.*

The notice should state the *parish* in which the property of the claimant is situate: *R.* v. *Mayor of Kidderminster*, 2 L. M. & P. 666, 20 L. J. Q. B. 281.

It seems that signature with initials only is sufficient. See *R.* v. *Mayor of Hartlepool*, 2 L. M. & P. 666, 21 L. J. Q. B. 71; and see section 241 and notes thereto, *ante.*

(8) See Eighth Schedule, Part II., Form E., *post.*

It seems a notice is not bad by reason of not stating the nature of the property of the objector or in what parish it is situate: *R.* v. *Mayor of Monmouth*, and *R.* v. *Mayor of Bolton*, L. R. 5 Q. B. 251, 39 L. J. Q. B. 77, 21 L. T. N S. 748. See further *R. v. Mayor of Harwich*, 8 A. & E. 919, 8 L. J. Q. B. 13, 2 Jur. 1086, 1 P. & D. 134.

to be fixed on the town hall, and to be kept so fixed during the last seven days of September (1).

8. He shall also keep a printed copy of each of these lists, open to public inspection on any day during the same seven days (2).

9. The mayor and the two revising assessors (3) shall in each year revise the parish burgess lists (4).

10. They shall for this purpose hold an open court in the borough on some or one of the first fifteen days of October.

11. They shall give three clear days notice of the holding of the court, by notice fixed on the town hall.

12. The town clerk shall at the the opening of the court produce the parish burgess lists, and a copy of the lists of claimants and respondents.

13. The court shall insert in the parish burgess lists the name of every person who has duly claimed to have his name inserted therein, and is proved to the satisfaction of the court to be so entitled (5).

14. The court shall expunge from the parish burgess lists the name of every person proved to the court to be dead.

15. Subject as aforesaid, the court shall retain in the parish burgess lists the name of every person to whom objection has not been duly made.

16. The court shall also retain therein the name of every respondent, unless the objector appears by himself, or by some person on his behalf, in support of the objection.

17. Where the objector so appears, the court shall require proof of the respondent's qualification, and, if it is not proved to the satisfaction of the court, shall expunge his name from the parish burgess list (6).

18. If the name of any person is entered in respect of property situate in more than one ward, the court may call upon him to choose, and if he does not choose, may determine in which of those wards he shall be entitled to vote (7).

19. The court shall correct any mistake and supply any omission proved to the court to have been made in any of the lists with respect to the name or abode of any person, or the description of any property.

20. The overseers, vestry clerks, and collectors of poor rates of every parish shall attend the court.

21. The court may require any overseer or person having the custody of any book containing any poor rate made in any year in any parish to produce the same at the court for inspection.

22. The court may examine on oath (8) the town clerk, overseers, vestry clerks, and collectors, and any claimant, objector, respondent, or witness.

23. The court shall, on the hearing in open court, determine on the validity of all claims and objections.

24. The mayor shall, in open court, write his initials against each name inserted or expunged, and against any part of the lists in which a mistake has been corrected or omission supplied, and shall sign his name to every page of the lists so revised.

25. The mayor may adjourn the court from time to time, so that no adjourned court be held after the fifteenth of October (9).

(1) See Eighth Schedule, Part II., Forms F. and G.; and see notes to rule 3, *ante*, p. 354.
(2) As to penalty for neglect, see section 75, *ante*.
(3) See section 29, *ante*.
(4) As to consequence of neglect, see sections 71 (1) and 75. As to *mandamus* to compel revision, see *R.* v. *Mayor of Rochester*, *ante*, p. 354, and *R.* v. *Mayor of Monmouth*, &c., *ante*, p. 354.
(5) As to *mandamus* to compel insertion of name of claimant, see section 47, *ante*.
As to questioning title of burgess, whose name appears on burgess list improperly made out, see *Seale* v. *R.*, 8 E. & B. 22, 3 Jur. N. S. 1244.
(6) As to *mandamus* to compel insertion of expunged name, see section 47, *ante*.
(7) See *R.* v. *Mayor of Cambridge*, 28 L. J. Q. B. 10, 5 Jur. N. S. 436; *R.* v. *Tugwell*, L. R. 3 Q. B. 704, 38 L. J. Q. B. 12, 33 J. P. 101, and *R.* v. *Harrald*, *ante*, p. 284.
(8) See section 239 (1), *ante*.
(9) But it seems where a *mandamus* has been obtained a court may be held after this date. See cases cited in note (4), *supra*.

Sched. III.

PART II.

Rules as to Nomination in Elections of Councillors (1).

1. Every candidate for the office of councillor must be nominated in writing (2).

2. The writing must be subscribed by two burgesses of the borough or, in the case of a ward election, of the ward, as proposer and seconder, and by eight other burgesses of the borough or ward, as assenting to the nomination (2).

3. Each candidate must be nominated by a separate nomination paper, but the same burgesses, or any of them, may subscribe as many nomination papers as there are vacancies to be filled, but no more (2).

4. Each person nominated must be enrolled in the burgess roll (3) or entered in the separate non-resident list (4) required by this Act to be made.

5. The nomination paper must state the surname and other names (5) of the candidate, with his abode (6) and description.

6. The town clerk shall provide nomination papers, and shall supply any burgess with as many nomination papers as may be required (7), and shall, at the request of any burgess, fill up a nomination paper.

7. Every nomination paper subscribed as aforesaid must be delivered by the candidate, or his proposer or seconder (8), at the town clerk's office, seven days at least (9) before the day of election, and before five o'clock (10) in the afternoon of the last day for delivery of nomination papers.

8. The town clerk shall forthwith send notice of every such nomination to each candidate.

9. The mayor shall attend at the town hall on the day next after the last day for delivery of nomination papers for a sufficient time, between the hours of two and four in the afternoon, and shall decide on the validity of every objection made in writing to a nomination paper (11).

10. Where a person subscribes more nomination papers than one, his subscription shall be inoperative in all but the one which is first delivered (12).

11. Each candidate may, by writing signed by him, or if he is absent from the United Kingdom, then his proposer or seconder may, by writing signed by him, appoint a person (in this schedule referred to as the candidate's representative) to attend the proceedings before the mayor on behalf of the candidate, and this appointment must be delivered to the town clerk before five o'clock (13) in the afternoon of the last day for delivery of nomination papers.

(1) These rules apply to the nomination of elective and revising assessors. See sections 62 and 72, *ante*.

(2) As to inaccurate description, &c., see the notes to section 241, *ante*. In *Harmon* v. *Park*, L. R. 7 Q. B. D. 369, 50 L. J. Q. B. 775, 45 L. T. N. S. 174, 45 J. P. 714, it was decided under 38 & 39 Vict. c. 40, s. 1 (2), that after a nomination paper was completed and delivered to the town clerk it could not be altered by striking out the name of the proposer and inserting the name of another duly enrolled burgess.

As to a candidate being nominated twice, one nomination being good and the other bad, and as to adding together the votes given under both nominations, see *Northcote* v. *Pulsford*, L. R. 10 C. P. 476, 44 L. J. C. P. 217, 32 L. T. N. S. 602, 23 W. R. 700.

It would seem that where the same burgess subscribes more nomination papers than there are vacancies, the first nomination papers subscribed to the number of the vacancies are not invalid. See *Burgoyne* v. *Collins*, L. R. 8 Q. B. D. 450, 51 L. J. Q. B. 335, 30 W. R. 923, 46 J. P. 390; and now see rule 10, *post*.

(3) See rule 18, *post*, and section 11 (2) (*a*), *ante*.

(4) See section 49, *ante*, and section 11 (2) (*b*), *ante*.

(5) See *Mather* v. *Brown*, *ante*, p. 286; and *Harmon* v. *Park*, *ante*, p. 292.

(6) See *Soper* v. *Mayor of Basingstoke*, *ante*, p. 345.

(7) See rule 3, *ante*, and rule 10, *post*.

(8) Under 38 & 39 Vict. c. 40, s. 1, delivery by an agent was held insufficient: *Monks* v. *Jackson*, L. R. 1 C. P. D. 683, 46 L. J. C. P. 162, 35 L. T. N. S. 95.

(9) As to computation of time, see section 230, *ante*, and *R.* v. *JJ. of Middlesex*, 3 D. & L. 109, 14 L. J. M. C. 139.

(10) Greenwich time: 43 & 44 Vict. c. 9.

(11) See note (9), *supra*, and rule 14, *post*.

(12) See rule 3, and notes thereon.

(13) See note (10), *supra*.

12. Each candidate and his representative, but no other person, except for the purpose of assisting the mayor, shall be entitled to attend the proceedings before the mayor.

13. Each candidate and his representative may, during the time appointed for the attendance of the mayor for the purposes of this schedule, object to the nomination paper of any other candidate for the borough or ward.

14. The decision of the mayor shall be given in writing, and shall, if disallowing an objection, be final, but, if allowing an objection, shall be subject to reversal on petition questioning the election or return (1).

15. The town clerk shall at least four days (2) before the day of election cause the surnames and other names of all persons validly nominated, with their respective abodes and descriptions, and the names of the persons subscribing their nomination papers as proposers and seconders, to be printed and fixed on the town hall (3), and in the case of a ward election, in some conspicuous place in the ward.

16. The nomination of a person absent from the United Kingdom shall be void, unless his written consent given within one month before the day of his nomination in the presence of two witnesses is produced at the time of his nomination.

17. Where the number of valid nominations exceeds that of the vacancies, any candidate may withdraw from his candidature by notice signed by him and delivered at the town clerk's office not later than two o'clock (4) in the afternoon of the day next after the last day for delivery of nomination papers: Provided that such notices shall take effect in the order in which they are delivered, and that no such notice shall have effect so as to reduce the number of candidates ultimately standing nominated below the number of vacancies.

18. In and for the purposes of the provisions of this Act relating to proceedings preliminary to election, the burgess roll or ward roll which will be in force on the day of election shall be deemed to be the burgess roll or ward roll, and a person whose name is inserted in one of the lists from which the burgess roll or ward roll will be made up, shall be deemed to be enrolled in that roll although that roll is not yet completed (5).

Part III.

Modifications of the Ballot Act in its Application to Municipal Elections (6).

1. The provisions of the Ballot Act, 1872, with respect to the voting of a returning officer, the use of a room for taking a poll, and the right to vote of persons whose names are on the register of voters, and rules 16 and 19 in the schedule to that Act, shall not apply in the case of a municipal election.

2. The mayor shall at least four days before the day of election give public notice of the situation, division, and allotment of polling places for taking the poll at the election, and of the description of the persons entitled to vote thereat, and at the several polling stations.

3. The mayor shall provide everything which in the case of a parliamentary election is required to be provided by the returning officer for the purpose of a poll, and shall appoint officers for taking the poll and counting the votes.

(1) It would seem that the mayor has no power to deal with an objection as to the time of delivering a nomination paper, and that his decision may be questioned on petition: *Howes* v. *Turner*, *ante*, p. 284. An objection as to the proper delivery of a nomination paper is cognizable by the mayor: *Monks* v. *Jackson*, *ante*, p. 356.

See, also, as to what questions can be entertained by the mayor, *Burgoyne* v. *Collins*, *ante*, p. 356; *Harmon* v. *Park*, *ante*, p. 356; *Budge* v. *Andrews*, *ante*, p. 282; and *Gothard* v. *Clarke*, *ante*, p. 288.

(2) As to computation of time, see section 230, *ante*.

(3) See section 232, *ante*.

(4) Greenwich time: 43 and 44 Vict. c. 9. (5) See *Budge* v. *Andrews*, *ante*, p. 282.

(6) See section 58 (1), *ante*. See the provisions of the Ballot Act in so far as it applies to municipal elections, *post*.

Sched. III.

4. The mayor shall furnish every polling station with such number of compartments in which the voters can mark their votes screened from observation, and furnish each presiding officer with such number of ballot papers as in the judgment of the mayor may be necessary for effectually taking the poll at the election.

5. All expenses of the election shall be defrayed in manner by this Act provided.

6. No return shall be made to the clerk of the Crown in Chancery.

Part IV.

Enactments which are to Revive on the Expiration of the Ballot Act (1).

With respect to a contested election of councillors, elective auditors, or revising assessors, the following rules shall be observed:

1. The returning officer shall cause the requisite polling booths to be erected, or the requisite rooms to be hired and used as polling booths.

2. The returning officer shall, at least two days before the day of election, give public notice of the situation, division, and allotment of the different booths.

3. Each booth shall be divided into compartments, and the returning officer shall appoint a clerk to take the poll at each compartment.

4. There shall be affixed on each booth a notice specifying the part of the borough for which it is allotted.

5. No person shall be admitted to vote at any booth except that allotted for the part in which his qualifying property is situate, unless no booth is allotted for that part, in which case he may vote at any booth.

6. If there is more than one booth, the returning officer may appoint a deputy to preside at each booth.

7. A burgess may vote by delivering to the returning officer or his deputy a voting paper containing the surnames and other names of the persons for whom he votes, with their abodes and descriptions. The voting paper must be signed by the burgess, and must state the qualifying property in respect of which he votes.

8. The returning officer or his deputy shall, if so required by two burgesses, put to any person offering to vote at the time of his delivering in his voting paper, but not afterwards, the following question:

"Are you the person whose name is signed as [*A.B.*] to the voting paper now delivered in by you?"

The vote of a person required to answer this question shall not be received until he has answered it. If any person wilfully makes a false answer thereto he shall be guilty of a misdemeanour.

9. The returning officer shall, at the close of the poll, examine the voting papers, and shall publish a list of the persons elected not later than two o'clock in the afternoon of the day next but one after the day of election.

10. The town clerk shall, for a period of six months from the day of election, keep at his office the voting papers used at the election, and shall permit any burgess to inspect the same on payment of one shilling for each search.

Sched. IV.

THE FOURTH SCHEDULE.

Fees and Remuneration.

The following fees and remuneration shall be payable:—

1. *Commissioner for Division into Wards or Alteration of Wards* (2).

Five guineas for every day he is employed, over and above his travelling and other expenses (3).

(1) Continued to December 31st, 1884: 46 & 47 Vict. c. 40.
(2) See section 30, *ante*.
(3) See Fifth Schedule, Part II., r. 8, *post*.

Sched. IV.

2. *Assistant Recorder and Officers of Second Court of Quarter Sessions* (1).

For every day not exceeding two, or, by resolution of the Council, with the sanction of the Secretary of State, not exceeding six—

To an assistant recorder	Ten guineas.
To an assistant clerk of the peace	Two guineas.
To an additional crier	Half a guinea.

The remuneration is payable on a certificate from the recorder showing the amount due (2).

3. *Coroner* (3).

To the borough coroner (subject to the provisions of any other Act relating to coroners)—

For every inquisition which he duly takes in the borough .	Twenty shillings.
and	
For every mile exceeding two miles which he is compelled to travel from his usual place of abode to take such inquisition	Ninepence.

4. *Special Constables* (4).

To a special constable, for every day during which he is called out to act as such	Three shillings and sixpence.

THE FIFTH SCHEDULE.

Sched V.

Payments out of the Borough Fund (5).

Part I.

Payments which may be made without Order.

1. The remuneration (if any) of the mayor (6), of the recorder (if any) in his capacity either of recorder (7) or of judge of a borough civil court (8), of the stipendiary magistrate (9) (if any), of the town clerk (10), of the treasurer (10), of the clerk of the peace when paid by salary (11), of every other officer appointed by the council (10), and of the clerk to the justices (12).

2. The remuneration and allowances certified by the Treasury to be payable to the Treasury in respect of an election petition (13).

3. The remuneration certified by the recorder to be due to any assistant recorder, assistant clerk of the peace, or additional crier (14).

Part II.

Payments which may not be made without Order.

1. The expenses incurred by overseers (15), and by the town clerk and other municipal

(1) See section 168, *ante*.
(2) See section 140, *ante*, and Fifth Schedule, Part I., r. 3, *post*.
(3) See section 140, *ante*, and Fifth Schedule, Part II., r. 4, *post*.
(4) See sections 140, 196, *ante*, and Fifth Schedule, Part II., r. 5, *post*.
(5) See sections 140, 141, 143 and 226 (3), and notes thereto, *ante*.
(6) See section 15 (4), *ante*.
(7) See section 163 (7), *ante*.
(8) See section 175 (5), *ante*.
(9) See section 161 (4), *ante*.
(10) See section 20, *ante*.
(11) See section 20 and section 164 (5), *ante*, and Part II., r. 4 of this Schedule, *post*.
(12) See section 159, *ante*.
(13) See section 101, *ante*.
(14) See section 168 (8), in the Fourth Schedule (2).
(15) See the Third Schedule, Part I., rr. 1, 2, 20, 21 and 22, *ante*.

Sched. V.

41 & 42 Vict. c. 26.

authorities, in relation to the enrolment of burgesses (1) and the holding of municipal elections, or so much of those expenses as is not otherwise provided for under section thirty of the Parliamentary and Municipal Registration Act, 1878.

2. The expenses incurred by the town clerk in providing accommodation for an election court held under this Act.

3. The expenses of providing, furnishing, maintaining, or improving the corporate buildings, including the justice room (if any) and the necessary expenses of that room.

4. The fees payable to the clerk of the peace if not paid by salary (2), and under this Act to the borough coroner (3).

5. The payments to be made under this Act to or in respect of the borough police (4) and to any special constable (5), including the following payments (namely):

(*a.*) Such salaries, wages, and allowances to the borough constables, and at such periods, as the watch committee, with the approbation of the council, direct; and

(*b.*) Such further sum as may be awarded by the watch committee, subject to the approbation of the council, or by the court of quarter or petty sessions, to a borough constable as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of his duty, or as may be awarded by the watch committee, subject to the approbation of the council, to a borough constable, as an allowance to him when disabled by bodily injury or worn out by length of service; and

(*c.*) Any extraordinary expenses which a borough constable appears to have necessarily incurred in apprehending offenders, and executing the orders of any justice having jurisdiction in the borough, such expenses having been first examined and approved by that justice; and

(*d.*) All other charges and expenses which the watch committee, subject to the approbation of the council, direct to be paid for the purposes of the borough constabulary force.

6. The costs and expenses payable by the corporation in respect of the prosecution, maintenance, conveyance, transport, or punishment of offenders (6).

7. All sums payable under this Act by the corporation of the borough to the treasurer of a county (7).

8. The expenses of and incidental to the division of a borough into wards or the alteration of wards, including the remuneration of the commissioner appointed for the purposes of the division or alteration (8).

9. Such remuneration to the clerk to any commissioners for taxes in respect of making copies of assessments as the council think reasonable (9).

10. The expenses of and relating to a charter of incorporation for a borough, and of and relating to all elections, acts and proceedings under the charter (10).

11. All expenses charged on the borough fund by any Act of Parliament or otherwise by law.

12. All other expenses, not by this Act otherwise provided for, necessarily incurred in carrying this Act into effect.

(1) See sections 44—49, and Third Schedule, Part I., *ante.*
(2) See section 164 (5), *ante*, and see Part I., r. 1, of this Schedule, *ante.*
(3) See section 171, *ante.*
(4) See sections 190—195, *ante.*
(5) See section 196, *ante.*
(6) See section 151, *ante.*
(7) See sections 151—153, *ante.*
(8) See section 30, *ante.*
(9) See section 144 (7), *ante.*
(10) See sections 210—218, *ante.*

THE SIXTH SCHEDULE (1).

Sched. VI.

COUNTIES TO WHICH CERTAIN BOROUGHS ARE TO BE CONSIDERED ADJOINING FOR PURPOSES OF CRIMINAL TRIALS.

Berwick-upon-Tweed . . .	Northumberland.
Bristol	Gloucestershire.
Chester	Cheshire.
Exeter	Devonshire.
Kingston-upon-Hull . . .	Yorkshire.
Newcastle-upon-Tyne	Northumberland.

THE SEVENTH SCHEDULE (2).

Sched. VII.

PROCEDURE FOR SCHEME ON GRANT OF NEW CHARTER.

1. The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. The scheme, when settled, shall, besides being published in the *London Gazette*, be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

5. Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme, which Bill shall be a Public Bill (3).

6. Before such Bill is introduced into Parliament the Committee of Council may alter the scheme in such manner as they think proper.

7. If while the Bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the Bill, so far as it relates to such scheme, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Private Bill.

8. A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

THE EIGHTH SCHEDULE.

Sched. VIII.

FORMS (4).

PART I.

Declarations on accepting Office (5).

FORM A.

FORM OF DECLARATION ON ACCEPTANCE OF CORPORATE OFFICE.

I, *A. B.*, having been elected mayor [*or* alderman, councillor, elective auditor, *or* revising assessor] for the borough of , hereby declare that I take the said

(1) See section 188 (2), *ante*.
(2) See section 214 (3), *ante*.
(3) See sections 213 (3) (4), and 217, *ante*.
(4) See section 240 and sections 72 and 241, *ante*.
(5) See sections 34 and 35, *ante*.

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office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [*and in the case of the person being qualified by estate say*, And I hereby declare that I am seised or possessed of real or personal estate, or both [*as the case may be*], to the value or amount of one thousand pounds, or five hundred pounds [*as the case may require*], over and above what will satisfy my just debts].

FORM B.

DECLARATION BY RECORDER OR BOROUGH JUSTICE (1).

I, *A. B.*, hereby declare that I will faithfully and impartially execute the office of recorder [*or* justice of the peace] for the borough of , according to the best of my judgment and ability.

PART II.

Forms relating to Elections (2).

FORM C.

THE LIST OF BURGESSES of the Borough of , in the Parish [*or* Township] of .

Surname and other Names of each person in full.	Nature of Property for which he is now rated.	Name and Situation of Property for which he is now rated.
Ashton, John . . .	Shop . .	No. 23, Church Street.
Bates, Thomas . . .	House . .	Brook's Farm.

(Signed) *A. B.* } Overseers.
C. D. }

FORM D.

NOTICE OF CLAIM.

To the Town Clerk of the Borough of .

I hereby give you notice, that I claim to have my name inserted in the parish burgess lists of the borough of that I occupy [*here describe the house, warehouse, counting-house, shop, or other building then occupied by the claimant*] in the borough, and that I have been rated in the parish (3) of , [*here state the parish or several parishes, and the time during which the claimant has been rated in each of them within the borough, necessary for his qualification*].

Dated the day of , in the year .

(Signed) John Allen (4) of [*place of abode*].

(1) See sections 157 (2) and 163 (4), *ante*.
(2) See sections 44—48, and Third Schedule, Part I., *ante*.
(3) See *R.* v. *Mayor of Kidderminster*, *ante*, p. 354.
(4) See *R.* v. *Mayor of Hartlepool*, *ante*, p. 354 ; *R.* v. *Avery*, 18 Q. B. 576, 21 L. J. Q. B. 428.

FORM E.

NOTICE OF OBJECTION.

To the Town Clerk of the Borough of [*or to the person objected to, as the case may be*].

I hereby give you notice, that I object to the name of Thomas Bates of Brook's Farm, in the parish of [*describe the person objected to as described in the parish burgess list*] being retained on the parish burgess lists of the borough of .

Dated the day of in the year .

(Signed) John Ashton of [*here state the place of abode and the property for which he is said to be rated in the parish burgess lists*].

FORM F.

LIST OF CLAIMANTS.

The following Persons claim to have their Names inserted in the Parish Burgess Lists of the Borough of .

Surname and other Names of each Claimant.	Nature of Property for which he is now rated.	Situation of Property for which he is now rated.	Parish [*or* Parishes] in which he has been rated, as stated in the Claim.
Allen, John . .	House . .	No. 17, High Street.	Rated in the last year in Saint Mary's parish in the borough, and in the two preceding years in Saint James's parish in the borough.

(Signed) *A. B.*, Town Clerk.

FORM G.

LIST OF PERSONS OBJECTED TO.

The following Persons have been objected to as not being entitled to have their Names retained in the Parish Burgess Lists of the Borough of .

Surname and other Names of each Person objected to.	Nature of Property for which he is now rated.	Situation of Property for which he is said to be now rated in the Overseers List.	Parish in which the Property for which he is now said to be rated in the Overseers List.
Bates, Thomas .	House .	Brook's Farm . .	Saint James'.

(Signed) *A. B.*, Town Clerk.

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FORM H. (1).

NOTICE.

Borough of Election of [Councillors, *or* elective Auditors, *or* revising Assessors, *as the case may be*] for the [Ward or several Wards of the] Borough.

Take Notice.

1. That an election of [*here insert the number of councillors, auditors, or assessors, as the case may be*] for the [ward or several wards of the] said borough will be held on the day of .

2. Candidates must be nominated by writing, subscribed by two burgesses as proposer or seconder, and by eight other burgesses as assenting to the nomination (2).

3. Candidates must be duly qualified for the office to which they are nominated, and the nomination paper must state the surname and other names (3) of the person nominated, with his abode and description, and may be in the following form, or to the like effect:

(Set out Form I.) (4).

4. Each candidate must be nominated by a separate nomination paper, but the same burgesses or any of them may subscribe as many nomination papers as there are vacancies to be filled for the borough [*or* ward], but no more.

5. Every person who forges a nomination paper, or delivers any nomination paper knowing the same to be forged, will be guilty of a misdemeanour, and be liable to imprisonment for any term not exceeding six months, with or without hard labour.

6. Nomination papers must be delivered by the candidate himself, or his proposer or seconder, at the town clerk's office before five o'clock in the afternoon of day the day of next.

7. The mayor will attend at the town hall on day the day of , for a sufficient time between the hours of two and four o'clock in the afternoon, to hear and decide objections to nomination papers.

8. Forms of nomination papers may be obtained at the town clerk's office; and the town clerk will, at the request of any burgess, fill up a nomination paper.

Dated this day of , 18 .

A. B., Town Clerk.

FORM I.

NOMINATION PAPER (5).

Borough of . Election of Councillors [elective Auditors, or revising Assessors] for Ward in the said Borough [*or* the said Borough] to be held on the day of , 18 .

We, the undersigned, being respectively burgesses, hereby nominate the following person as a candidate at the said election.

Surname.	Other names.	Above.	Description.

(1) See section 54, *ante*.
(2) See *Harmon* v. *Park*, *ante*, p. 356.
(3) See *Mather* v. *Brown*, *ante*, p. 286.
(4) See Form I., *infra*.
(5) See Third Schedule, Part II., rr. 1—5.

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
A. B. C. D.	

We, the undersigned, being respectively burgesses, hereby assent to the nomination of the above-named person as a candidate at the said election.

Dated this day of , 18 .

Signature.	Number on Burgess Roll, with the Ward or Polling District, if any, having a distinct numbering.
E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T.	

FORM K.

BALLOT PAPER (1).

FORM of Front of Ballot Paper.

For Elective Auditors.

Counterfoil.
No.

Note. — The counterfoil is to have a number to correspond with that on the back of the ballot paper.

1	CADE. (John Cade, of 22, Wellclose Place, Accountant.)	
2	JOHNSON. (Charles Johnson, of 7, Albion Street, Gentleman.)	
3	THOMPSON. (William Thompson, of 14, Queen Street, Silversmith.)	

For Revising Assessor.

1	BACON. (Charles Bacon, of 29, New Street, Solicitor.)	
2	BYRON. (James Byron, of 45, George Street, Commission Agent.)	
3	WILSON. (George Wilson, of 22, Hanover Square, Gentleman.)	

FORM of Back of Ballot Paper.

No. . Election of elective auditors [*or* revising assessors] for the borough of , to be held on the day of , 18 .

The number on the back of the ballot paper is to correspond with that on the counterfoil.

(1) See section 62, *ante*.

Part III.

Forms relating to Working Men's Dwellings (1).

Form L.

Form of Grant by Corporation.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Grant No. .

The mayor, aldermen, and burgesses of the borough of , by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to them by *A. B.* of hereby grant to the said *A. B.* (herein referred to as the grantee), and his heirs, the site following (that is to say) [*insert description*] with the appurtenances, subject to the following conditions (that is to say):

1. The grantee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, numbered , and under the superintendence and to the satisfaction of the corporation.

2. The grantee, his heirs and assigns, shall always maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts, and, in case of the taking down or destruction of the building shall not rebuild it except in manner approved by the corporation.

3. The grantee, his heirs or assigns, shall not add to or alter the character of the building without the consent of the corporation.

4. If at any time the grantee, his heirs or assigns, fail to fully observe and perform any stipulation of this grant, the corporation may, if they think fit, declare that the site is re-vested in the corporation; and thereupon the same, with the dwelling and other buildings thereon, shall become and be vested in the corporation, as if this grant had not been made.

In witness whereof, &c., this day of , 187 .

(*Corporate Seal.*)

Form M.

Form of Transfer of Grant.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Transfer No. . (Grant No. .)

A. B. of , by virtue and in pursuance of the above-mentioned Act, and in consideration of paid to him by *C. D.* of , hereby grants and transfers to the said *C. D.* and his heirs the site comprised in the within-written* grant [*or* the grant No. under the said Act, dated the day of , 187 †] with the appurtenances and with the dwelling and other buildings thereon, subject to the conditions on which that site is held immediately before the execution of this transfer.

*[*In case of transfer by indorsement.*]

†[*In case of transfer by separate deed.*]

In witness whereof, &c., this day of 18 .

A. B. (L.S.)

(1) See section 111, *ante.*

FORM N.

FORM OF LEASE BY CORPORATION.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Lease No. .

The mayor, aldermen, and burgesses of the borough of , by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of paid to them by *A. B.* of , and of the rent and stipulations in this lease reserved and contained, and to be by him, his executors, administrators, or assigns, paid and performed, hereby lease to the said *A. B.* (herein referred to as the lessee), his executors and administrators, the site following (that is to say) [*insert description*] with the appurtenances, for the term of [*nine hundred and ninety-nine*] years from the day of , at the yearly rent (clear of all deductions) of , payable by two equal half-yearly payments on the day of , and the day of in every year, the first thereof to be made on the day of , and the last thereof to be made in advance on the day of next before the end of the term, and so that on the term being determined by re-entry a proportionate part of the rent for the fraction of the current half year up to re-entry be payable.

And the lessee hereby covenants with the corporation that he, his executors, administrators, or assigns, will during the term pay the rent on the days and in manner aforesaid, and will pay all taxes, rates, and outgoings for the time being payable by the tenant in respect of the premises.

And this lease is made subject to the following conditions (that is to say):

1. The lessee shall build on the site one working-man's or working-men's dwelling (and no more) according to the plan and specification deposited in the office of the town clerk, and numbered , under the superintendence and to the satisfaction of the corporation.

2. The lessee, his executors, administrators, and assigns, shall always during the term maintain and repair the building, and shall not sell or alienate the site or building in divisions or separate parts and, in case of the taking down or destruction of the building, shall not rebuild it, except in manner approved by the corporation.

3. The lessee, his executors, administrators, or assigns, shall not add to or alter the character of the building without the consent in writing of the corporation.

4. If at any time the lessee, his executors, administrators, or assigns, fail to duly pay the rent hereby reserved, or to fully observe and perform any stipulation herein contained, the corporation may, if they think fit, re-enter on any part of the site in the name of the whole, and thereupon the term of years shall absolutely cease.

In witness whereof, &c., this day of , 187 .

20 & 21
22 &

(*Corporate Seal.*)

A. B. (L.S.)

FORM O.

FORM OF ASSIGNMENT OF LEASE.

The Municipal Corporations Act, 1882.

(Working Men's Dwellings.)

Borough of . Transfer No. . (Lease No. .)

A. B. of (herein referred to as the assignor), by virtue and in pursuance of the above-mentioned Act, and in consideration of , paid to him by *C. D.* of , hereby assigns to the said *C. D.* (herein referred to as the assignee), his and administrators, the site comprised in the within-written lease* [*or* the No. under the said Act, dated the day of 187 †], with the nces, and with the dwelling and other buildings thereon, for the residue of of years, at the rent and subject to the stipulations and conditions

*[*In case of assignment by indorsement.*]

†[*In case of assignment by separate deed.*]

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at and subject to which that site is held immediately before the execution of this assignment.

And the assignee for himself, his executors, administrators, covenants, with the assignor, his executors and administrators, that the assignee, his executors or administrators, will pay the yearly rent and observe and perform the stipulations and conditions aforesaid, and will at all times keep the assignor, his executors and administrators, indemnified in respect thereof.

In witness whereof, &c., this day of 187 .

A. B. (L.S.)
C. D. (L.S.)

PART IV.

Forms relating to Borough Bridges (1).

FORM P.

FORM OF MORTGAGE.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Mortgage No. .

We, the mayor, aldermen, and burgesses of the borough of , by virtue and in pursuance of the above-mentioned Act, and in consideration of the sum of , paid to them by *A. B.* of , for the purposes of the said Act, do grant and assign unto the said *A. B.*, his executors, administrators, and assigns, such proportion of the borough fund and borough rate as the said sum of doth or shall bear to the whole sum which is or shall be borrowed on the credit of the said fund and rate, to hold to the said *A. B.*, his executors, administrators, and assigns, from the day of the date hereof, until the said sum of , with interest at the rate of per centum per annum for the same, shall be fully paid and satisfied. And it is hereby declared that the said principal sum shall be repaid on the day of , at [*place of payment*].

In witness whereof, &c., this day of 187 .

(*Corporate Seal.*)

FORM Q.

FORM OF TRANSFER OF MORTGAGE.

The Municipal Corporations Act, 1882.

(Borough Bridges.)

Borough of . Transfer No. . (Mortgage No. .)

I, *A. B.*, of , in consideration of the sum of , paid to me by *C. D.* of , do hereby transfer to the said *C. D.*, his executors, administrators, and assigns, a certain mortgage, dated this day of , and made by the mayor, aldermen, and burgesses of the borough of , under the above-mentioned Act, for securing the sum of , and interest thereon at per centum per annum [*or, if the transfer is by indorsement on the mortgage, insert instead of the words immediately following the word "assigns,"* the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the fund and rate thereby assigned.

In witness whereof, &c., this day of 187 .

A. B.

(1) See section 119, *ante*.

THE NINTH SCHEDULE (1).

ENACTMENTS IN WHICH A REFERENCE TO THIS ACT IS TO BE SUBSTITUTED.

PART I.

General References.

2 & 3 Vict. c. 93.—An Act for the establishment of county and district constables by the authority of justices of the peace (section 24).

5 & 6 Vict. c. 109.—An Act for the appointment of parish constables (section 21).

9 & 10 Vict. c. 74.—An Act to encourage the establishment of public baths and wash-houses (section 1).

10 & 11 Vict. c. 62.—An Act for the establishment of naval prisons, and for the prevention of desertion from Her Majesty's navy (section 13).

12 & 13 Vict. c. 35.—An Act for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the Secretary of State, and afterwards laid before Parliament (section 2).

12 & 13 Vict. c. 82.—An Act to relieve boroughs, in certain cases, from contribution to certain descriptions of county expenditure.

13 & 14 Vict. c. 20.—An Act to amend an Act of the fifth and sixth years of Her present Majesty for the appointment and payment of parish constables (section 7).

13 & 14 Vict. c. 105.—An Act for facilitating the union of liberties with the counties in which they are situate (section 10).

14 & 15 Vict. c. 28.—An Act for the well ordering of common lodging-houses (section 2).

14 & 15 Vict. c. 34.—An Act to encourage the establishment of lodging-houses for the labouring classes (section 2).

16 & 17 Vict. c. 73.—An Act for the establishment of a body of naval coast volunteers, and for the temporary transfer to the navy, in case of need, of seafaring men employed in other public services (section 24).

16 & 17 Vict. c. 97.—The Lunatic Asylums Act, 1853 (section 9).

17 & 18 Vict. c. 71.—An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts.

17 & 18 Vict. c. 87.—An Act to make further provision for the burial of the dead in England beyond the limits of the metropolis (section 3).

17 & 18 Vict. c. 105.—The Militia Law Amendment Act, 1854 (section 11).

18 & 19 Vict. c. 57.—An Act further to amend the laws relating to the militia in England (section 7).

18 & 19 Vict. c. 121.—The Nuisances Removal Act for England, 1855.

19 & 20 Vict. c. 69.—An Act to render more effectual the police in counties and boroughs in England and Wales.

20 & 21 Vict. c. 81.—An Act to amend the Burial Acts.

22 & 23 Vict. c. 40.—An Act for the establishment of a reserve volunteer force of seamen, and for the government of the same (section 25).

23 & 24 Vict. c. 68.—An Act for the better management and control of the highways in South Wales.

25 & 26 Vict. c. 61.—An Act for the better management of highways in England.

26 & 27 Vict. c. 13.—An Act for the protection of certain garden or ornamental grounds in cities and boroughs.

26 & 27 Vict. c. 97.—The Stipendiary Magistrates Act, 1863 (section 2).

28 & 29 Vict. c. 126.—The Prison Act, 1865 (section 4).

30 & 31 Vict. c. 102.—The Representation of the People Act, 1867.

[illegible] 32 Vict. c. 22.—The Petty Sessions and Lock-up House Act, 1868 (section 3).

Electi[illegible] c. 46.—The Boundary Act, 1868 (First Schedule).

day of [illegible] 58.—The Parliamentary Electors Registration Act, 1868.

The petiti[illegible]—The Parliamentary Elections Act, 1868 (sections 43 and 45).

as the case may be] the Artizans and Labourers' Dwellings Act, 1868 (section 3).

1. Your petitio[illegible]

may be,] at the above [illegible]

petitioner *B.* [*here sta*[illegible]

(1) See section 242, *ante*.

Sched. IX.

33 & 34 Vict. c. 75.—The Elementary Education Act, 1870 (section 3).

33 & 34 Vict. c. 78.—The Tramways Act, 1870 (Schedule A).

34 & 35 Vict. c. 56.—The Dogs Act, 1871 (Schedule).

34 & 35 Vict. c. 105.—The Petroleum Act, 1871 (section 2).

35 & 36 Vict. c. 38.—The Infant Life Protection Act, 1872 (First Schedule).

35 & 36 Vict. c. 91.—An Act to authorise the application of funds of municipal corporations and other governing bodies in certain cases.

38 & 39 Vict. c. 17.—The Explosives Act, 1875 (section 108).

38 & 39 Vict. c. 55.—The Public Health Act, 1875 (section 4).

38 & 39 Vict. c. 83.—The Local Loans Act, 1875 (section 34).

39 & 40 Vict. c. 56.—The Commons Act, 1876 (section 37).

40 & 41 Vict. c. 21.—The Prison Act, 1877 (section 59).

41 & 42 Vict. c. 49.—The Weights and Measures Act, 1878 (Fourth Schedule).

41 & 42 Vict. c. 74.—The Contagious Diseases (Animals) Act, 1878 (sections 7 and 66).

41 & 42 Vict. c. 77.—The Highways and Locomotives (Amendment) Act, 1878 (section 38.

Part II.

Particular References.

14 & 15 Vict. c. 55.—An Act to amend the law relating to the expenses of prosecutions, and to make further provisions for the apprehension and trial of offenders in certain cases:

In section 24, for Schedule C. to the Municipal Corporations Act, 1835, the Sixth Schedule to this Act.

33 & 34 Vict. c. 91.—The Clerical Disabilities Act, 1870:

In the First Schedule, for section 28 of the Municipal Corporations Act, 1835, so much of the provision of this Act relative to disqualifications for being councillor as relates to being in holy orders.

my right,
fund and rate

A. B.

GENERAL RULES

FOR THE EFFECTUAL EXECUTION OF PART IV. OF "THE MUNICIPAL CORPORATIONS ACT, 1882,"

MADE BY

SIR CHARLES EDWARD POLLOCK, Knight;
SIR HENRY MANISTY, Knight; and
SIR HENRY CHARLES LOPES, Knight;

THE JUDGES FOR THE TIME BEING ON THE ROTA FOR THE TRIAL OF PARLIAMENTARY ELECTION PETITIONS.

Rules 1—5.

1. The presentation of a Municipal Election Petition shall be made by leaving it at the office of the Master for the time being nominated as prescribed officer, under the Parliamentary Elections Act, 1868, and such Master or his clerk shall (if required) give a receipt, which may be in the following form:—

Received on the day of at the Master's office a petition touching the election of *A. B.*, alderman, councillor, [&c. *as the case may be*] for the borough of purporting to be signed by [*insert the names of petitioners*].

C. D., Master's Clerk.

With the petition shall also be left a copy thereof for the Master to send to the town clerk, pursuant to section 88, sub-section (3), of the Act.

2. A municipal election petition shall contain the following statements:

(1.) It shall state the right of the petitioner or petitioners to petition within section 88, sub-section (1), of the Act.

(2.) It shall state the holding and result of the election, and shall briefly state the facts and grounds relied on to sustain the prayer.

3. The petition shall be divided into paragraphs, each of which, as nearly as may be, shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively, and no costs shall be allowed of drawing or copying any petition not substantially in compliance with this rule, unless otherwise ordered by the High Court or a judge thereof.

4. The petition shall conclude with a prayer, as for instance, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, (as the case may be) and shall be signed by all the petitioners.

5. The following form, or one to the like effect, shall be sufficient:—

In the High Court of Justice,
"The Municipal Corporations Act, 1882."

Election for [*state the place and office for which election held*] holden on the day of , A.D. .

The petition of *A.* of [*or* of *A.* of , and *B.* of , *as the case may be*] whose names are subscribed.

1. Your petitioner A. is a person who voted [*or* had a right to vote, *as the case may be*,] at the above election, [*or* was a candidate at the above election]; and your petitioner *B.* [*here state in like manner the right of each petitioner*].

2. And your petitioners state that the election was holden on the day of , A.D. , when *A. B.*, *C. D.*, and *E. F.* were candidates, and that *A. B.* and *C. D.* have been in the usual manner declared to be duly elected.

3. And your petitioners say that [*here state the facts and grounds on which the petitioners rely*].

Wherefore your petitioners pray that it may be determined that the said *A. B.* was not duly elected, and that the election was void [*or* that the said *E. F.* was duly elected and ought to have been returned, *or as the case may be*].

(Signed)
A.
B.

6. Evidence need not be stated in the petition, but the High Court or a judge thereof may order such particulars as may be necessary to prevent surprise and unnecessary expense, and to insure a fair and effectual trial in the same way as in ordinary proceedings in the said High Court, and upon such terms as to costs and otherwise as may be ordered ([1]).

7. When a petitioner claims the office for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of or defending the election shall, six days before the day appointed for trial, deliver to the Master and also at the address, if any, given by the petitioners and respondent, as the case may be, a list of the votes intended to be objected to, and the heads of objection to each such vote, and the Master shall allow inspection and office copies of such lists to all parties concerned; and no evidence shall be given against the validity of any vote, nor upon any head of objection not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

8. When the respondent in a petition under the Act complaining of an undue election, and claiming the office for some person, intends to give evidence to prove that the election of such person was undue, pursuant to the 93rd section of the Act, sub-section 10, such respondent shall, six days before the day appointed for trial, deliver to the Master, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, and the Master shall allow inspection and office copies of such list to all parties concerned; and no evidence shall be given by a respondent of any objection to the election not specified in the list, except by leave of the High Court or a judge thereof, upon such terms as to amendment of the list, postponement of the inquiry, and payment of costs, as may be ordered.

9. With the petition the petitioner or petitioners shall leave at the office of the Master a writing, signed by him or them or on his or their behalf, giving the name of some person entitled to practise as a solicitor in the High Court of Justice, whom he or they authorise to act as his or their agent, or stating that he or they act for himself or themselves, as the case may be, and in either case giving an address, within three miles from the General Post Office, at which notices addressed to him or them may be left; and if no such writing be left or address given, then notice of objection to the recognisances, and all other notices and proceedings may be given by sticking up the same at the Master's office.

10. Any person elected to any municipal office may at any time after he is elected send to or leave at the office of the Master a writing, signed by him or on his behalf, appointing a person entitled to practise as a solicitor in the High Court of Justice, to act as his agent in case there should be a petition against him, or stating that he intends to act for himself, and in either case giving an address within three miles from the General Post Office at which notices may be left, and in default of such writing being left in a week after service of the petition, notices and proceedings may be given and served respectively by sticking up the same at the Master's office.

11. The Master shall keep a book or books at his office in which he shall enter all

[1] In the absence of exceptional circumstances, particulars will not be ordered to be delivered more than seven clear days before the hearing of the petition: *Lenham* v. *Barber*, L. R. 10 Q. B. D. 293, 52 L. J. Q. B. 312, 31 W. R. 428.

addresses and the names of agents given under either of the preceding rules, which book shall be open to inspection by any person during office hours.

12. The Master shall, upon the presentation of the petition, forthwith send a copy of the petition to the town clerk, pursuant to section 88 of the Act, sub-section (3), and shall therewith send the name of the petitioner's agent, if any, and the address, if any, given as prescribed, and also the name of the respondent's agent, and the address, if any, given as prescribed, and the town clerk shall forthwith publish those particulars along with the petition.

The cost of publication of this and any other matter required to be published by the town clerk shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

13. The time for giving notice of the presentation of a petition and of the nature of the proposed security, shall be five days, exclusive of the day of presentation.

14. Where the respondent has named an agent or given an address, the service of a municipal election petition may be by delivery of it to the agent, or by posting it in a registered letter to the address given at such time that, in the ordinary course of post, it would be delivered within the prescribed time.

In other cases the service must be personal on the respondent, unless a judge of the High Court, on an application made to him not later than five days after the petition is presented on affidavit, showing what has been done, shall be satisfied that all reasonable effort has been made to effect personal service and cause the matter to come to the knowledge of the respondent, in which case the judge may order that what has been done shall be considered sufficient service, subject to such conditions as he may think reasonable. An agent employed for the petitioner or respondent shall forthwith leave written notice at the office of the Master of his appointment to act as such agent, and service of notices and proceedings upon such agent shall be sufficient for all purposes.

15. In case of evasion of service the sticking up a notice in the office of the Master of the petition having been presented, stating the petitioner, the prayer, and the nature of the proposed security, shall be deemed equivalent to personal service if so ordered by a judge.

16. The deposit of money by way of security for payment of costs, charges, and expenses payable by the petitioner, shall be made by payment into the Bank of England to an account to be opened there by the description of "The Municipal Corporations Act, 1882, Security Fund," which shall be vested in and drawn upon from time to time by the Lord Chief Justice of England for the time being, for the purposes for which security is required by the said Act, and a bank receipt or certificate for the same shall be forthwith left at the Master's office.

17. The Master shall file such receipt or certificate, and keep a book open to inspection of all parties concerned, in which shall be entered from time to time the amount and the petition to which it is applicable.

18. All claims at law or in equity to money so deposited or to be deposited in the Bank of England shall be disposed of by the High Court of Justice or a judge thereof.

19. Money so deposited shall, if and when the same is no longer needed for securing payment of such costs, charges, and expenses, be returned or otherwise disposed of as justice may require, by rule of the High Court, or order of a judge thereof.

20. Such rule or order may be made after such notice of intention to apply, and proof that all just claims have been satisfied or otherwise sufficiently provided for, as the Court or judge may require.

21. The rule or order may direct payment either to the party in whose name the same is deposited, or to any person entitled to receive the same.

22. Upon such rule or order being made, the amount may be drawn for by the Lord Chief Justice of England for the time being.

23. The draft of the Lord Chief Justice of England for the time being shall in all cases be a sufficient warrant to the Bank of England for all payments made thereunder.

24. The recognisance as security for costs may be acknowledged before a judge of the High Court or the Master in town, or a justice of the peace in the country.

There may be one recognisance acknowledged by all the sureties, or separate recognisances by one or more, as may be convenient.

Rules 25—32.

25. The recognisance shall contain the name and usual place of abode of each surety, with such sufficient description as shall enable him to be found or ascertained, and may be as follows:—

Be it remembered that on the day of , in the year of our Lord 18 , before me [*name and description*] came *A. B.*, of [*name and description as above prescribed*] and acknowledged himself [*or* severally acknowledged themselves] to owe to our Sovereign Lady the Queen the sum of five hundred pounds [*or* the following sums], (that is to say) the said *C. D.* the sum of £ , the said *E. F.* the sum of £ , the said *G. H.* the sum of £ , and the said *J. K.* the sum of £ , to be levied on his [*or* their respective] goods and chattels, lands, and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors.

The condition of this recognisance is that if [*here insert the names of all the petitioners, and if more than one, add*, or any of them] shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him [*or* them] relating to the [*here insert the name of the borough*] which shall become payable by the petitioner [*or* petitioners, or any of them,] under the Municipal Corporations Act, 1882, to any person or persons, then this recognisance to be void, otherwise to stand in full force.

Signed,

[*Signature of sureties.*]

Taken and acknowledged by the above-named [*name of sureties*] on the at , before me,

C. D.

A justice of the peace [*or, as the case may be*].

26. The recognisance or recognisances shall be left at the Master's office, by or on behalf of the petitioner in like manner as before described for the leaving of a petition forthwith after being acknowledged.

The security may (unless the High Court or a judge thereof shall otherwise order on summons) be given to any amount not less than £300; but the High Court or a judge thereof may, on summons taken out within five days from the service of the notice of the nature and amount of the security, order that the same shall be increased within a time to be fixed in the order by further security to be given in the manner directed by the Act, for a further amount, not exceeding with the amount for which security shall have been already given £500. And in default of compliance with such order, no further proceedings shall be had on the petition.

27. The time for giving notice of any objection to a recognisance under the 89th section of the Act, sub-section (4), shall be within five days from the date of service of the notice of the petition and of the nature of the security, exclusive of the day of service, or in case of further security within five days after service of notice of the nature thereof, exclusive of the day of such service.

28. An objection to the recognisance must state the ground or grounds thereof, as that the sureties, or any and which of them, are insufficient, or that a surety is dead, or that he cannot be found, or that a person named in the recognisance has not duly acknowledged the same.

29. Any objection made to the security shall be heard and decided by the Master, subject to appeal within five days to a judge, upon summons taken out by either party to declare the security sufficient or insufficient.

30. Such hearing and decision may be either upon affidavit or personal examination of witnesses, or both, as the Master or judge may think fit.

31. If an objection be allowed and the security be declared insufficient, the Master or judge shall in his order state what amount he deems requisite to make the security sufficient, and the further prescribed time to remove the objection by deposit shall be within five days from the date of the order, not including the day of the date, and such deposit shall be made in the manner already prescribed.

32. The costs of hearing and deciding the objections made to the security given shall be paid as ordered by the Master or judge, and in default of such order shall form part of the general costs of the petition.

33. The costs of hearing and deciding an objection upon the ground of insufficiency of a surety or sureties, shall be paid by the petitioner, and a clause to that effect shall be inserted in the order declaring its sufficiency or insufficiency, unless at the time of leaving the recognisance with the Master there be also left with the Master an affidavit of the sufficiency of the surety or sureties sworn by each surety before a justice of the peace, which affidavit any justice of the peace is hereby authorised to take, or before some person authorised to take affidavits in the High Court of Justice that he is seised or possessed of real or personal estate, or both, above what will satisfy his debts, of the clear value of the sum for which he is bound by his recognisance, which affidavit may be as follows:

In the High Court of Justice.
Municipal Corporations Act, 1882.

I, *A. B.*, of [*as in recognisance*], make oath and say that I am seised or possessed of real [*or* personal] estate above what will satisfy my debts, of the clear value of £

Sworn, *&c.*

34. The order of the Master for payment of costs shall have the same force as an order made by a judge, and may be enforced in like manner as a judge's order in an ordinary proceeding in the High Court of Justice.

35. A copy of every order (other than an order giving further time for delivering particulars, or for costs only), or, if the Master shall so direct, the order itself or a duplicate thereof, also a copy of every particular delivered, shall be forthwith filed with the Master, and the same shall be produced at the trial by the Registrar, stamped with the official seal. Such order shall be filed by the party obtaining the same, and such particular by the party delivering the same.

36. The petitioner or his agent shall, immediately after notice of the presentation of a petition and of the nature of the proposed security shall have been served, file with the Master an affidavit of the time and manner of service thereof.

37. The days mentioned in rules 7 and 8, and in any rule of court or judge's order, whereby particulars are ordered to be delivered, or any act is directed to be done, so many days before the day appointed for trial, shall be reckoned exclusively of the day of delivery, or of doing the act ordered, and the day appointed for trial, and exclusively also of Sunday, Christmay Day, Good Friday, and any day set apart for a public fast or public thanksgiving.

38. When the last day for presenting petitions, or filing lists of votes or objections, under rules 7 and 8, or recognisances, or any other matter required to be filed within a given time, shall happen to fall on a holiday, the petition or other matter shall be deemed duly filed if put into the letter box at the Master's office at any time during such day; but an affidavit, stating with reasonable precision the time when such delivery was made, shall be filed on the first day after the expiration of the holidays.

39. The Master shall make out the municipal election list. In it he shall insert the names of the agents of the petitioners and respondents, and the addresses to which notices may be sent, if any. The list may be inspected at the Master's office at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the said Act, and headed "Municipal Election List."

40. The time of the trial of each municipal election petition shall be fixed by the election judges on the rota or any one of them, who shall signify the same to the Master, and notice thereof shall be given in writing by the Master by sticking notice up in his office, sending one copy by post to the address given by the petitioner, another to the address given by the respondent, if any, and a copy by the post to the town clerk of the borough to which the petition relates, fifteen days before the day appointed for the trial.

The town clerk shall forthwith publish the same in the borough.

41. The sticking up of the notice of trial at the office of the Master shall be deemed and taken to be notice in the prescribed manner within the meaning of the Act, and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies thereof to be sent as already directed.

Rules 42—52.

42. The notice of trial may be in the following form:—

Municipal Corporations Act, 1882.

Election petition of
Borough of

Take notice that the above petition [*or* petitions] will be tried at , on the day of , and on such other subsequent days as may be needful.

Dated the day of .

Signed, by order,
A. B.,
The Master appointed under the above Act.

43. A judge may from time to time, by order made upon the application of a party to the petition, or by notice in such form as the judge may direct to be sent to the town clerk, postpone the beginning of the trial to such day as he may name, and such notice when received shall be forthwith made public by the town clerk.

44. In the event of the barrister to whom the trial of the petition is assigned not having arrived at the time appointed for the trial, or to which the trial is postponed, the commencement of the trial shall *ipso facto* stand adjourned till the ensuing day, and so from day to day.

45. No formal adjournment of the court for the trial of a municipal election petition shall be necessary, but the trial is to be deemed adjourned, and may be continued from day to day until the inquiry is concluded.

46. After receiving notice of the petitioner's intention to apply for leave to withdraw, or of the respondent's intention not to oppose, or of the abatement of the petition by death, or of the happening of any of the events mentioned in the 97th section of the Act, if such notice be received after notice of trial shall have been given, and before the trial has commenced, the Master shall forthwith countermand the notice of trial. The countermand shall be given in the same manner, as near as may be, as the notice of trial.

47. If all the respondents shall give notice of their intention not to oppose the petition, and no other person shall be admitted as a respondent, the High Court of Justice, or a judge, may either declare the election void or direct the trial to proceed. Notice of such order shall be forthwith given by the Master to the town clerk, and if the election be declared void the office shall be deemed to be vacant from the first day (not being a *dies non*) after the date of such order.

The Court or judge may also make such order as to costs as may be just.

48. The application to state a special case may be made by motion in the High Court of Justice, or by a summons before a judge thereof.

49. The title of the court held for the trial of a municipal election petition, may be as follows:—

"Court for the trial of a municipal election petition for the borough of [*or as may be*] between petitioner and respondent,"

and it shall be sufficient so to entitle all proceedings in that court.

50. An officer shall be appointed for each court for the trial of a municipal election petition by the election judges, at the time that they assign the petition to the barrister; such officer shall attend at the trial in like manner as the clerks of assize and of arraigns attend at the assizes.

Such officer may be called the registrar of that court. He, by himself, or in case of need, his sufficient deputy, shall perform all the functions incident to the officer of a court of record, and also such duties as may be prescribed to him.

51. The Commissioner may appoint a proper person to act as crier and officer of the court

52. The shorthand writer to attend at the trial of a petition shall be the shorthand writer to the House of Commons for the time being or his deputy, and the Master

shall send a copy of the notice of trial to the said shorthand writer to the House of Commons.

53. The amount to be paid to any witness whose expenses shall be allowed by the Commissioner trying the petition shall be ascertained and certified by the registrar; or in the event of his becoming incapacitated from giving such certificate, by the Commissioner.

54. The order of the court to compel the attendance of a person as a witness may be in the following form:—

Court for the trial of a municipal election petition for [*complete the title of the court*] the day of .

To *A. B.* [*describe the person*]. You are hereby required to attend before the above court at [*place*] on day of at the hour of [*or* forthwith, *as the case may be*], to be examined as a witness in the matter of the said petition, and to attend the said court until your examination shall have been completed.

As witness my hand, *A. B.*,
The Commissioner to whom the trial of the said petition is assigned.

55. In the event of its being necessary to commit any person for contempt, the warrant may be as follows:—

At a court holden on , at , for the trial of a municipal election petition for the borough of , before *A. B.*, one of the barristers appointed for the trial of municipal election petitions, pursuant to "The Municipal Corporations Act, 1882."

Whereas *C. D.* has this day been guilty, and is by the said court adjudged to be guilty, of a contempt thereof. The said court does therefore sentence the said *C. D.* for his said contempt to be imprisoned in the gaol for calendar months [*or as may be*], and to pay to our Lady the Queen a fine of £ , and to be further imprisoned in the said gaol until the said fine be paid, and the court further orders that the sheriff of the borough [*if any, or as the case may be*], and all constables and officers of the peace of any county, borough, or place where the said *C. D.* may be found, shall take the said *C. D.* into custody and convey him to the said gaol, and there deliver him into the custody of the gaoler thereof, to undergo his said sentence; and the court further orders the said gaoler to receive the said *C. D.* into his custody, and that he shall be detained in the said gaol in pursuance of the said sentence.

A. B.

Signed the day of

A. B.

56. Such warrant may be made out and directed to the sheriff or other person having the execution of process of the High Court, as the case may be, and to all constables and officers of the peace of the county, borough, or place where the person adjudged guilty of contempt may be found, and such warrant shall be sufficient without further particularity, and shall and may be executed by the persons to whom it is directed or any or either of them.

57. All interlocutory questions and matters, except as to the sufficiency of the security, shall be heard and disposed of before a judge, who shall have the same control over the proceedings under the Municipal Corporations Act, 1882, as a judge in the ordinary proceedings of the High Court, and such questions and matters shall be heard and disposed of by any judge of the High Court.

58. Notice of an application for leave to withdraw a petition shall be in writing and signed by the petitioners or their agent.

It shall state the ground on which the application is intended to be supported.

The following form shall be sufficient:—

Municipal Corporations Act, 1882.

Borough of . Petition of [*state petitioners*] presented day of .

The petitioner proposes to apply to withdraw his petition upon the following

Rules 58—67.

ground [*here state the ground*], and prays that a day may be appointed for hearing his application.

Dated this day of .

(Signed)

59. The notice of application for leave to withdraw shall be left at the Master's office.

60. A copy of such notice of the intention of the petitioner to apply for leave to withdraw his petition shall be given by the petitioner to the respondent, and to the town clerk, who shall cause the same to be published in the borough to which it relates.

The following may be the form of such notice:—

Municipal Corporations Act, 1882.

In the election petition for , in which is petitioner, and respondent.

Notice is hereby given, that the above petitioner has on the day of , lodged at the Master's office notice of an application to withdraw the petition, (1) which notice the following is a copy [*set it out*].

And take notice that by the rule made by the judges, any person who might have been a petitioner in respect of the said election may, within five days after publication by the town clerk of this notice, give notice in writing of his intention on the hearing to apply for leave to be substituted as a petitioner.

(Signed)

61. Any person who might have been a petitioner in respect of the election to which the petition relates, may, within five days after such notice is published by the returning officer, give notice in writing, signed by him or on his behalf, to the Master of his intention to apply at the hearing to be substituted for the petitioner, but the want of such notice shall not defeat such application, if in fact made at the hearing.

62. The time and place for hearing the application shall be fixed by a judge, and whether before the High Court, or before a judge, as he may deem advisable, but shall not be less than a week after the notice of the intention to apply has been given to the Master as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to such person or persons, if any, as shall have given notice to the Master of an intention to apply to be substituted as petitioners, and otherwise in such manner and at such time as the court or judge directs.

63. Notice of abatement of a petition, by death of the petitioner or surviving petitioner, under section 96, sub-section 1, of the said Act, shall be given by the party or person interested in the same manner as a notice of an application to withdraw a petition, and the time within which application may be made to the High Court, or a judge thereof, by motion or summons at chambers, to be substituted as a petitioner, shall be one calendar month, or such further time as upon consideration of any special circumstances the High Court or a judge thereof may allow.

64. If the respondent dies, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may give notice of the fact in the borough by causing such notice to be published in at least one newspaper circulating therein, if any, and by leaving a copy of such notice signed by him or on his behalf with the town clerk, and a like copy with the Master.

65. The manner of the respondent's giving notice that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Master signed by the respondent.

66. Upon such notice being left at the Master's office, the Master shall forthwith send a copy thereof by the post to the petitioner or his agent, and to the town clerk, who shall cause the same to be published in the borough.

67. The time for applying to be admitted as are spondent in either of the events mentioned in the 97th section of the Act shall be within ten days after such notice is

(1) The word "of" appears to be omitted here.

given as hereinbefore directed, or such further time as the High Court or a judge thereof may allow.

68. Costs shall be taxed by the Master, or at his request by any Master of the Superior Court upon the rule of court or judge's order by which the costs are payable, and costs when taxed may be recovered in like manner as if payable under a rule of court, judgment, or order of a judge in the ordinary proceedings in the High Court of Justice, or in case there be money in the Bank available for the purpose, then to the extent of such money by order of the Lord Chief Justice of England for the time being.

The office fees payable for inspection, office copies, enrolment, and other proceedings under the Act and these rules, shall be the same as those payable, if any, for like proceedings according to the present practice of the High Court of Justice.

69. No proceedings under the Municipal Corporations Act, 1882, shall be defeated by any formal objection.

70. Any rule made or to be made in pursuance of the Act shall be published by a copy thereof being put up at the Master's office.

Dated the 17th day of April, 1883.

C. E. Pollock,
H. Manisty,
Henry C. Lopes,
The judges for the time being on the rota for the trial of Parliamentary Election Petitions.

MUNICIPAL CORPORATIONS ACT, 1883.

46 & 47 VICT. c. 18.

An Act to make provision respecting certain Municipal Corporations and other Local Authorities not subject to the Municipal Corporations Act.

[29*th June*, 1883.]

Secs. 1—3.

Whereas Commissioners were appointed by His late Majesty King William the Fourth (in this Act referred to as the Commissioners of 1834) to inquire into Municipal Corporations in England and Wales, and made reports respecting divers corporations, including most of those mentioned in the schedules to this Act:

And whereas the Municipal Corporation Acts consolidated and repealed by the Municipal Corporations Act, 1882 (1), were passed and applied to most of the places mentioned in the above report, but not to those which are mentioned in the schedules to this Act:

And whereas Commissioners were appointed by Her Majesty to inquire into Municipal Corporations not subject to the Municipal Corporation Acts (in this Act referred to as the Commissioners of 1876), and have made reports to Her Majesty respecting the places mentioned in the schedules to this Act, and it is expedient to make the provisions hereinafter appearing respecting those places:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Municipal Corporations Act, 1883.

Abolition of special judicial bodies, exclusive rights of trading, exempting from juries, &c.

2. On and after the twenty-fifth day of March, one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September, one thousand eight hundred and eighty-six, as Her Majesty in Council may in the case of any place or places appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this Act) apply to each of the places mentioned in the schedules to this Act; that is to say,

(1.) All civil, criminal, and Admiralty jurisdiction of any corporate officer, court, or judge of the said place appointed or holding office under any charter, grant, or prescription shall cease, whether such jurisdiction is conferred by such charter, grant, or prescription, or by any Act, and the place shall be subject to the same jurisdiction as the part of the county in which it is situate or to which it adjoins, and if it adjoins more than one county or part of a county, then as the county or part with which it has the longest common boundary:

(2.) All exclusive rights of trading, local exemptions from juries, and other local franchises, privileges, and exemptions existing under any charter or grant or prescription shall cease.

Future abolition of corporations, except as provided by new charter

3. On and after the twenty-fifth day of March, one thousand eight hundred and eighty-six, or such later day, not after the twenty-ninth day of September, one thousand eight hundred and eighty-six, as Her Majesty in Council may, in the case of any place or places, appoint, the following provisions shall (subject to the savings for vested interests and other provisions contained in this

[1] 45 & 46 Vict. c. 50, *ante*, p. 269.

Secs. 3—6.

or by scheme under 40 & 41 Vict. c. 69.

Act) (1) apply to each of the places mentioned in the schedules to this Act to which her Majesty may not be pleased before the said day to grant a new charter; that is to say,

(*a.*) The place shall not be a corporate town or borough, and any municipal or other corporation thereof existing under any charter or grant or prescription shall be dissolved:

(*b.*) All property of any corporation in the place which is dissolved by this Act, or of any person as member or officer thereof, or of any court or judge whose jurisdiction is abolished by this Act, shall be applied for the public benefit of the inhabitants of the place in such manner as may be for the time being provided by a scheme of the Charity Commissioners, or, in a case where a scheme is made by the Local Government Board, by that scheme, and shall vest in such persons or body corporate as may be specified in such scheme.

(2.) Provided that until any such scheme takes effect the said property shall continue to be held, managed, and enjoyed as heretofore in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, management, and enjoyment, and for that purpose the persons managing the property shall continue in like manner as if they were a body constituted by the scheme for the administration of such property, but the legal estate in the property shall vest in the official trustees.

Saving for new charters and for charities.

4. Nothing in this Act shall prevent the application to any place of any charter applying the Municipal Corporation Acts (2) which Her Majesty may be pleased to grant, or affect anything done in pursuance of those Acts or any scheme thereunder, and shall not affect the operation of any such charter, thing, or scheme; save that nothing in the said Acts or scheme shall authorise the establishment or continuance of any court for the trial of civil actions.

(2.) Nothing in this Act shall affect the right to the benefit of any charity, or shall alter or confer any power of altering the defined charitable purposes (if any) to which any property is by law applicable at the passing of this Act.

Inquiry as to places mentioned in first part of First Schedule.

5. Whereas the Commissioners of 1876 reported that the places mentioned in the first part of the First Schedule to this Act might be dealt with by being subjected to the provisions of the Municipal Corporations Act, 1835, and the Acts amending the same, as if they were mentioned in Schedule B. of the Municipal Corporations Act, 1835: Be it therefore enacted as follows:

(1.) As soon as conveniently may be after the passing of this Act, the Privy Council shall cause an inquiry to be made into the expediency of advising Her Majesty to grant a charter extending the Municipal Corporation Acts to the several places mentioned in the first part of the First Schedule to this Act, and also whether it is expedient that any adjoining district not included in the existing corporations shall be included in the places to which such charters may be granted, and shall report to Her Majesty thereon.

(2.) The expenses of such inquiry shall be regulated by the Commissioners of Her Majesty's Treasury, and paid out of moneys provided by Parliament.

(3.) Nothing in this section shall require an inquiry to be held with respect to any place with respect to which a similar inquiry has been held since the first day of January, one thousand eight hundred and seventy-nine.

Power to Privy Council to preserve certain courts and officers.

6. The Privy Council, upon being satisfied by any applicants after inquiry that it is expedient for the public so to do, may, by order, provide for retaining any court leet or other court or any officer, whether as returning officer for the return of members to serve in Parliament, or as town clerk for the purpose of the registration of parliamentary voters, or otherwise, and for the appointment of any officer so retained, subject in every case to such exceptions, restrictions, and modifications as seem expedient.

(2.) Subject to the provisions of any Order of the Privy Council, any person who at the passing of this Act holds an office by virtue of which he is such returning officer or town clerk as aforesaid may during the time limited for the tenure of

(1) See sections 8—14 and 16—25, *post.*
(2) See the definition in section 27, *post.*

his office continue to perform the duties of such returning officer or town clerk as aforesaid, and on the expiration of such time, or his otherwise ceasing to perform the duties, the said duties shall, so far as regards the returning officer, be performed in manner provided by the Act of the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter fifty-seven, intituled "An Act to amend the law relating to the appointment of returning officers in certain cases," and so far as regards the town clerk shall be performed by the person in the parliamentary borough who is town clerk within the meaning of section one hundred and one of the Parliamentary Registration Act, 1843.

Secs. 6—8.

Scheme of Local Government Board respecting places under local boards or improvement commissioners.

7. Whereas there are local boards or improvement commissioners in some of the places mentioned in the First Schedule to this Act, and the Commissioners of 1876 reported that it might be expedient to establish local boards in other of such places: Be it therefore enacted as follows:

(1.) Where any part of any of the places mentioned in any of the schedules to this Act is comprised in the district of any local board or improvement commissioners, whether established before or after the passing of this Act, and Her Majesty is not pleased to grant a charter to such place, the Local Government Board, after such local inquiry as they think expedient, may, at any time before any corporation in the said place becomes abolished by this Act, make such scheme as might be made by the Committee of Council under part eleven of the Municipal Corporations Act, 1882 (1).

45 & 46 Vict. c. 50.

(2.) Sections two hundred and thirteen and two hundred and fourteen (2) of and the Seventh Schedule (3) to that Act shall, so far as is consistent with the tenour thereof, apply accordingly as if they were herein re-enacted, with the substitution of the Local Government Board for the Committee of Council, and of the said district for borough, and with a limitation to the purposes of this section:

(3.) A scheme may be made as aforesaid for the purpose of amending any previous scheme under this section:

(4.) Sections two hundred and ninety-four, two hundred and ninety-five, and two hundred and ninety-six of the Public Health Act, 1875 (4), shall, so far as is consistent with the tenour thereof, apply to any local inquiry held by order of the Local Government Board for the purposes of this section.

38 & 39 Vict. c. 55.

Power of Charity Commissioners.

8.—(1.) The Charity Commissioners may provide, by the appointment of interim trustees and otherwise, for the security and proper management and application of the property, for the application of which such Commissioners have, or may in certain events have, power under this Act to make a scheme.

(2.) If any such property has after the first day of March, one thousand eight hundred and eighty-three, and before the date at which a charter or a scheme under this Act, or the Municipal Corporations Act, 1882, as the case may be, takes effect, been alienated by way of sale, mortgage, grant, lease, charge, or otherwise, and such alienation has not been made in pursuance of some covenant, contract, or agreement *bonâ fide* made or entered into on or before the said first day of March, or of some resolution duly entered in the Corporation books of the Corporation on or before the said first day of March, or in pursuance of any right saved by this Act, and such alienation has been made collusively and for no consideration, or for insufficient consideration, such alienation may be set aside in the like proceedings (instituted with the consent of the Charity Commissioners or of the Attorney-General) and in like manner as a lease of land of a charity granted without due consideration may be set aside: Provided that if a charter is granted or a scheme made whereby the property is affected, the said proceedings shall be commenced within one year after the charter or scheme takes effect.

(3.) Anything authorised by this Act to be done by the Charity Commissioners may be done by an order of those Commissioners, which may be made in like manner as if the property were the endowment of a charity and application had

(1) *I.e.*, sections 210—218, *ante*, pp. 335—338.
(2) *Ante*, pp. 336, 337.
(3) *Ante*, p. 361.
(4) *Ante*, pp. 204, 205.

Secs. 8—10.

16 & 17 Vict. c. 137. 32 & 33 Vict. c. 110.

been made as provided by the Charitable Trusts Acts, 1853 to 1869; and an order of the Charity Commissioners may be made at any time after the passing of this Act, so, however, that the order shall not take effect until such date as the Charity Commissioners fix as being, in their opinion, under the circumstances of the case, most consistent with the purposes of this Act.

(4.) Any corporation or person directly affected by any order of the Charity Commissioners under this Act in relation to any property made before a scheme under this Act has provided for the application of such property, or directly affected by the order of the Charity Commissioners which first establishes a scheme providing for the application of such property, may, if aggrieved by the order, appeal (except as hereinafter provided) to the Privy Council, and the Privy Council after considering the objections to the order and, if it seem necessary, hearing the parties, may make such order as in their opinion the Charity Commissioners ought to have made, and such order shall have the same effect under this Act as if made by the Charity Commissioners, and an appeal shall not lie to the High Court of Justice under the Charitable Trusts Acts, 1853 to 1869, against any order against which an appeal to the Privy Council can be had in pursuance of this enactment.

(5.) After a scheme has been made under this Act providing for the application of any property the Charitable Trusts Acts, 1853 to 1869, shall apply in all respects as if the scheme were a scheme made in pursuance of those Acts, and the property shall for the purpose of those Acts be deemed to be the endowment of a charity.

Provision as to property and transfer thereof.

9.—(1.) All property by this Act vested in the official trustees or any body corporate or persons shall, so far as the same can be transferred by this Act, be transferred by virtue of this Act, and so far as the same cannot be so transferred, be held in trust for those trustees, body corporate, or persons, and shall be vested for the same estate and interest, and subject to the same liabilities, for and subject to which such property was held at the time immediately before the same becomes vested.

(2.) For the purposes of this Act the expression "property" includes all property, real and personal, and all things in action, and all rights of common or commonable rights, and rights to toll, and all franchises, privileges, and rights which have any pecuniary value, and all charters, records, deeds, books, and documents, and includes any estate or interest, legal or equitable, in any property as so defined; and all property held, enjoyed, claimed, or administered by any corporation, Court, judge, or person shall for the purposes of this Act be deemed to be the property of such corporation or person.

(3.) All powers and duties conferred or imposed by any local Act of Parliament (including a Provisional Order confirmed by Parliament) on, and all trusts administered by, any corporation abolished by this Act, or any officers or nominees of such corporation, either alone or jointly with other persons, shall vest in and be exercised, and performed, and administered by such persons as may be provided by a scheme under this Act, and until such scheme takes effect by the same persons as at the passing of this Act.

(4.) Any question which may arise as to whether anything is property within the meaning of this Act, or as to whether anything is vested in the official trustees or any body corporate or persons as provided by this Act, shall in the first instance be decided by the Charity Commissioners, subject, nevertheless, to an appeal to the High Court of Justice, as provided by section eight of the Charitable Trusts Act, 1860, and such appeal may be presented by any person interested or claiming to be interested in the property, and the provisions of this Act with respect to an appeal to the Privy Council shall not apply.

23 & 24 Vict. c. 136.

Reservation of rights of property and beneficial exemptions to freemen, their wives, and children.

10.—(1.) Every person who now is or hereafter may be an inhabitant of any borough mentioned in any of the schedules to this Act, and also every person who has been admitted or might hereafter have been admitted a freeman or burgess of any such borough if this Act had not been passed, or who now is or hereafter may be the wife or widow or son or daughter of any freeman or burgess, or who may have espoused or may hereafter espouse the daughter or widow of any freeman or burgess, or who has been or may hereafter be bound an apprentice, shall have and

enjoy and be entitled to acquire and enjoy the same share and benefit of the lands, tenements, and hereditaments, and of the rents and profits thereof, and of the common lands and public stock of any such borough or any municipal or other corporation thereof, and of any lands, tenements, and hereditaments, and any sum or sums of money, chattels, securities for money, or other personal estate, of which any person or any corporation may be seised or possessed in whole or in part for any charitable uses or trusts, as fully and effectually, and for such time and in such manner as he or she by any statute, charter, bye-law, or custom in force at the time of passing this Act might or could have had, acquired, or enjoyed in case this Act had not been passed [1]: Provided that—

(*a.*) The total amount to be divided amongst the persons whose rights are herein reserved in this behalf shall not exceed the surplus which shall remain after payment of the interest of all lawful debts chargeable upon the real or personal estate out of which the sums so to be divided have arisen, together with the salaries of municipal officers, and all other lawful expenses, which on the first day of March one thousand eight hundred and eighty-three were defrayed out of or chargeable upon the same:

(*b.*) Nothing hereinbefore contained shall be construed to apply to any claim, right, or title of any burgesses or freemen, or of any person, to any discharge or exemption from any tolls or dues levied wholly or in part by or to the use or benefit of any borough or corporation; and after the passing of this Act no person shall have or be entitled to claim thenceforward any discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any corporation except as hereinafter is excepted:

(*c.*) Nevertheless, every person who on the said first day of March was an inhabitant or was entitled to be admitted a freeman or burgess of any borough mentioned in any of the schedules to this Act, or who on the said first day of March was the wife or widow, son or daughter, of any freeman or burgess of any such borough, or who on the said first day of March was bound an apprentice, shall be entitled to have or acquire and enjoy the same discharge or exemption from any tolls or dues lawfully levied in whole or in part by or to the use of any borough or corporation as fully and for such time and in such sort as he or she by any statute, charter, bye-law, or custom in force on the first day of March might or would have had, acquired, and enjoyed the same if this Act had not been passed, and no further or otherwise:

(*d.*) Where, by any statute, charter, bye-law, or custom in force at the time of passing this Act within any of the boroughs mentioned in any of the schedules to this Act, any person whose rights in this behalf are herein reserved would have been liable in case this Act had not been passed to pay any fine, fee, or sum of money to any corporation, or to any member, officer, or servant of any corporation, in consideration of his freedom, or of his or her title to such rights as are herein reserved, no such person shall be entitled to have or claim any share or benefit in respect of the rights herein reserved as aforesaid until he or she shall have paid the full amount of such fine, fee, or sum of money to the treasurer of such borough, elected under the Municipal Corporations Act, 1882, or to such other person as may be appointed in that behalf by a scheme under that Act or under this Act:

(*e.*) Nothing in this Act contained shall be construed to entitle any person to any share or benefit of the rights herein reserved who shall not have first fulfilled every condition which, if this Act had not passed, would have been a condition precedent to his or her being entitled to the benefit of such rights, so far as the same is capable of being fulfilled according to the provisions of this Act, or to strengthen, confirm, or affect any claim, right, or title of any burgesses or freemen of any borough or corporation, or of any person, to the benefit of any such

[1] See *ante*, pp. 332—335.

Secs. 10–13.

rights as are hereinbefore reserved, but the same in every case may be brought in question, impeached, and set aside in like manner as if this Act had not been passed.

(2.) From and after the passing of this Act no person shall be elected, made, or admitted a burgess or freeman of any borough mentioned in any of the schedules to this Act by gift or purchase.

(3.) Every scheme under the Municipal Corporations Act, 1882, or this Act, shall, if need be, provide for carrying this section into effect, and for the enrolment of persons from time to time entitled under this section, and a scheme may be made for that purpose or for the purpose of managing any property to which the said persons may be for the time being entitled.

Saving for vested interests.

11.—(1). If any person alleges that he is by virtue of this Act deprived of any emolument or pecuniary profit, or any other profit of a pecuniary value, he may apply to the Local Government Board, and that Board, if satisfied that the allegation is true, and that under all the circumstances the applicant ought, if deprived thereof, to receive compensation for the same, may order that he shall continue to enjoy such emolument or profit, or shall receive such compensation for the same as the Board may think just, and if the compensation is pecuniary, the money shall (and if necessary from time to time) be raised in such manner or paid out of such funds (being, so far as may be, the same manner or funds in or out of which the emolument or profit was previously raised or paid) as the order directs.

(2.) All liabilities of any corporation, court, judge, or officer abolished by this Act, existing at the time of such abolition, shall be discharged out of the same funds and in the same manner, as near as may be, as they would have been if this Act had not passed; and the Local Government Board, on the application of any person interested, may by order provide in such manner as they think expedient for the discharge of such liabilities.

(3.) For the purposes of this section, a rate, toll, or due may continue to be levied, and may be made, assessed, levied, and collected by such persons as the Local Government Board direct, in like manner as if they were the persons who, if this Act had not passed, would have been authorised to make, assess, and levy such rate, toll, or due.

(4.) An order under this section may be made an order of the High Court of Justice, and may be enforced accordingly.

Saving for powers of Committee of Council and Charity Commissioners.

12. Nothing in this Act shall be in derogation of any power otherwise vested in the Committee of Council, or the Charity Commissioners, and the Committee of Council and Charity Commissioners may exercise for the purposes of this Act all powers otherwise vested in them in relation to boroughs and charities respectively.

Saving as to Cinque Ports.

13. With respect to any cinque port[1] or ancient town or member of a cinque port mentioned in the schedules to this Act, the following provisions shall have effect:—

(1.) Nothing in this Act shall diminish the jurisdiction of the Court of Admiralty of the Cinque Ports within the boundaries defined by the Act of the session of the first and second years of the reign of King George the Fourth, chapter seventy-six, intituled "An Act to continue and amend certain Acts for preventing the various frauds and depredations committed on merchants, shipowners, and underwriters by boatmen and others within the jurisdiction of the Cinque Ports; and also for remedying certain defects relative to the adjustment of salvage under a statute made in the twelfth year of the reign of Her late Majesty Queen Anne," or of any commissioners appointed in pursuance of that Act:

(2.) Nothing in this Act shall increase the authority or jurisdiction which any cinque port, or any court, justice, or officer of a cinque port, has over any member of a cinque port, notwithstanding that that member is, in pursuance of this Act, no longer corporate;

(3.) The non-corporate members of any such cinque port or ancient town shall form part of the body of the county, and hundred, and other division in which those members are respectively situate.

[1] See the Municipal Corporations Act, 1882, section 248, *ante*, p. 346.

Secs. 14–18.

Saving as to Winchelsea.

14. In the event of a charter not being granted to Winchelsea the property of the corporation of Winchelsea shall continue to be held, managed, and enjoyed as heretofore, in like manner as if a scheme of the Charity Commissioners in pursuance of this Act, had provided for such holding, management, and enjoyment, and for that purpose the corporation of Winchelsea shall continue undissolved in like manner as if it were constituted by the said scheme; and, notwithstanding anything in this Act, Winchelsea shall continue to be entitled an ancient town of the Cinque Ports.

Provisions as to local authorities and officers. 45 & 46 Vict. c. 50.

15.—(1.) Every body referred to in the First Schedule to this Act, shall, notwithstanding any mistake in the name or description thereof, be subject to this Act, as a corporation, and be deemed to be a local authority within the meaning of section two hundred and thirteen of the Municipal Corporations Act, 1882.[1]

(2.) Any mayor, jurat, recorder, justice of the peace, coroner, bailiff, sergeant, inspector, or constable, or any other officer by whatever name called, having or claiming the authority of any judge or officer above named, shall be deemed to be included in this Act in the expression judge or officer, as the case may be.

(3.) Where in any report of the Commissioners of 1834, or in any report of the Commissioners of 1876, any corporation, court, sessions, judge, recorder, justice, coroner, constable, inspector, authority, or officer, or any franchise, privilege, right, or exemption, or any property, is mentioned in connection with any place mentioned in the schedules to this Act, that mention shall be evidence that the same is subject to this Act.

Saving for rights of voting and acts done.

16.—(1.) Nothing in this Act shall affect the right enjoyed by any person at the passing of this Act to vote for any member or members to serve in Parliament.

(2.) The abolition by this Act of any jurisdiction shall not affect anything done in pursuance of such jurisdiction before it is abolished; any offence committed before such abolition may be prosecuted, tried, and punished as if the jurisdiction had been abolished at the time when the offence was committed.

Saving for Romney Marsh.

17. Whereas it appears from the Report of the Commissioners of 1876, that doubt exists as to whether the corporation mentioned in Part II. of the First Schedule to this Act, as existing or reputed to exist in Romney Marsh, is a municipal corporation, and it is expedient to make such provision respecting the same and respecting the lords, bailiff, and jurats of Romney Marsh as hereinafter contained: Be it therefore enacted as follows:

(1.) The reputed corporation of the bailiff, jurats, and commonalty of Romney Marsh shall, notwithstanding anything in this Act, continue to exist, and to elect officers, and to hold the property vested in them, but any such corporation shall not have or exercise any municipal rights or powers; and all property vested in such corporation shall continue to be applicable for the purposes to which it is at present by law applicable or otherwise for the benefit of the inhabitants of the said place.

(2.) Notwithstanding anything in this Act, the bailiff and justices of the corporation of Romney Marsh shall continue to be appointed and elected, as nearly as may be, in like manner as heretofore, and to have authority as justices in like manner as if they were justices assigned by a commission from Her Majesty in a liberty not having a separate court of quarter sessions.

(3.) The reputed corporation of the lords, bailiff, and jurats of Romney Marsh shall not be deemed a municipal corporation, and notwithstanding anything in this Act shall continue to exist, to elect officers, to hold the property vested in them, and to exercise the same powers as heretofore, and all property vested in such corporation shall continue to be applicable for the purposes to which it is at present by law applicable or otherwise for the benefit of the inhabitants of the said place.

Saving for Havering-atte-Bower.

18. Whereas it appears from the Report of the Commissioners of 1876 that doubt exists whether the corporation of Havering-atte-Bower is a municipal corporation, and whether an Order in Council for the union of Havering-atte-Bower to the county of Essex might be made in pursuance of the Act of the

[1] *Ante*, p. 336.

Secs. 18–22.

session of the thirteenth and fourteenth years of the reign of Her present Majesty, chapter one hundred and five, intituled "An Act for facilitating the union of liberties with the counties in which they are situate," upon the petition of the justices of the said county, without any petition from the justices of Havering-atte-Bower: Be it therefore enacted as follows:

Nothing in this Act shall be deemed to apply to Havering-atte-Bower or to the justices or corporation or reputed corporation thereof, save that it shall be lawful that an Order in Council be made for uniting Havering-atte-Bower to the county of Essex, in pursuance of the recited Act, upon the petition either of the justices of the said county or of the justices of Havering-atte-Bower.

Saving for Local Act relating to Alnwick.

19. Notwithstanding anything in this Act, the corporation referred to in the Alnwick Corporation Act, 1882, shall continue to be a corporation and to hold and administer the property vested in such corporation at the passing of this Act, and shall apply the same for the purposes mentioned in the said Alnwick Corporation Act, 1882, and the maintenance as heretofore of the Corporation schools or for any other public or charitable purposes; and the provisions of this Act with respect to an inquiry by the Privy Council or the Local Government Board, or with respect to a scheme by the Local Government Board, shall not apply to Alnwick, and this Act shall not affect the provisions of the said Alnwick Corporation Act, 1882.

Saving as to Laugharne and Malmesbury.

20. Whereas in Laugharne and Malmesbury divers members of the corporation, whether called burgesses, landholders, or any other name, have the right to occupy without rent or at low rents certain property belonging to the corporation, and it is expedient to make provision with respect to such property, be it enacted as follows:

(1.) In the event of a charter not being granted to Laugharne or Malmesbury, the property of the corporation of the place to which a charter is not so granted shall continue to be held, managed, and enjoyed as heretofore, in like manner as if a scheme of the Charity Commissioners, in pursuance of this Act, had provided for such holding, enjoyment, and management, and for that purpose the corporation in the said place shall continue undissolved in like manner as if it were constituted by the said scheme.

(2.) The corporation of such place, subject to the approval of the Charity Commissioners, may sell all or any of the property of the corporation for the best price that may be got for the same; and, after compensating or saving the rights of any person in such property, whether existing or prospective, may pay the proceeds to any public authority in the locality, to be applied by such authority for the benefit of the inhabitants of the said place.

(3.) The provisions of this Act and of the Municipal Corporations Act, 1882 [1], for saving the rights and interests of freemen and of persons who might have become freemen shall extend to the rights and interests of persons who are or if this Act had not passed might have become landholders, assistant burgesses, or capital burgesses in Malmesbury, and for that purpose freemen of Malmesbury may continue to be elected landholders, assistant burgesses, and capital burgesses.

Saving for Newport, Pembroke.

21. Whereas it appears from the report of the Commissioners of 1876 that the office of mayor of Newport (Pembroke) is purely honorary, and that the corporation has no revenue and no municipal function: Be it therefore enacted as follows:

Nothing in this Act shall be deemed to prevent the election of the mayor of Newport (Pembroke) as heretofore, or to dissolve the corporation of Newport (Pembroke), or deprive the lord of the manor or the burgesses of any tolls, rights of common, or other rights of a pecuniary value.

Saving for Over.

22. Whereas it appears from the report of the Commissioners of 1876 that the corporation of Over has no revenue, and no municipal function, and that the mayor of Over, elected at the court leet, has a magisterial but no other jurisdiction: Be it therefore enacted as follows:

Nothing in this Act shall be deemed to prevent the holding of the court leet, and the election by such court of the mayor of Over as heretofore, but such mayor

[1] Sections 205—209, *ante*, p. 334.

shall not, as such, have the jurisdiction of a justice, whether for criminal, licensing, or any other purpose.

Saving for Altrincham.

23. Whereas it appears from the report of the Commissioners of 1876 that the corporation of Altrincham has no municipal function, and that the mayor of Altrincham elected at the court leet has no jurisdiction, be it therefore enacted as follows:

Nothing in this Act shall be deemed to prevent the holding of the court leet and the election by such court of the mayor of Altrincham as heretofore, but such mayor shall not have any jurisdiction magisterial, municipal, or other.

Saving for lord of the manor of Corfe Castle.

24. Nothing in this Act shall deprive the lord of the manor of Corfe of any title enjoyed by him under any charter.

Saving for certain rights.

25.—(1.) Nothing in this Act shall diminish the liability of the owner or occupier of any tenement to any rent or sum payable under any charter granted to any corporation mentioned in the Schedules to this Act, and any person entitled to receive such rent or sum shall have the same right and remedy for recovering the same as prior to the passing of this Act, and also upon the abolition by this Act of the corporation under the charter shall have the power of such corporation or of any officer of such corporation to enforce payment of such rent or sum.

(2.) The provisions of this section and of the other parts of this Act for protecting the rights of persons interested shall have effect in favour of Her Majesty, her heirs and successors, and of any body corporate, not being a corporation abolished by this Act, in like manner as if Her Majesty, her heirs and successors, and such body corporate, were included in the term person.

(3.) Nothing in this Act shall affect the legal proceedings pending at the passing of this Act on the information of the Attorney General against the corporation of the mayor and burgesses of Holt, and certain members of that corporation, and for the purpose of such proceedings the said corporation shall continue to be and to act as a corporation, and the mayor, bailiffs, and burgesses shall continue to be elected and appointed in like manner as if this Act had not passed, and any liabilities of such corporation under any judgment, decree, or order in such legal proceedings shall be deemed for the purposes of this Act to be liabilities of the corporation existing at the time of the abolition thereof.

Repeal of Acts and charters.

26.—(1.) So much of any Act, law, charter, or usage as is inconsistent with this Act is hereby repealed.

(2.) The Act of the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter seventy-one, intituled "An Act to amend the law concerning the making of borough rates in boroughs not within the Municipal Corporation Acts," shall, on and after the first day of January one thousand eight hundred and eighty-six, or such later day, not after the first day of September one thousand eight hundred and eighty-six, or such later day, not after the first day of September one thousand eight hundred and eighty-six, as Her Majesty in Council may appoint, be repealed, without prejudice to any rate previously made in pursuance of that Act, and without prejudice to the making of any rate which is by this Act authorised to be made; and any such rate may be made, levied, collected, and applied, as nearly as may be, as if the said Act had not been repealed.

Definitions.

27. In this Act, unless the context otherwise requires,—

The expression "Privy Council" means the Lords of Her Majesty's most Honourable Privy Council, or any two of them;

The expression "Committee of Council" means a Committee of the said Lords:

45 & 46 Vict. c. 50.

The expression "Municipal Corporation Acts" has the same meaning as in the Municipal Corporations Act, 1882 (1);

The expression "Charity Commissioners" means the Charity Commissioners for England and Wales:

16 & 17 Vict. c. 137. 32 & 33 Vict. c. 110.

The expression "official trustees" means, as respects real property the official trustee of charity lands, and as respects all other property the official trustees of charitable funds, acting under the Charitable Trusts Acts, 1853 to 1869.

[1] See section 7 of the Municipal Corporations Act, 1882, *ante*, p. 270.

SCHEDULES.

Sched. I.

FIRST SCHEDULE.

PLACES REPORTED ON BY THE COMMISSIONERS OF 1876.

PART I.

Places to which the Commissioners of 1876 *consider that the Municipal Corporation Acts might be applied.*

Places.	Corporation or reputed Corporation.
Aldeburgh	"The bailiff and burgesses of the borough of Aldeburgh."
Alnwick	"The chamberlains, common council, and freemen."
Appleby	"The mayor, aldermen, and capital burgesses."
Bishop's Castle	"The bailiff and burgesses of the borough of Bishop's Castle."
Bradninch	"The mayor and burgesses of the borough of Bradninch."
Christchurch	"The mayor and burgesses of the borough of Christchurch."
Henley-on-Thames	"The mayor, aldermen, bridgemen, and burgesses of Henley-on-Thames."
Kidwelly	"The mayor, aldermen, bailiffs, and burgesses."
Llanfyllin	"The bailiffs and burgesses of the borough of Llanfyllin."
Lostwithiel	"The mayor and burgesses of Lostwithiel."
Lydd	"The bailiffs, jurats, and commonalty of the town of Lydd."
Malmesbury	"The aldermen and burgesses of the borough of Malmesbury."
Montgomery	"The bailiffs and burgesses of the borough of Montgomery."
New Romney	"The mayor, jurats, and commonalty of the town and port of New Romney."
Okehampton	"The mayor and burgesses of the town and borough of Okehampton."
Over	"The mayor of Over."
Queenborough	"The mayor, jurats, bailiffs, and burgesses of Quinborowe."
Radnor	"The bailiff, aldermen, and burgesses of New Radnor."
Saltash	"The mayor and free burgesses of the borough of Saltash."
Sutton Coldfield	"The warden and society of the royal town of Sutton Coldfield."
Wareham	"The mayor, capital burgesses, and assistants of the borough of Wareham."
Wilton	"The mayor and burgesses of the borough of Wilton."
Wokingham	"The aldermen and burgesses of the town of Wokingham."
Woodstock	"The mayor and commonalty of the borough of New Woodstock."
Wootton Bassett	"The mayor, aldermen, and burgesses of the borough of Wootton Bassett."

PART II.

Places not mentioned by the Commissioners of 1876 *as places to which the Municipal Corporation Acts might be applied.*

Places.	Corporation or reputed Corporation.
Alresford	"Bailiff and burgesses of New Alresford."
Altrincham	"The mayor, aldermen, and burgesses of the borough of Altrincham."
Axbridge	"The mayor, aldermen, and burgesses of the borough of Axbridge.
Berkeley	"The mayor and aldermen of the borough of Berkeley."
Bovey Tracey	"The mayor and freeholders of Bovey Tracey."
Brackley	"The mayor, aldermen, and burgesses of the borough of Brackley."
Brading	"The bailiffs, burgesses, and commoners of the borough of Brading."
Camelford	"The mayor and burgesses of the vill of Camelford."
Chipping Camden	"The high steward, deputy steward, treasurer, senior bailiff, junior bailiff, and capital and inferior burgesses of Chipping Campden."
Corfe Castle	"The mayor, barons, and inhabitants of Corfe."
Cowbridge	"The bailiffs, aldermen, and burgesses of the town of Cowbridge."
Dinas Mowddwy	"The mayor and burgesses of Dinas Mowddwy."
Dunwich	"The bailiffs, burgesses and commonalty of the borough and corporation of Dunwich."
Dursley	"The bailiff and aldermen of Dursley."
East Looe	"The mayor and free burgesses of the borough of East Looe."
Fordwich	"The mayor, jurats, and commonalty of the town of Fordwich."
Garstang	"The bailiff and burgesses of the borough of Garstang."
Great Dunmow	"The bailiff and burgesses of the borough of Great Dunmow."
Harton	"The portreeve and burgesses of Harton."
Havering-atte-Bower	"The tenants and inhabitants of the lordship or manor of Havering-atte-Bower."
Higham Ferrers	"The mayor, aldermen, and burgesses of the borough and parish of Higham Ferrers."
Holt	"The mayor and burgesses of Holt."
Ilchester	"The bailiff and burgesses of Ilchester."
Kenfig	"The constable of the castle, portreeve, and burgesses of Kenfig."
Kilgerran	"The portreeve and burgesses of Kilgerran."
Lampeter	"The burgesses of the borough of Lampeter Pont Stephen."
Langport Eastover	"The portreeve and commonalty of the borough of Langport."
Laugharne	"The portreeve and burgesses of the town and corporation of Laugharne."
Llantrissant	"The constable of the castle, portreeve, aldermen, and burgesses of Lantrissant."
Loughor	"The portreeve, aldermen, and burgesses of the borough of Loughor."
Marazion	"The mayor, burgesses, and inhabitants of the town of Marazion."
Nevin	"The mayor, bailiffs, and burgesses of the town and borough of Nevin."
Newport (Salop)	"The high steward, bailiffs, and burgesses of Newport."

Sched. I.

Places.	Corporation or reputed Corporation.
Newport (Pembroke) . .	"The mayor, aldermen, and burgesses of the borough of Newport."
Orford	"The mayor and commonalty of the borough of Orford."
Overton	"The burgesses of Overton."
Petersfield	"The mayor of Petersfield."
Pevensey	"The bailiff, jurats, and commonalty of the town and liberty of Pevensey."
Romney Marsh . . .	"The bailiffs, jurats, and commonalty."
St. Clear's	"The burgesses and commonalty of St. Clear's,"
Seaford	"The bailiff, jurats, and freemen of the town and port of Seaford."
Thornbury	"The bailiff and aldermen of Thornbury."
Usk	"The portreeve and burgesses of Usk."
Westbury	"The mayor and burgesses of Westbury."
Wickwar	"The mayor and aldermen of Wickwar."
Winchcomb	"The bailiffs and burgesses of Winchcomb."
Winchelsea	"The mayor, jurats, and commonalty of the ancient town of Winchelsea."
Wootton-under-Edge . .	"The mayor and aldermen of Wootton-under-Edge."
Yarmouth (Isle of Wight) .	"The mayor and chief burgesses of the borough of Yarmouth."

NOTE.—Since the report of the Commissioners a charter has been granted to the town of Lewes.

Sched. II.

SECOND SCHEDULE.

Place in which the Commissioners of 1876 *report that a Municipal Corporation has not existed or has become virtually extinct.*

PART I.

Places mentioned in paragraph (15) *of the Report of the Commissioners of* 1876 *as places which either have not been municipal or have long since ceased to be so:*

Bala.	Fowey.	Presteign.
Bangor.	Grampound.	Ruyton.
Bridlington.	Harlech.	St. David's.
Chipping Sodbury.	Hay.	Tavistock.
Criccieth.	Machynlleth.	Weobley.
Crickhowell.	Midhurst.	Wiston.
Farnham.	Newborough.	
Fishguard.	Newton (Lancashire).	

PART II.

Places mentioned in paragraph (16) *of the Report of the Commissioners of* 1876 *as having had municipal corporations in* 1835:

Bosinny.	Llanelly.	Tregony.
Caerwys.	Newtown (Isle of Wight).	West Looe.
Castle Rising.	Plympton Earle.	
Clun.	Rhuddlan.	

LOCAL GOVERNMENT BOARD ACT, 1871.

34 & 35 VICT. c. 70.

An Act for constituting a Local Government Board, and vesting therein certain functions of the Secretary of State and Privy Council concerning the Public Health and Local Government, together with the powers and duties of the Poor Law Board. [14*th August*, 1871.]

Whereas it is expedient to concentrate in one department of the Government as hereinafter provided the supervision of the laws relating to the public health, the relief of the poor, and local government:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as "The Local Government Board Act, 1871."

Establishment of Local Government Board.

Establishment of Local Government Board.

2. A Board shall be established, to be called the Local Government Board, and from and after the establishment of such Board the Poor Law Board shall cease to exist, and all powers and duties vested in or imposed on the Poor Law Board by the several Acts of Parliament relating to the relief of the poor and any other Acts, or vested in or imposed on one of Her Majesty's Principal Secretaries of State by the enactments in that behalf mentioned in the first part of the schedule annexed hereto, so far as such powers and duties relate to England, or vested in or imposed on Her Majesty's most honourable Privy Council by the enactments in that behalf specified in the second part of the said schedule, shall be transferred to and imposed on the said Local Government Board, and, except as otherwise provided by this Act, shall be exercised and performed by such Board in like manner and form, and subject to the same conditions, liabilities, and incidents respectively as such powers and duties might before the passing of this Act have been exercised and performed by the authorities in whom the same were then vested respectively, or as near thereto as circumstances admit.

Constitution of Local Government Board.

3. The Local Government Board shall consist of a president to be appointed by Her Majesty, and to hold office during the pleasure of Her Majesty, and of the following *ex-officio* members, that is to say, the Lord President of Her Majesty's most honourable Privy Council, all Her Majesty's Principal Secretaries of State for the time being, the Lord Privy Seal, and the Chancellor of the Exchequer.

The Local Government Board shall be deemed to be established from and after the date of the first appointment of a president under this Act.

The Local Government Board may appoint in writing such secretaries, assistant secretaries, inspectors, auditors, clerks, messengers, and other officers as the Board may, with the sanction of the Treasury, determine.

No payment shall be made in respect of their duties under this Act to the *ex-officio* members of the Local Government Board, but there shall be paid out of moneys provided by Parliament to the president, secretaries, and other officers of

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the Board such salaries as the Treasury may from time to time determine: Provided, that the appointment of any officer to a new office made by the Local Government Board in pursuance of this section shall be deemed to be temporary only until the salary of such office has been provided for by Parliament.

President and one of the secretaries may sit in Parliament.

4. The president and one of the secretaries of the Local Government Board shall at the same time be capable of being elected to and of voting in the Commons House of Parliament, and the office of president shall be deemed to be an office included in Schedule H. of the Representation of the People Act, 1867; in Schedule H. of the Representation of the People (Scotland) Act, 1868; and in Schedule E. of the Representation of the People (Ireland) Act, 1868.

Seal, style, and acts of Board.

5. The Local Government Board may adopt an official seal, and describe themselves generally by the style and title of "The Local Government Board," and, save as hereinafter provided, any act to be done or instrument to be executed by or on behalf of the Local Government Board may be done or executed in the name of that Board by the president or by any member of the Local Government Board, or by a secretary or assistant secretary, if such secretary or assistant secretary is authorised to do or execute the same by any general order of the Local Government Board.

A rule, order, or regulation made by the Local Government Board shall be valid if it is made under the seal of the Board, and signed by the president or one of the *ex-officio* members of the Board, and countersigned by a secretary or assistant secretary; and the production of such *primâ facie* evidence of any of the said rules, orders, or regulations as is required by the Documentary Evidence Act, 1868, with respect to the rules, orders, or regulations of the Poor Law Board, shall, until the contrary is shown, be a sufficient proof that any such rule, order, or regulation of the Local Government Board was duly made.

Transfer of officers.

6. All officers, clerks, and other persons employed in or about the execution of the powers and duties by this Act transferred to the Local Government Board shall, from and after the establishment of the Local Government Board, be attached to and under the control of the Local Government Board.

The officers, clerks, and persons so attached shall in other respects hold their offices and places upon the same terms and conditions, and shall have the same powers, privileges, and immunities with respect to the performance of their duties as if this Act had not passed.

The Local Government Board may, by order, distribute the business to be performed under the Local Government Board amongst the several officers and persons transferred to the Board by this Act in such manner as the Local Government Board may think expedient.

Construction of Acts and documents, and power of Local Government Board.

7. In the construction of and for the purposes of any Act of Parliament, contract, or other document passed, entered into, or made before the establishment of the Local Government Board, but so far only as may be necessary for exercising the powers and discharging the duties by this Act transferred to and imposed on the Local Government Board, the name of such Board shall, according to circumstances, be deemed to be substituted for the Poor Law Board, one of Her Majesty's Principal Secretaries of State, or Her Majesty's most honourable Privy Council, as the case may require; and any act or thing which might, if this Act had not passed, have been done by the Poor Law Board, or by one of Her Majesty's Principal Secretaries of State, or by Her Majesty's most honourable Privy Council, so far as relates to the powers and duties hereby transferred, may be done by the Local Government Board.

Duplicate returns to be sent to Local Government Board.

8. Where under an Act, whether passed before or after the passing of this Act, any return relative to any rate, toll, tax, or due raised in England (other than such as is raised for the public revenue of the United Kingdom) is required to be sent to one of Her Majesty's Secretaries of State or any other department of the Government, a duplicate of such return shall in like manner be sent to the Local Government Board, and any person failing to send the same shall be subject to the like penalties as a person neglecting to send any return under the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter fifty-one.

SCHEDULE referred to in the foregoing Act.

PART I.

Powers and Duties of Secretary of State.

Subject.	Act.
Registration of Births, Deaths, and Marriages . .	6 & 7 Will. IV. c. 86. 7 Will. IV. & 1 Vict. c. 22.
Public Health	11 & 12 Vict. c. 63.
Local Government	21 & 22 Vict. c. 98. 24 & 25 Vict. c. 61. 26 & 27 Vict. c. 17.
Drainage. Sanitary Matters	28 & 29 Vict. c. 75. 29 & 30 Vict. c. 90. 30 & 31 Vict. c. 113. 31 & 32 Vict. c. 115. 32 & 33 Vict. c. 100.
Baths and Wash-houses	9 & 10 Vict. c. 74. 10 & 11 Vict. c. 61.
Public Improvements	23 & 24 Vict. c. 30.
Towns Improvements	10 & 11 Vict. c. 34.
Artizans and Labourers Dwellings	31 & 32 Vict. c. 130.
Returns. Local Taxation	23 & 24 Vict. c. 51. And any Acts amending the said Acts, and conferring powers on the said Secretary of State.

PART II.

Powers and Duties of Privy Council.

Subject.	Act.
Prevention of Disease	11 & 12 Vict. c. 63. 18 & 19 Vict. c. 116. Sections one, three, five, and six of 21 & 22 Vict. c. 97. 22 & 23 Vict. c. 3. 23 & 24 Vict. c. 77. 29 & 30 Vict. c. 90. 31 & 32 Vict. c. 115.
Vaccination	30 & 31 Vict. c. 84. And any Acts amending the said Acts, and conferring powers on the said Privy Council.

PUBLIC HEALTH ACT, 1875.

(SUPPORT OF SEWERS) AMENDMENT ACT, 1883.

46 & 47 VICT. c. 37.

An Act to amend the Public Health Act, 1875, *and to make provision with respect to the support of public sewers and sewage works in mining districts* (1)

[25*th August*, 1883.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and construction.

1. This Act may be cited as the Public Health Act, 1875 (Support of Sewers,) Amendment Act, 1883, and shall be construed as one with the Public Health Act, 1875 (in this Act called the principal Act), as amended by the Acts for the time being in force amending the same.

Interpretation.

2. In this Act,—

The expression "sanitary work" means any existing or future building or work constructed by or vested in or under the control of a local authority (2) under the powers or for the purposes of so much of the Principal Act (3), or of any General or Local Act or Provisional Order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority (2):

The expression "support" includes vertical and lateral support (3):

The expression "Sanitary Act" means the Act or Provisional Order under the authority of which a sanitary work has been or is constructed or is maintained, whether such Act or Order was passed and confirmed before or after the commencement of this Act:

The expression "person" includes a body corporate.

Application of provisions of the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, with respect to mines, to sanitary works over mines.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive) with respect to mines (4) shall, in relation to any sanitary work (5) of a local authority (2), be deemed to be incorporated with this Act and with the Sanitary Act (5) under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say):—

(1.) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression "the undertakers" referred to the local authority (6), and as if the expression "the Special Act" referred to such Sanitary Act (7) and this Act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work (7):

(2.) The local authority, by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines, may specify and define the nature and extent of support (8) which they require

(1) See the note, *ante*, p. 55. (2) Defined *ante*, p. 44.

(3) See the preceding section.

(3) See *Re Corporation of Dudley, and Metropolitan Board of Works* v. *Metropolitan Ry.*, *ante*, p. 55.

(4) See the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, *post*.

(5) Defined in the preceding section.

(6) Defined *ante*, p. 44. (7) See note (3), *supra*.

to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said Act or to such less distance as the local authority think fit:

(3.) As regards sanitary works (2) existing at the passing of this Act the local authority shall cause the survey and map referred in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this Act:

(4.) The amount of any compensation in respect of support for a sanitary work payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this Act or the Sanitary Act (2), together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work (2) by the Sanitary Act (2):

(5.) A local authority (1) may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this Act in relation to the matters in this Act mentioned or otherwise for carrying into effect the purposes of this Act in relation to the past or future working of mines:

The provisions of this Act shall apply to every sanitary work as defined in this Act (2), whether the land on, in, over, or under which such work is situate is or is not vested in or occupied by the local authority, and is, or is not wholly or partially dedicated to the public as a street, highway, or public place.

Limitation of right to support for sanitary works over mines.

4. Except as in this Act provided, a local authority (1) shall not by reason only of anything contained in the Sanitary Act (2) under the authority of which a sanitary work (2) has been or is constructed or maintained be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such Sanitary Act shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a sanitary work caused in or consequent upon the working of any mines in a reasonable and proper manner.

Savings.

5. Nothing in this Act shall be construed to repeal, invalidate, or affect any express enactment in a Sanitary or other Act with respect to rights of support for sanitary works, or any agreement made before the passing of this Act with respect to such rights, or to affect any action, arbitration, or other legal proceedings concluded before or pending at the passing of this Act.

Where any right of support (3) has been acquired before the passing of this Act by a local authority in respect of any sanitary work, and no compensation is at the passing of this Act recoverable in respect of such right, nothing in this Act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this Act had not been passed.

(1) Defined in *ante*, p. 44.
(2) Defined in section 2, *ante*.
(3) See note (3), *supra*.

THE RIVERS POLLUTION PREVENTION ACT.

39 & 40 VICT. c. 75.

ARRANGEMENT OF CLAUSES.

Clauses.
1. Short title of Act.

PART I.—LAW AS TO SOLID MATTERS.

2. Prohibition as to putting solid matters into streams.

PART II.—LAW AS TO SEWAGE POLLUTIONS.

3. Prohibition as to drainage into streams of sewers.

PART III.—LAW AS TO MANUFACTURING AND MINING POLLUTIONS.

4. Prohibition as to drainage into streams from manufactories.
5. Prohibition as to drainage into stream from mines.
6. Restriction on proceedings under this part of the Act.

PART IV.—ADMINISTRATION OF LAW.

7. Sanitary authority to afford facilities for factories draining into sewers.
8. Power of sanitary authority to enforce Act.
9. Power of Lee Conservancy Board to enforce Act.

LEGAL PROCEEDINGS. SAVING CLAUSES. DEFINITIONS.

(1.) *Legal Proceedings.*

10. Offences to be restrained by summary order of county court.
11. Appeal from county court, and removal of case into High Court of Justice.
12. Certificate of inspector of Local Government Board as to best practicable means.
13. Restriction on proceedings for offences.
14. Orders as to costs of inquiries.
15. Power of inspectors of Local Government Board.

(2.) *Saving Clauses.*

16. Powers of Act cumulative.
17. Saving of rights of impounding and diverting water.
18. Saving of certain Conservancy Acts.
19. Saving of works of certain local authorities.

(3.) *Definitions.*

20. Definitions.

PART V.—APPLICATION OF THE ACT TO SCOTLAND.

21. Modifications of Act in Scotland.

PART VI.

22. Application of this Act to Ireland.

THE RIVERS POLLUTION PREVENTION ACT.

39 & 40 VICT. c. 75.

An Act for making further Provision for the Prevention of the Pollution of Rivers. [15*th August*, 1876.]

WHEREAS it is expedient to make further provision for the prevention of the pollution of rivers, and in particular to prevent the establishment of new sources of pollution (1):

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

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1. This Act may be cited for all purposes as the Rivers Pollution Prevention Act, 1876.

Short title of Act.

PART I. (2).

LAW AS TO SOLID MATTERS.

Prohibition of putting solid matters into streams.

2. Every person (3) who puts or causes to be put or to fall or knowingly permits to be put or to fall or to be carried into any stream (4), so as either singly or in combination with other similar acts of the same or any other person to interfere with its due flow, or to pollute its waters, the solid refuse of any manufactory, manufacturing process or quarry, or any rubbish or cinders, or any other waste or any putrid solid matter, shall be deemed to have committed an offence against this Act.

In proving interference with the due flow of any stream, or in proving the pollution of any stream, evidence may be given of repeated acts which together cause such interference or pollution, although each act taken by itself may not be sufficient for that purpose.

PART II.

LAW AS TO SEWAGE POLLUTIONS.

Prohibition as to drainage into streams of sewers.

3. Every person (5) who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream (4) any solid or liquid sewage matter, shall

(1) As to the evils for the remedy of which this Act was passed, see the Reports of the Royal Commissioners, appointed in 1868 to inquire into the best means of preventing the pollution of rivers.

(2) This part of the Act came into operation on 15th August, 1876; section 13, *post*, p. 404, only applies to Parts II. and III.

(3) See note (5), *infra*.

(4) As to the meaning of "stream," see section 20, *post*, p. 405.

(5) "Person" includes any body of persons, whether corporate or unincorporate. See section 20, *post*. p. 405.

Where a sanitary authority have not themselves constructed sewers which are a nuisance, but only permitted them to be used as formerly by the inhabitants, they are not doing an act which can be restrained under this or the Public Health Act. They

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(subject as in this Act mentioned) be deemed to have committed an offence against this Act (1).

Where any sewage matter falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act for the purpose of conveying such sewage matter, the person causing or knowingly permitting the sewage matter so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and available means (3) to render harmless the sewage matter so falling or flowing or carried into the stream.

Where the Local Government Board are satisfied after local inquiry (4) that further time ought to be granted to any sanitary authority, which at the date of the passing of this Act is discharging sewage matter into any stream, or permitting it to be so discharged, by any such channel as aforesaid, for the purpose of enabling such authority to adopt the best practicable and available means for rendering harmless such sewage matter, the Local Government Board may by order declare that this section shall not, so far as regards the discharge of sewage matter by such channel, be in operation until the expiration of a period to be limited in the order (5).

Any order made under this section may be from time to time renewed by the Local Government Board, subject to such conditions, if any, as they may see fit.

A person (6) other than a sanitary authority shall not be guilty of an offence under this section in respect of the passing of sewage matter into a stream (2) along a drain communicating with any sewer belonging to or under the control of any sanitary authority, provided he has the sanction of the sanitary authority for so doing.

PART III.

Law as to Manufacturing and Mining Pollutions.

Prohibition as to drainage

4. Every person (7) who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream (2) any poisonous, noxious, or polluting liquid

have only a limited ownership in the sewers, and are not in the same position as to responsibility for fouling a stream as a private individual, because they cannot stop the sewers on account of the damage to the inhabitants: *Att.-Gen.* v. *Dorking Union*, *ante*, p. 56. But where a corporation themselves constructed sewers under their Local Act, they were restrained at the suit of landowners from polluting a river, although the sewer had been completed and in operation sixteen years: *Att.-Gen.* v. *Leeds Corporation*, L. R. 5 Ch. 583, 39 L. J. Ch. 711, 22 L. T. N. S. 330, 19 W. R. 19. See, further, sections 17 & 19 of the Public Health Act, *ante*, pp. 55, 57.

(1) As to whether a prescriptive right to pollute a stream is a good answer to a complaint under the Act, see *Portobello* (*Magistrates of*) v. *Edinburgh* (*Magistrates of*), *post*, p. 405.

(2) As to the meaning of "stream," see section 20, *post*, p. .

(3) By section 12, *post*, a certificate granted by an inspector appointed by the Local Government Board that the means used are the best or only practicable and available means, under the circumstances of the particular case, shall be conclusive evidence of the fact.

The expression must be construed with reference to the state of chemical and other knowledge for the time being, and with reference to the locality and circumstances of the particular cases.

(4) See sections 14 & 15, *post*, and the notes thereto.

(5) As to communications with the Local Government Board, see note, *ante*, p. 157.

(6) See the interpretation clause, section 20, *post*.

(7) See note (1), *supra*.

proceeding from any factory or manufacturing process, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act (1).

into streams from manufactories.

Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably available means (2) to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream (3).

Prohibition as to drainage into stream from mines.

5. Every person (4) who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious, or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the court having cognizance of the case that he is using the best practicable and reasonably available means (2) to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream (3).

Restriction on proceedings under this part of the Act.

6. Unless and until Parliament otherwise provides the following enactments shall take effect, proceedings shall not be taken against any person under this part of this Act save by a sanitary authority (5), nor shall any such proceedings be taken without the consent of the Local Government Board: Provided always, that if the sanitary authority, on the application of any person interested alleging an offence to have been committed, shall refuse to take proceedings or apply for the consent by this section provided, the person so interested may apply to the Local Government Board, and if that Board on inquiry is of opinion that the sanitary authority should take proceedings, they may direct the sanitary authority accordingly, who shall thereupon commence proceedings.

The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality.

The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.

Any person within such district as aforesaid, against whom proceedings are proposed to be taken under this part of this Act, shall, notwithstanding any consent of the Local Government Board, be at liberty to object before the sanitary authority to such proceedings being taken, and such authority shall, if required in writing by such person, afford him an opportunity of being heard against such proceedings being taken, so far as the same relate to his works or manufacturing processes. The sanitary authority shall thereupon allow such person to be heard by himself, agents, and witnesses, and after inquiry such authority shall determine, having regard to all the considerations to which the Local Government Board are

(1) By section 7, *post*, sanitary authorities are to afford facilities for factories draining into sewers.

(2) See note (3) to section 3, *ante*. Note the introduction here of the word "reasonably."

(3) As to restrictions on proceedings, see sections 6 and 13, *post*.

(4) See note (1) to section 3, *ante*.

(5) Defined in section 20, *post*.

Secs. 6—9.

by this section directed to have regard, whether such proceedings as aforesaid shall or shall not be taken; and where any such sanitary authority has taken proceedings under this Act, it shall not be competent to other sanitary authorities to take proceedings under this Act till the party against whom such proceedings are intended shall have failed in reasonable time to carry out the order of any competent court under this Act.

PART IV.

Administration of Law.

Sanitary authority to afford facilities for factories draining into sewers.

7. Every sanitary (1) or other local authority having sewers under their control shall give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers:

Provided that this section shall not extend to compel any sanitary or other local authority to admit into their sewers any liquid which would prejudicially affect such sewers or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along such sewers, or which would from its temperature or otherwise be injurious in a sanitary point of view:

Provided also, that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of such authority (2).

Power of sanitary authority to enforce Act.

8. Every sanitary authority (1) shall, subject to the restrictions in this Act contained (3), have power to enforce the provisions of this Act in relation to any stream (4) being within or passing through or by any part of their district, and for that purpose to institute proceedings in respect of any offence against this Act which causes interference with the due flow within their district of any such stream, or the pollution within their district of any such stream, against any other sanitary authority or person, whether such offence is committed within or without the district of the first-named sanitary authority.

Any expenses incurred by a sanitary authority in the execution of this Act shall be payable as if they were expenses properly incurred by that authority in the execution of the Public Health Act, 1875 (5).

Proceedings may also, subject to the restrictions in this Act contained, be instituted in respect of any offence against this Act by any person aggrieved by the commission of such offence.

Power of Lee Conservancy Board to enforce Act.

9. The Conservancy Board constituted under the Lee Conservancy Act, 1868, shall, within the area of their jurisdiction, have, to the exclusion of any other authority, the powers for enforcing the provisions of this Act which sanitary authorities have under this Act.

The said Conservancy Board may also enforce the provisions of the Lee Conservancy Act, 1868, under the head or division "Protection of Water," by application to the county court having jurisdiction in the place in which any offence is committed against those provisions, and such court may by summary order require any person to abstain from the commission of any such offence, and the provisions of this Act with respect to summary orders of county courts and appeal therefrom shall apply accordingly.

(1) Defined in section 20, *post.*

(2) As to the rights and obligations of sanitary authorities with regard to sewers, see the Public Health Act, 1875, sections 15 *et seq.*, *ante*, p. 53 *et seq.*

(3) See section 6, *ante*, and section 13, *post.*

(4) See the interpretation clause, section 20, *post.*

(5) As to expenses of urban authorities, see p. 157 *et seq.*, *ante;* and as to those of rural authorities, see *ante*, p. 169 *et seq.*

(1.) *Legal Proceedings.*

10. The county court having jurisdiction in the place where any offence against this Act is committed may by summary order require any person [1] to abstain from the commission of such offence, and where such offence consists in default to perform a duty under this Act may require him to perform such duty in manner in the said order specified; the court may insert in any order such conditions as to time or mode of action as it may think just, and may suspend or rescind any order on such undertaking being given or condition being performed as it may think just, and generally may give such directions for carrying into effect any order as to the court seems meet. Previous to granting such order the court may, if it think fit, remit to skilled parties to report on the "best practicable and available means" and the nature and cost of the works and apparatus required, who shall in all cases take into consideration the reasonableness of the expense involved in their report.

Offences to be restrained by summary order of county court.

Any person making default in complying with any requirement of an order of a county court made in pursuance of this section shall pay to the person complaining, or such other person as the court may direct, such sum, not exceeding fifty pounds a day for every day during which he is in default, as the court may order; and such penalty shall be enforced in the same manner as any debt adjudged to be due by the court; moreover, if any person so in default persists in disobeying any requirement of any such order for a period of not less than a month or such other period less than a month as may be prescribed by such order, the court may in addition to any penalty it may impose appoint any person or persons to carry into effect such order, and all expenses incurred by any such person or persons to such amount as may be allowed by the county court shall be deemed to be a debt due from the person in default to the person or persons executing such order, and may be recovered accordingly in the county court.

11. If either party in any proceedings before the county court under this Act feels aggrieved by the decision of the court in point of law or on the merits, or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice.

Appeal from county court, and removal of case into High Court of Justice.

The appeal shall be in the form of a special case to be agreed upon by both parties or their attorneys, and, if they cannot agree, to be settled by the judge of the county court upon the application of the parties or their attorneys.

The court of appeal may draw any inferences from the facts stated in the case that a jury might draw from facts stated by witnesses.

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the superior courts on such appeals, shall apply to all proceedings under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court.

Any plaint entered in a county court under this Act may be removed into the High Court of Justice by leave of any judge of the said High Court, if it appears to such judge desirable in the interests of justice that such case should be tried in the first instance in the High Court of Justice and not in a county court, and on such terms as to security for and payment of costs, and such other terms (if any) as such judge may think fit.

12. A certificate granted by an inspector of proper qualifications appointed for the purposes of this Act by the Local Government Board, to the effect that the means used for rendering harmless any sewage matter or poisonous, noxious, or polluting solid or liquid matter falling or flowing or carried into any stream, are

Certificate of inspector of Local Government Board as to

[1] See note to section 3, *ante*, p. 399.

Secs. 12–18.

best practicable means.

the best or only practicable and available means under the circumstances of the particular case, shall in all courts and in all proceedings under this Act be conclusive evidence of the fact; such certificate shall continue in force for a period to be named therein, not exceeding two years, and at the expiration of that period may be renewed for the like or any less period (1).

All expenses incurred in or about obtaining a certificate under this section shall be paid by the applicant for the same.

Any person aggrieved by the grant or the withholding of a certificate under this section may appeal to the Local Government Board against the decision of the inspector; and the Board may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne as to the said Board may appear just (2).

Restriction on proceedings for offences.

13. *Proceedings shall not be taken under this Act against any person for any offence against the provisions of Parts II. and III. of this Act until the expiration of twelve months after the passing of this Act;* nor shall proceedings in any case be taken under this Act for any offence against this Act until the expiration of two months after written notice of the intention to take such proceedings has been given to the offender, nor shall proceedings under this Act be taken for any offence against this Act while other proceedings in relation to such offence are pending (3).

Orders as to costs of inquiries.

14. The Local Government Board may make orders as to the costs incurred by them in relation to inquiries instituted by them under this Act, and as to the parties by whom such costs shall be borne (4); and every such order and every order for the payment of costs made by the said Board under section twelve of this Act may be made a rule of Her Majesty's High Court of Justice (5).

Power of inspectors of Local Government Board.

15. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board under this Act, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which the inspectors of the said Board have under the Public Health Act, 1875, for the purposes of that Act (6).

(2.) *Saving Clauses.*

Powers of Act cumulative.

16. The powers given by this Act shall not be deemed to prejudice or affect any other rights or powers now existing or vested in any person or persons by Act of Parliament, law, or custom, and such other rights or powers may be exercised in the same manner as if this Act had not passed; and nothing in this Act shall legalise any act or default which would, but for this Act, be deemed to be a nusiance, or otherwise contrary to law: Provided nevertheless, that in any proceedings for enforcing against any person such rights or powers the court before which such proceedings are pending shall take into consideration any certificate granted to such person under this Act.

Saving of rights of impounding and diverting water.

17. This Act shall not apply to or affect the lawful exercise of any rights of impounding or diverting water.

Saving of certain Conservancy Acts.

18. Nothing in or done under this Act shall extend to interfere with, take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege given by "The Thames Conservancy Acts, 1857 and 1864," or by "The Thames Navigation Act, 1866," or by the Lee Conservancy Act, 1868, or any Act or Acts extending or amending the said Acts or either of them, or affect any outfall or other works of the Metropolitan Board of Works (although beyond the Metropolis) executed under the Metropolis Management Act, 1855, and the Acts

(1) See the saving clause, section 16, *infra.*

(2) See section 14, *infra.*

(3) See, also, section 6, *ante.* The part in *italics* is repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39.

(4) As to inquiries under the Public Health Act, 1875, see *ante*, pp. 204, 205.

(5) See section 294 of the Public Health Act, 1875, *ante*, p. 204.

(6) See *ante*, p. 205.

amending or extending the same, or take away, abridge, or prejudicially affect any right, power, authority, jurisdiction, or privilege of the Metropolitan Board of Works.

Saving of works of certain local authorities.

19. Where any local authority, or any urban or rural sanitary authority has been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment, shall be deemed to be an offence against this Act.

(3.) *Definitions.*

Definitions.

20. In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say:

"Person" includes any body of persons, whether corporate or unincorporate:

"Stream" includes the sea to such extent, and tidal waters to such point, as may, after local inquiry and on sanitary grounds, be determined by the Local Government Board, by order published in the *London Gazette*. Save as aforesaid, it includes rivers, streams, canals, lakes, and watercourses, other than watercourses at the passing of this Act mainly used as sewers, and emptying directly into the sea, or tidal waters which have not been determined to be streams within the meaning of this Act by such order as aforesaid (1):

"Solid matter" shall not include particles of matter in suspension in water:

"Polluting" shall not include innocuous discoloration:

"Sanitary authority" means—

In the Metropolis as defined by the Metropolis Management Act, 1855, any local authority acting in the execution of the Nuisances Removal for England Act, 1855, and the acts amending the same;

Elsewhere in England, any urban or rural sanitary authority acting in the execution of the Public Health Act, 1875.

PART V.

21. [Application of the Act to Scotland.]

PART VI.

22. [Application of Act to Ireland.]

(1) In *Portobello (Magistrates of)* v. *Edinburgh (Magistrates of)*, 10 C. of S. Cas. (4th Series) 130 (Sc.), where a sanitary authority had been for a long time before the Act sending a large quantity of sewage into a watercourse which joined a large stream, the combined stream falling into the sea three miles below the junction, so that, though for more than forty years the combined stream had carried more or less polluted water to the sea, within the last twenty years the pollution had largely increased, and in the summer the greater part of the combined stream was foully polluted, it was held that, though the watercourse was at the date of the Act "mainly used as a sewer," and therefore excepted from the operation of the Act, the stream into which it flowed was not so used, and the pollution of the latter must be prevented.

PUBLIC HEALTH (WATER) ACT, 1878.

41 & 42 VICT. c. 25.

ARRANGEMENT OF SECTIONS.

Section.
1. Short title, and construction.
2. Commencement of Act.
3. Duty of rural authority to provide or require provision of sufficient water supply, and procedure for enforcing such requirement.
4. Appeal by owner against requirement to provide water supply.
5. Appeal against apportionment of expenses.
6. Houses in rural districts not to be erected or rebuilt without sufficient water supply.
7. Periodical inspections of water supply.
8. Explanation of section 62 of 38 & 39 Vict. c. 55 as to the meaning of "reasonable cost."
9. Rating for water supply by stand-pipes.
10. Power to require water rates to be levied.
11. Powers of urban sanitary authorities in certain cases.
12. Forms in the schedule.
13. Powers of Act cumulative.

SCHEDULE.

PUBLIC HEALTH (WATER) ACT, 1878.

41 & 42 VICT. c. 25.

An Act to amend the Public Health Act, 1875, *so far as relates to the supply of Water.* [*4th July*, 1878.]

Secs. 1—3.

38 & 39 Vict. c. 55.

WHEREAS it is expedient to amend the provisions of the Public Health Act, 1875:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, and construction.

1. This Act may be cited as the Public Health (Water) Act, 1878, and shall be construed as one with the Public Health Act, 1875.

Commencement of Act.

2. This Act shall come into operation on the twenty-fifth day of March, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Duty of rural authority to provide or require provision of sufficient water supply, and procedure for enforcing such requirement.

3. It shall be the duty of every rural sanitary authority (1), regard being had to the provisions in this Act contained, to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water (2) sufficient for the consumption and use for domestic purposes of the inmates of the house.

Where it appears to a rural sanitary authority (1), on the report of their inspector of nuisances (3), or their medical officer of health (3), that any occupied dwelling-house within their district has not such supply within a reasonable distance, and the authority are of opinion that such supply can be provided at a reasonable cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to twopence per week, or at such other cost not exceeding a capital sum the interest on which at the rate of five per centum per annum would amount to threepence per week, as the Local Government Board may on the application of the local authority (4) determine under all the circumstances of the case to be reasonable, and that the expense of providing the supply ought to be paid by the owner (5) or defrayed as private improvement expenses (6), proceedings may be taken as follows:

(1.) The authority may serve on the owner of the house a notice (7) requiring him, within a time specified in the notice and not exceeding six months from the date of the service thereof, to provide such supply, and to do all such works as may be necessary for that purpose.

(2.) If at the expiration of the time so specified the notice is not complied with, the authority may serve on the owner a second notice (8), informing him that if the requirements of the first notice are not complied with within one month from the date of the service of the second notice, the authority will themselves provide such supply, and that the expense of

(1) As to the meaning of "rural sanitary authority," see sections 5 and 9 of the Public Health Act, 1875, *ante*, pp. 48, 50.

(2) See *Milnes* v. *Mayor of Huddersfield*, *post*, p. 422.

(3) As to these officers, see the Public Health Act, 1875, section 190, and notes thereto *ante*, p. 151.

(4) As to correspondence with the Local Government Board, see note (1), *ante*, p. 157.

(5) See Public Health Act, 1875, sections 257 and 251 *et seq.*, *ante*, pp. 185 and 181 *et seq.*

(6) See Public Health Act, 1875, sections 257, 213, 214, and 251 *et seq.*, *ante*, pp. 185, 163, 164, 181 *et seq.*

(7) For form of notice, see the Schedule to this Act, Form (A.), *post.*

(8) For form, see the Schedule to this Act, Form (B.), *post.*

Secs. 3, 4.

providing the supply will in that case be payable by the owner or as a private improvement expense.

(3.) If at the expiration of one month from the date of the service of the second notice the requirements of the first notice are not complied with, the authority may, subject as in this Act is mentioned, themselves provide the supply, and for that purpose they may enter upon the premises and execute all such works as appear to them necessary for obtaining a supply of water for the house, and for the purposes of such entry sections 102 and 103 of the Public Health Act, 1875, shall apply until the works are completed, in the same manner as if an order of a court of summary jurisdiction had been made for the abatement of a nuisance on the premises, and that order had not been complied with (1).

38 & 39 Vict. c. 55.

(4.) Any expenses incurred by the authority in providing such supply and doing such works may, when the supply has been provided, be recovered in a summary manner from the owner of the house (2), or may, at the option of the authority, be declared, by their order, to be private improvement expenses (3).

(5.) Where the owners of two or more houses have failed to comply with the requirements of the notices served on them under this section, and the authority might, under this Act, execute the necesssary works for providing a water supply for each house, the authority may, if it appears to them desirable, and no greater expense would be occasioned thereby, execute works for the joint supply of water to those houses, and apportion the expenses as they deem just.

The authority may, on cause being shown to their satisfaction why the requirements of a notice served by them under this section should not be complied with, withdraw the notice or modify the requirements thereof.

Provided that nothing in this section contained shall be deemed to relieve the authority from the duty imposed upon them by the Public Health Act, 1875, of providing their district or any contributory place or part of a contributory place therein with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply, and a general scheme of supply is required, and such supply can be got at a reasonable cost (4).

38 & 39 Vict. c. 55.

Appeal by owner against requirement to provide water supply.

4. Where an owner of a house has been required by the notice of a rural sanitary authority to provide a supply of water for his house, and objects to such requirement on any of the following grounds; that is to say,

(1.) That the supply is not required; or,

(2.) That the time limited by the notice for providing the supply is insufficient; or,

(3.) That it is impracticable to provide the supply at a reasonable cost; or,

(4.) That the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply of water wholesome; or,

(5.) That the whole or part of the expense of providing the supply, or of rendering the existing supply wholesome, ought to be a charge on the district or contributory place;

he may, within twenty-one days after service on him of the second notice, address a memorial to the authority, stating his objections, and in that case it shall not be lawful for the authority to proceed with the execution of the works which they

(1) See *ante*, pp. 96, 97.

(2) See Public Health Act, 1875, sections 257 and 251 *et seq.*, *ante*, pp. 185 and 181 *et seq.*

(3) See Public Health Act, 1875, sections 257, 213, 214 and 251 *et seq.*, *ante*, pp. 185, 163, 164, 181 *et seq.*

(4) See the Public Health Act, 1875, section 299, *ante*, p. 207, and sections 51 *et seq.*, *ante*, pp. 69 *et seq.*

The Public Health Act, 1875, section 62, *ante*, p. 76, is not repealed by sections 3 and 4 of this Act: *Colne Valley Water Co.* v. *Treharne*, 48 J. P. 279.

might otherwise execute under this Act until they have been authorised to execute the same by a court of summary jurisdiction or by the Local Government Board in manner hereinafter provided.

If the objections stated in the memorial do not include either the fourth or fifth of the above-mentioned grounds, the authority may apply to a court of summary jurisdiction for an order authorising them to proceed with the works, and thereupon the court shall summon the owner, and, if satisfied on hearing the case that the objections are not well founded, shall make an order authorising the authority to proceed with the works in the event of their not being executed by the owner within a time limited by the order.

If the objections stated in the memorial are or include the fourth and fifth of the above-mentioned grounds, or either of them, the authority shall forward a copy of the memorial to the Local Government Board, who may either cancel the requirement of the authority, or confirm the same, with or without modifications.

If the Local Government Board confirm the requirement they shall issue an order authorising the authority, subject to such modifications, if any, as they prescribe, to execute the works in the event of such works not being executed by the owner within a time limited by the order.

And such order may, if the Local Government Board think it equitable so to do, apportion the expense of providing the supply between the owner of the house and the authority of the district comprising the contributory place in which the house is situate, or between the owner and any other person or persons.

If the Local Government Board cancel the requirement on the grounds that the authority ought themselves to provide a supply of water for the district or contributory place in which the house is situate, or to render the existing supply wholesome, the memorial shall be deemed to have been a complaint of default made to the Local Government Board against the authority under the 299th section of the Public Health Act, 1875 (1). 38 & 39 Vict. c. 55.

Appeal against apportionment of expenses.

5. Where the expenses of providing a joint supply of water for two or more houses are apportioned under this Act by a rural sanitary authority among the owners of the several houses, notice of such apportionment shall be forthwith given to each of such owners, and if any owner objects to the apportionment as unjust, he may, within twenty-one days after service on him of notice thereof, apply to a justice, and thereupon the justice may summon the authority, and also the other owners, to show cause before a court of summary jurisdiction why the apportionment should not be varied, and the court may either dismiss the application or make such order varying the apportionment as to the court may appear reasonable (2).

Houses in rural districts not to be erected or rebuilt without sufficient water supply.

6. It shall not be lawful in any rural district for the owner of any dwelling-house which may be erected after the date of the commencement of this Act, or of any dwelling-house which after that date may be pulled down to or below the ground floor and rebuilt, to occupy the same, or cause or permit the same to be occupied, unless and until he has obtained from the sanitary authority of the district a certificate that there is provided, within a reasonable distance of the house, such an available supply of wholesome water as may appear to such authority, on the report of their inspector of nuisances or of their medical officer of health, to be sufficient for the consumption and use for domestic purposes of the inmates of the house.

If the sanitary authority refuse to grant such certificate, the owner may apply to a court of summary jurisdiction for an order authorising the occupation of the house notwithstanding the refusal of the certificate, and thereupon the court shall summon the authority, and if the court, after hearing the case, is of opinion that the certificate ought to have been granted, the court may make an order authorising the occupation of the house.

(1) *Ante*, p. 207.

(2) As to meaning of "rural sanitary authority," see sections 5 and 9 of Public Health Act, 1875, *ante*, pp. 48, 50. As to providing joint supply of water, see section 3 (5), *ante*.

Secs. 6—12.

Any owner who occupies a house or causes or permits it to be occupied in contravention of this section shall be liable on conviction by a court of summary jurisdiction to a penalty not exceeding ten pounds (1).

Periodical inspections of water supply.

7. It shall be the duty of every rural sanitary authority (2) from time to time to take such steps as may be necessary to ascertain the condition of the water supply within their district, and the authority may pay all reasonable costs and expenses incurred by them for the purpose of taking such steps. The authority, or any of their officers, or any person duly authorised in writing for that purpose by the authority, if they or he have or has reasonable ground for believing that any occupied dwelling-house within the district is without a proper supply of wholesome water, sufficient for the consumption and use for domestic purposes of the inmates of such house, shall be admitted into the premises for which such supply is required or from which the water supply may be derived for the purpose of ascertaining whether or not such house has such a supply within a reasonable distance; and for the purposes of any such admission sections 102 and 103 of the Public Health Act, 1875 (3), shall apply in the same manner as if such admission were necessary for the purpose of examining as to the existence of any nuisance on the premises, and the person so authorised as aforesaid were an officer of the rural sanitary authority.

38 & 39 Vict. c. 55.

Explanation of s. 62 of 38 & 39 Vict. c. 55, as to the meaning of "reasonable cost."

8. Where application is made to the Local Government Board by a local authority under section 62 of the Public Health Act, 1875 (4), to determine what is a reasonable cost within the meaning of that section, the Board may, for that purpose, fix, by order, a general scale of charges for the whole or any part of the district of the local authority, and the cost of the supply of water to any house within the area specified in the order shall be deemed to be determined to be a reasonable cost within the meaning of that section if it does not exceed the cost authorised by such general scale of charges.

Rating for water supply by stand-pipes.

9. Where a rural sanitary authority (5) have provided a stand-pipe or stand-pipes for the supply of water to any portion of their district, they may recover water rates or water rents from the owner or occupier of every dwelling-house within two hundred feet of any such stand-pipe, in the same manner in all respects as if the supply had been given on the premises (6).

Provided that if any such dwelling-house has, within a reasonable distance, and from other sources, a supply of wholesome water sufficient for the consumption and use of the inmates of the house, no water rate or water rent shall be recoverable from the owner or occupier of the house unless and until the water supplied by the authority by means of such stand-pipes is used by inmates of the house.

Power to require water rates to be levied.

38 & 39 Vict. c. 55.

10. Where a sanitary authority under the provisions of the Public Health Act, 1875, as amended by this Act, supply water in any urban district or in any contributory place, and an application is made to them by any ten persons rated to the relief of the poor in such urban district, or by any five persons so rated in such contributory place, to charge water rates or water rents in respect of the water so supplied, it shall be incumbent upon the authority to exercise the powers given to them by the Public Health Act, 1875 (6), and by this Act, of charging water rates or water rents in respect of all water supplied by them in such urban district or in such contributory place.

Powers of urban sanitary authorities in certain cases.

11. The Local Government Board may, if they think fit, by order, invest any urban sanitary authority with all or any of the powers and duties which are by this Act given to a rural sanitary authority, and such investment may be made either unconditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during at or in which the powers and duties are to be exercised.

Forms in the schedule.

12. The forms contained in the schedule to this Act, or forms to like effect

(1) As to the recovery of penalties, see the Public Health Act, 1875, sections 251 *et seq.*, *ante*, pp. 181 *et seq.*

(2) See the Public Health Act, 1875, sections 5 and 9, *ante*.

(3) *Ante*, pp. 96, 97. (4) *Ante*, p. 76.

(5) See Public Health Act, 1875, sections 5 and 9, *ante*.

(6) See Public Health Act, 1875, sections 56, 58, *ante*, pp. 75, 76.

varied as circumstances may require, may be used, and shall be deemed sufficient for all purposes.

Secs. 12, 13.

13. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by Act of Parliament, law, or custom.

Powers of Act cumulative.

THE SCHEDULE.

FORM (A.)

Form of Notice requiring Owner to provide a supply of Water for an Occupied House.

To the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas it appears to the above-named [*local authority*] on the report of their [*inspector of nuisances or their medical officer of health, as the case may be*] that the said house has not within a reasonable distance an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the house by reason of the existing supply not being [*wholesome or sufficient, or within a reasonable distance, as the case may be*], and that the requisite supply can be provided at a reasonable cost; and whereas the said [*local authority*] are of opinion that such supply ought to be provided at your expense as the owner of the said house, or defrayed as private improvement expenses:

Now, therefore, we, the said [*local authority*], in pursuance of the Public Health (Water) Act, 1878, do hereby require you to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as may be necessary for that purpose within [*state the time*] from the date of the service hereof.

Dated this day of , 187 .

(Signed)

Clerk to the said [*local authority*]

FORM (B.)

Form of Second Notice to be served where Requirements of First Notice have not been complied with.

To the owner of the house occupied by [*state name of occupier*] and situated at [*give such description as may be sufficient to identify the premises*] within the district of [*describe the local authority*].

Whereas on the day of , the above-named [*local authority*], in pursuance of the Public Health (Water) Act, 1878, served on you a notice bearing date the day of requiring you as the owner of the said house to provide an available supply of wholesome water sufficient for the consumption and use for domestic purposes of the inmates of the said house within a reasonable distance from such house, and to do all such works as might be necessary for that purpose within [*state the time*] from the date of the service of such notice:

And whereas the said notice has not been complied with: Now, therefore, we, the said [*local authority*], do hereby give you notice that if the requirements of the said first notice dated the day of are not complied with within one month from the date of the service hereof, we [*describe local authority*] will ourselves provide a supply of water for the said house, and do all necessary works for that purpose, and that the cost which may be incurred therein will be recovered from you summarily or be recovered as private improvement expenses.

Dated this day of , 187 .

(Signed)

Clerk to the said [*local authority*].

WATERWORKS CLAUSES ACT, 1847[1].

10 & 11 VICT. c. 17.

An Act for consolidating in One Act certain Provisions usually contained in Acts authorising the making of Waterworks for supplying Towns with Water.
[23*rd April*, 1847.]

Secs. 1—3.

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the construction of waterworks for supplying towns with water, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such waterworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or accepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows:

Interpretations in this Act.

"Special Act."

"Prescribed."

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction of waterworks, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands and streams" shall mean the lands and streams of water which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed; and the expression "the undertakers" shall mean the persons by the special Act authorised to construct the waterworks.

"The lands and streams."

"The undertaking."

"The undertakers."

Interpretations in this and the special Act.

3. The following words and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them,

(1) As to the portions of this Act which are incorporated with the Public Health Act, 1875, see section 57 of that Act, *ante*, p. 75, and section 3 of the Public Health Act (Support of Sewers) Amendment Act, 1883, *ante*, p. 396. The powers of local authorities with regard to water supply are derived from the Public Health Act, 1875, sections 51—70, *ante*, pp. 69—80, and see section 316, *ante*, p. 215, and from the Public Health (Water) Act, 1878, *ante*, p. 407.

As to the general principles of water supply, see the suggestions issued by the Local Government Board, dated October 1874, amongst the Board's circulars, &c., *post*.

unless there be something in the subject or context repugnant to such construction; (that is to say,)

Sec. 3.

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number: — Number.

Words importing the masculine gender shall include females: — Gender.

The word "person" shall include a corporation, whether aggregate or sole: — "Person."

The word "lands" shall include messuages, lands, tenements, and hereditaments, or heritages of any tenure: — "Lands."

The word "streams" shall include springs, brooks, rivers, and other running waters: — "Streams."

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special Act: — "Street."

The expression "the waterworks" shall mean the waterworks, and the works connected therewith, by the special Act authorised to be constructed: — "The waterworks."

The expression "water rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of water: — "Water rate."

The word "month" shall mean calendar month: — "Month."

The expression "Superior Courts," where the matter submitted to the cognizance of the Court arises in England or Ireland, shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster and the Court of Pleas of the County of Durham, and where such matter arises in Scotland it shall mean the Court of Session: — "Superior Courts."

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: — "Oaths."

The word "county" shall include riding or other division of a county having a separate commission of the peace, and in Scotland stewartry, and any ward or other division of a county or stewartry having a separate sheriff, and it shall also include county of a city or county of a town: — "County."

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and if such matter arise in respect of lands or streams situated not wholly in one jurisdiction, shall mean a justice acting for the county or place where any part of such lands or streams shall be situated; and where any matter is authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together: — "Justice." "Two justices."

The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland and the steward depute of the stewartry in Scotland in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively: — "Sheriff."

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the waterworks, or the principal office thereof, for the county or place in which the waterworks, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace: — "Quarter sessions."

The expression "the town commissioners" shall mean the parties defined under that title in the special Act, and where no such parties shall be there defined shall mean the commissioners, trustees, or other parties having the control or management of the streets under any Act for paving or improving the town or district to be supplied with water under the special Act: — "The town commissioners."

The word "inspector" shall mean an officer appointed under any local Act relating to the town or district supplied with water under the special Act — "Inspector."

Secs. 3—6.

for the purpose of inspecting or superintending works connected with the paving, drainage, or supply of water of such town or district, or any officer appointed under any general Act for executing the like duties with respect to such town or district together with other towns or districts.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Waterworks Clauses Act, 1847" (1).

Form in which portions of this Act may be incorporated in other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

And with respect to the construction of the waterworks, be it enacted as follows:

Construction of waterworks to be subject to the provisions of this Act and the Lands Clauses Consolidation Acts, 1845.

6. Where by the special Act the undertakers shall be empowered, for the purpose of constructing or supplying waterworks, to take or use any lands or streams otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act, and if the waterworks be situated in England or Ireland, to the provisions and restrictions contained in the Lands Clauses Consolidation Act, 1845 (2), and if the waterworks be situated in Scotland, the provisions and restrictions contained in the Lands Clauses Consolidation (Scotland) Act, 1845, and shall make to the owners and occupiers of and all other parties interested in any lands or streams taken or used for the purposes of the special Act, or injuriously affected by the construction or maintenance of the works thereby authorised, or otherwise by the execution of the powers thereby conferred, full compensation for the value of the lands and streams so taken or used, and for all damage sustained by such owners, occupiers, and other persons, by reason of the exercise, as to such lands and streams, of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith (3); and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Acts (4) respectively for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the said last-mentioned Acts respectively shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

(1) The Act of 1863, section 1, *post*, p. 434, provides that that and this Act may be cited together as the Waterworks Clauses Acts, 1847 and 1863.

(2) See sections 16 *et seq.* of the Act, *post.*

(3) See further section 12, *post.*

There is a distinction between "taking and using" and "injuriously affecting" lands and streams. The diversion of a stream is a "taking and using" within the meaning of section 85 of the Lands Clauses Act, 1845 (*post*), and before such diversions can be effected, the value of the stream must be ascertained and secured to the owners of the land through which it passes: *Ferrand* v. *Mayor of Bradford*, 21 Beav. 412, 27 L. T. 11, 2 Jur. N. S. 175. See also *Stone* v. *Corporation of Yeovil*, *ante*, p. 212. But the mere *abstraction* of water only entitles a riparian proprietor below to compensation for injuriously affecting his interest in the stream: *Bush* v. *Trowbridge Waterworks Co.*, *ante*, p. 213.

Generally as to water rights and liabilities for injury thereto, see the notes *ante*, p. 70 *et seq.*

(4) *Post.*

Secs. 7—11.

Errors and omissions in plans, &c., may be corrected by justices, &c., who shall certify the same.

7. If any omission, mis-statement, or wrong description shall have been made of any lands or streams, or of the owners, lessees, or occupiers of any lands or streams, described on the plans or books of reference deposited in compliance with the standing orders of either House of Parliament, or in the schedule to the special Act, the undertakers, after giving ten days notice to the owners, lessees, and occupiers of the lands and streams affected by such proposed correction, may apply, in England or Ireland, to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, mis-statement, or wrong description arose from mistake, they or he shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited, in England or Ireland, with the clerk of the peace, and in Scotland with the sheriff clerk of the several counties in which the lands or streams affected thereby are situated, or, where any such lands or streams are situated in a royal burgh, in Scotland, with the town clerk of such burgh; and such certificate shall be kept by such clerks of the peace, sheriff clerks, or town clerks respectively with the other documents to which they relate; and thereupon such plan, book of reference, or schedule shall be deemed to be corrected according to such certificate; and the undertakers may make the works in accordance with such certificate, as if such omission, mis-statement, or wrong description had not been made (1).

Certificate, &c., to be deposited.

Works not to be proceeded with until plans of all alterations authorised by Parliament have been deposited.

8. The undertakers shall not begin to execute the waterworks unless they shall have previously deposited with the clerk of the peace in England or Ireland, and the sheriff clerk in Scotland, of every county, and the town clerk of every royal burgh in Scotland in which the waterworks shall be situated, a plan and section of all such alterations from the original plan and section (if any) as shall have been approved of by Parliament, on the same scale and containing the same particulars as the original plan and section of the waterworks, and shall also have deposited with the parish clerks of the several parishes in England, and the clerks of the unions of the several parishes in Ireland, and the schoolmasters of the several parishes in Scotland, in which such alterations shall have been authorised to be made, copies or extracts of or from such plans and sections as shall relate to such parishes respectively.

Clerks of the peace, &c., to receive plans of alterations, &c., and allow inspection.

9. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of unions, and schoolmasters, shall receive the said plans and sections of alterations, and copies and extracts thereof respectively, and shall keep the same, as well as the said original plans and sections, and shall allow all persons interested to inspect any of the documents aforesaid, and to make copies and extracts of and from the same, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of the original plans and sections by an Act passed in the first year of the reign of Her Majesty, intituled "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

7 Will. IV. & 1 Vict. c. 83.

Copies of plans and alterations, &c. to be evidence.

10. Copies of the said plans and books of reference, or of any alteration or correction thereof, or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk, which certificate such clerk shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Not to deviate beyond limits

11. The undertakers in constructing the waterworks shall not deviate from the line of the works laid down in the said plan more than the prescribed number of

(1) It has been held that the corresponding section in the Railways Clauses Act is intended to meet the case of any omission of land in the plan or of description of the owner in the books of reference, or the omission or mis-statement of the acreage as from an error in copying or the like: *Kemp* v. *W. London & Crystal Palace Ry.*, 1 K. & J. 681, 1 Jur. N. S. 1012. See also *Taylor* v. *Clemson*, 11 Cl. & F. 610, 2 Q. B. 978.

If the justices are satisfied that the omission, &c., arose from mistake, it is their duty to grant the necessary certificate, and they may be compelled to do so by *mandamus*. See *Ex parte Central Wales Ry.*, Hodges on Railways, 6th ed., p. 335.

Secs. 11–13.

defined upon plans, &c.

yards, and where no number of yards is prescribed, not more than ten yards, nor in any case to any greater extent than the line of lateral deviation described in the said plans with respect to such works, nor take nor use, for the purpose of such deviation, the lands of any persons not mentioned in the books of reference without his previous consent in writing, unless the name of such person shall have been omitted by mistake, and the fact that such omission happened from mistake shall have been certified in manner hereinbefore provided (1).

Undertakers, subject to provisions of this and the special Act, may execute the works herein named.

12. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, the undertakers may execute any of the following works for constructing the waterworks; (that is to say,)

They may enter upon any lands and other places described on the said plans and in the said books of reference, and take levels of the same, and set out such parts thereof as they shall think necessary, and dig and break up the soil of such lands, and trench and sough the same, and remove or use all earth, stone, mines, minerals, trees, or other things dug or gotten out of the same:

They may from time to time sink such wells or shafts, and make, maintain, alter, or discontinue such reservoirs, waterworks, cisterns, tanks, aqueducts, drains, cuts, sluices, pipes, culverts, engines, and other works, and erect such buildings upon the lands and streams authorised to be taken by them, as they shall think proper, for supplying the inhabitants of the town or district within the prescribed limits with water:

They may from time to time divert and impound the water from the streams mentioned for that purpose in the special Act, or the said plans or books of reference, and alter the course of any such streams, not being navigable, and also take such waters as may be found in and under or on the lands to be taken for constructing the works (2):

Undertakers to make compensation for damges.

Provided always, that in the exercise of the said powers the undertakers shall do as little damage as can be (3), and in all cases where it can be done, shall provide other watering places, drains, and channels for the use of adjoining lands, in place of any such as shall be taken away or interrupted by them, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers (4).

Penalty for obstructing construction of works.

13. Every person who shall wilfully obstruct any person acting under the authority of the undertakers in setting out the line of the works, or pull up or remove any poles or stakes driven into the ground for the purpose of setting out

(1) It would seem that this will not prevent the company from taking, for collateral purposes, land beyond the prescribed distance and beyond the limits of deviation marked on the plans, provided the land be scheduled in the company's local Act, and included in their plans and books of reference. See *Armistead* v. *N. Staffordshire Ry.*, 16 Q. B. 526, 20 L. J. Q. B. 249.

Undue delay may deprive a landowner of the right to complain of unwarranted lateral deviation. See *per* Lord Cottenham in *Holyoake* v. *Shrewsbury, &c. Ry.*, 5 Rail. Cas. 421.

(2) This section does not empower a company to execute any works which are not authorised by its special Act: *Simpson* v. *S. Staffordshire Waterworks Co.*, 34 L. J. Ch. 380, 12 L. T. N. S. 360, 11 Jur. N. S. 453, 13 W. R. 729. But private persons seeking an injunction must show a private interest: *Mayor, &c. of Liverpool* v. *Chorley Waterworks Co.*, 2 De G. Mac. & G. 852; *Ware* v. *Regent's Canal Co.*, 3 De G. & J. 212.

(3) This relates to the *mode* only of doing the works authorised, and does not regulate what these works shall be: *Per* Lord Campbell, C.J., in *R.* v. *E. & W. India Docks, &c. Ry.*, 2 El. & Bl. 466, 22 L. J. Q. B. 380. The remedy is injunction: *Manser* v. *N. E. Counties Ry.*, 2 Rail. Cas. 380; *Ware* v. *Regent's Canal Co.*, 3 De G. & J. 212. But substantial damage must be shown: *Holyoake* v. *Shrewsbury, &c. Ry., supra; Wandsworth Board* v. *L. & S. W. Ry.*, 31 L. J. Ch. 854; or an action will lie, if there be special damage: *Watkins* v. *Great N. Ry.*, 16 Q. B. 961, 20 L. J. Q. B. 391; *Tanner* v. *S. W. Ry.*, 5 El. & Bl. 618, 25 L. J. Q. B. 7.

(4) As to what damage is the subject of compensation, see the notes to section 308 of the Public Health Act, 1875, *ante*, p. 211.

the line of such works, or deface or destroy any works made for the same purpose, shall be liable to a penalty not exceeding five pounds for every such offence.

Penalty for illegally diverting water.

14. After the streams or supplies of water hereby or by the special Act authorised to be taken by the undertakers shall have been so taken, every person who shall illegally divert or take the waters supplying or flowing into the streams so taken, or any part thereof, or who shall do any unlawful act whereby the said streams or supplies of water may be drawn off or diminished in quantity, and who shall not immediately repair the injury done by him, on being required so to do by the undertakers, so as to restore the said waters to the state in which they were before such act, shall forfeit to the undertakers any sum which shall be awarded in England or Ireland by two justices, and in Scotland by the sheriff, not exceeding five pounds for every day during which the said supply of water shall be diverted or diminished by reason of any act done by or by the authority of such person, and any sum so forfeited shall be in addition to the sum which he may be lawfully adjudged liable to pay to the undertakers for any damage which they may sustain by reason of their supply of water being diminished; and the payment of the sum so forfeited shall not bar or affect the right of the undertakers to bring or raise an action at law against such person for the damage so committed (1).

Reservation of existing rights.

15. Provided always, that nothing herein contained shall prevent the owners and occupiers for the time being of lands through or by which such streams shall flow, from using the waters thereof in such manner and to such extent as they might have done before the passing of the special Act, unless they shall have received compensation in respect of their right of so using such water.

And with respect to the construction of works for the accommodation of lands adjoining the waterworks, be it enacted as follows:

Differences as to the construction of accommodation works to be settled by justices.

16. Where by the special Act the undertakers shall be required to erect any works for making good the interruption caused to any lands adjoining or near the waterworks, or otherwise, for the accommodation of such lands, then, if any difference shall arise respecting the construction of any such accommodation works, or the kind or size or sufficiency thereof, or respecting the maintenance thereof, the same shall be determined, in England or Ireland by two justices, and in Scotland by the sheriff, and such justices or sheriff shall also appoint the time within which such accommodation works shall be begun and finished by the undertakers (2).

If undertakers fail to execute such works persons aggrieved may perform the same, and charge the expense to the undertakers.

17. If the undertakers shall, for fourteen days next after the time appointed by such justices or sheriff for the beginning of any such accommodation works, fail to begin such works, or, having begun such works, fail diligently to execute the same in a sufficient manner, the person aggrieved by such failure may execute such work or repairs; and the reasonable expenses thereof shall, on demand, be repaid by the undertakers to the person by whom the same shall so have been executed; and if there be any dispute about the amount or nature of such expenses, the same shall be settled in England or Ireland by two justices, and in Scotland by the sheriff.

And with respect to mines, be it enacted as follows (3):

Undertakers not entitled to mines unless previously purchased.

18. The undertakers (4) shall not be entitled to any mines of coal, ironstone, slate, or other minerals (5), under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the con-

(1) As to the recovery of penalties, see section 85, *post*, p. 432.

(2) As to what are accommodation works under the Railways Clauses Act, see *R.* v. *Fisher*, 3 B. & S. 191, 32 L. J. M. C. 12; *R.* v. *Waterford & Limerick Ry.*, 2 Ir. L. R. N. S. 580.

(3) The provisions of this Act as to mines, viz. sections 18—27 (both inclusive), are, in relation of any sanitary work of a local authority, incorporated with the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883 (which is construed as one with the Public Health Act, 1875), 46 & 47 Vict. c. 37, ss. 2, 3, *ante*, p. 396.

(4) See 46 & 47 Vict. c. 37, s. 3 (1), *ante*, p. 396.

(5) As to what are minerals, see *Bell* v. *Wilson*, L. R. 1 Ch. 303, 35 L. J. Ch. 337, 14 W. R. 493, 14 L. T. N. S. 115, 12 Jur. N. S. 263 (freestone); *Michlethwaite* v. *Winter*, 6 Exch. 644, 20 L. J. Ex. 313 (stones from quarries); *E. Rosse* v. *Wainman*, 14 M. & W. 859, 2 Ex. 800; *Darvill* v. *Roper*, 3 Drew. 294, 24 L. J. Ch. 779; *Hext* v. *Gill*, L. R. 7 Ch. 699, 41 L. J. Ch. 761, 27 L. T. N. S. 291, 20 W. R. 957 (china clay).

Secs. 18–22.

struction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby (1).

Map and plan of underground works of undertakers to be made.

19. The undertakers (2) shall from time to time within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any such pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or distribution of water, and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special Act (2); and such map and plan, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district (3).

Copies of such map or plan to be deposited with clerk of the peace, &c.

20. The undertakers (2) shall from time to time within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the clerks of the peace in England or Ireland, and with the sheriff clerks in Scotland, of every county, and the town clerk of every burgh in Scotland, in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in England, and clerks of the union of the several parishes in Ireland, and the schoolmasters of the several parishes in Scotland, in which such underground works shall be situate, copies of the said map or plan, with all such particulars and all such corrections and additions as aforesaid, so far as relates to such counties, burghs, and parishes respectively.

Clerks of the peace, &c., to receive and keep copies of the map, &c., and allow inspection. 7 Will. IV. & 1 Vict. c. 83.

21. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of the union, and schoolmasters, shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of maps and plans deposited under an Act passed in the first year of the reign of Her Majesty, intituled "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament.

Mines lying near the works not to be worked until owners give notice to undertakers of their intentions.

Upon receipt of notice, undertakers may take the mines, making

22. Except where otherwise provided for by agreement between the undertakers (2) and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be under ground, and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers (2) notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers

(1) See 22, *post*.

(2) See 46 & 47 Vict. c. 37, s. 3 (1), *ante*, p. 396.

(3) As to the making of the survey and map as regards sanitary works existing at the passing of the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883, which incorporates this provision in relation to the sanitary work of a local authority see sections 2 and 3 (3) of that Act, *ante*, p. 396.

that the working of such mines or minerals is likely to damage the said works, and if they be willing to make compensation for such mines to such owner, lessee, or occupier thereof, then he shall not work the same; and if the undertakers and such owner do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation (1).

compensation to the owners.

23. If before the expiration of such thirty days the undertakers (2) do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same by means of engines or otherwise, as if this Act and the special Act (2) had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner; and if any damage or obstruction be occasioned to the works of the undertakers by the working of such mines in an unusual manner, the same shall be forthwith repaired or removed (as the case may require), and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expense; and if such repair or removal be not forthwith done, or, if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expense occasioned thereby by action in any of the Superior Courts.

If company unwilling to treat for payment of compensation, owner may work the mines.

Owners to make good damage occasioned by working the mines in an unusual manner.

24. If the working of any such mines under the said works of the undertakers (2) or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

Mining communications.

25. Except where otherwise provided for by agreement, the undertakers (2) shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals, extending so as to lie on both sides of any reservoirs, buildings, pipes, conduits, or other works, all such additional expenses and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands over such mines or minerals by such reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special Act (2), and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid; and if any dispute or question shall arise between the undertakers (2) and such owner, lessee, or occupier as aforesaid, touching the price of such minerals, the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act (3) if the undertaking shall be situate in England or Ireland, and by the Lands Clauses Consolidation (Scotland) Act if the undertaking shall be situate in Scotland.

Company to make compensation to owner, lessee, or occupier of mines for expenses incurred by reason of mines being worked.

Disputes to be settled by arbitration.

26. For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works, it shall be lawful for the under-

Power to company to enter and

(1) See section 18, *ante*.

(2) See 46 & 47 Vict. c. 37, s. 3 (1), *ante*, p. 396.

(3) This Act will be found *post*.

It would seem that in estimating compensation an arbitrator may take into consideration, not only the loss and expense incurred by reason of the land being severed and the working of the mines interrupted, but also such losses and expenses as might with reasonable certainty be estimated, which would necessarily be sustained or incurred in working the mines in future. See *Whitehouse* v. *Wolverhampton, &c. Ry.*, L. R. 5 Ex. 6, 39 L. J. Ex. 1 (decided under Railways Clauses Act, 1845).

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inspect the working of mines, after giving notice of the same.

takers (1), after giving twenty-four hours notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

Nothing to prevent undertakers from being liable to actions for injury done to mines.

27. Nothing in this or the special Act (1) shall prevent the undertakers (1) from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the waterworks, in case the same had not been constructed or maintained by virtue of this Act or the special Act.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows (2):

Power to break up streets, &c. under superintendence, and to open drains.

28. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets (3) and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets (3) and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets (3) and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be (4) in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers (5).

Not to enter on private land without consent.

29. Provided always, that nothing herein contained shall authorise or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use without the consent of the owners and occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

Notice to be served on persons having control, &c., before breaking up streets or opening drains.

30. Before the undertakers open or break up any street (6), bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of

(1) See 46 & 47 Vict. c. 37, s. 3 (1), *ante*, p. 396.

(2) This portion of the Act in italics, viz., sub-sections 28—34, is incorporated with the Public Health Act, 1875. See section 57 of that Act, *ante*, p. 75.

(3) See the interpretation clause, *ante*, p. 413, and see the notes, *ante*, pp. 45, 46.

(4) See note (3) to section 12, *ante*, p. 416.

(5) As to what damage is the subject of compensation, see notes to section 308 of the Public Health Act, 1875, *ante*, p. 212.

It is an unlawful act without legislative sanction to take up streets, and where a person has been employed to do so and an injury is thereby caused to a third party, the employer is liable: *Ellis* v. *Sheffield Gas Consumers Co.*, 2 El. & Bl. 767, 23 L. J Q. B. 42.

As to the power of urban authorities to raise, sink, or alter the situation of water or gas pipes, see the Public Health Act, 1875, s. 153, *ante*, p. 125. And as to the powers of telegraph companies, see the Telegraph Act, 1863, 26 & 27 Vict. c. 112, ss. 6, 8, and the Telegraph Act, 1878, 41 & 42 Vict. c. 76, ss. 3—8. See also the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, ss. 13, 61, 62, *post*.

(6) See the interpretation clause, *ante*, p. 413.

the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

31. No such street (1), bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan (2) as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the intention of the undertakers as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons, or their officer.

If persons having the control, &c., fail to superintend, undertakers may perform the work without them.

Streets, &c. broken up to be reinstated without delay.

32. When the undertakers open or break up the road or pavement of any street (1) or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and kept thereagainst, every night during which such road or pavement shall be continued open or broken up, and shall, after replacing and making good the road or pavement which shall have been so broken up, keep the same in good repair for three months thereafter, and such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Penalty for delay in reinstating streets, &c.

33. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid, when so required, except in the cases in which the undertakers are authorised to perform such works without any superintendence or notice, or if the undertakers make any unnecessary delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of six months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay, other parties may reinstate, and recover the expenses.

34. If any such delay or omission as aforesaid shall take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers, and such expenses may be recovered in the same way as damages are recoverable under this and the special Act.

(1) See the interpretation clause, *ante*, p. 413.

(2) It would seem that the plan should show not only the line of the proposed pipes, but their position, depth, gradient, &c.: *Edgware Board* v. *Colne Valley Water Co.*, W. Notes, 1877, p. 154.

Secs. 34 37.

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows (1):

A constant supply of water to be kept for domestic purposes at high pressure.

35. The undertakers shall provide and keep in the pipes to be laid down by them a supply of pure and wholesome water (2), sufficient for the domestic use (3) of all the inhabitants of the town or district within the limits of the special Act, who, as hereinafter provided, shall be entitled to demand a supply, and shall be willing to pay water rate for the same; and such supply shall be constantly laid on at such a pressure as will make the water reach the top story of the highest houses within the said limits, unless it be provided by the special Act that the water to be supplied by the undertakers need not be constantly laid on under pressure (4); and the undertakers shall cause pipes to be laid down and water to be brought to every part of the town or district within the limits of the special Act whereunto they shall be required by so many owners or occupiers of houses in that part of the town or district, as that the aggregate amount of water rate payable by them annually at the rates specified in the special Act shall be not less than one tenth part of the expense of providing and laying down such pipes; provided that no such requisition shall be binding on the undertakers unless such owners or occupiers shall severally execute an agreement binding themselves to take such supply of water for three successive years at least.

Penalty for neglect to lay pipes for supply of water for domestic use.

36. If for twenty-eight days after demand in writing made to the undertakers, and tender made of an agreement signed by such number of owners or occupiers as aforesaid, to take and pay for a supply of water for three years or more, the undertakers shall refuse or neglect to lay down pipes in the manner hereinbefore directed, and to provide such supply of water as aforesaid, or as provided by the special Act, they shall forfeit to each of such owners and occupiers the amount of rate which he would be liable to pay under such agreement, and also the further sum of forty shillings for every day during which they shall refuse or neglect to lay down such pipes, or to provide such supply of water: Provided always, that the undertakers shall not be liable to any penalty for not supplying water if the want of such supply shall arise from frost, unusual drought, or other unavoidable cause or accident.

Proviso.

Supply of water to be kept for cleansing sewers, drains, &c., and for other public purposes.

37. In all the pipes to which any fire-plug shall be fixed the undertakers shall provide and keep constantly laid on, unless prevented by frost, unusual drought, or other unavoidable accident, or during necessary repairs, a sufficient supply of water for the following purposes; (that is to say,) for cleansing the sewers and drains, for cleansing and watering the streets, and for supplying any public pumps (5), baths, or washhouses that may be established for the free use of the inhabitants, or paid for out of any poor rates or borough rates levied within the

(1) These sections (35—43) are not incorporated with the Public Health Act, 1875. But see the corresponding provisions contained in sections 55 and 66 of that Act, *ante*, pp. 75 and 78.

(2) Where a company entitled by their private Act to prescribe the material to be used for service pipes prescribed by bye-law lead or cast iron and supplied pure and wholesome water in their mains, but in its passage from the mains through the service pipes, which upon the plaintiff's application were of lead, it was contaminated by the lead, and the plaintiff using it suffered from lead poisoning, it was held that he had no cause of action: *Milnes* v. *Mayor of Huddersfield*, L. R. 12 Q. B. D. 443, 53 L. J. Q. B. 12, 32 W. R. 265, 48 J. P. 134.

(3) See section 12 of the Waterworks Clauses Act, 1863 (26 & 27 Vict. c. 93), *post*, and *Liskeard Union* v. *Liskeard Waterworks Co.*, *post*, p. 423.

(4) As to the effect of general Acts on previous private Acts, see *Thorpe* v. *Adams*, L. R. 6 C. P. 125, 40 L. J. M. C. 52, 23 L. T. N. S. 810; *Fitzgerald* v. *Champneys*, 2 J. & H. 31, 30 L. J. Ch. 777; *London & Blackwall Ry.* v. *Limehouse Board*, 3 K. & J. 123, 26 L. J. Ch. 164. See, also, *Purnell* v. *Wolverhampton New Waterworks Co.*, 10 C. B. N. S. 576, 4 L. T. N. S. 513. A private Act cannot repeal a former private Act: *Trustees of the Birkenhead Docks* v. *Birkenhead Dock Co.*, 23 L. J. Ch. 457.

(5) See *Hildreth* v. *Adamson*, *post*, p. 427.

limits of the special Act (1), and such supply shall be provided at such rates, in such quantities, and upon such terms and conditions as may be agreed upon by the town commissioners and the undertakers, or, in case of disagreement, as shall be settled in England or Ireland by two justices, and in Scotland by the sheriff, until in either case an inspector shall have been appointed, and after the appointment of such inspector, by the inspector so appointed (2).

Undertakers to affix public fireplugs in mains.

38. The undertakers, at the request of the town commissioners, shall fix proper fire-plugs in the main and other pipes belonging to them, at such convenient distances, not being more than the prescribed distance, or, if no distance be prescribed, not more than one hundred yards from each other, and at such places as may be most proper and convenient for the supply of water for extinguishing any fire which may break out within the limits of the special Act (3), and in case of any difference of opinion as to the proper position or number of such fire-plugs, it shall be settled by such inspector as aforesaid, when appointed, and in the meantime by two justices in England or Ireland, and by the sheriff in Scotland (2).

Undertakers to repair fire-plugs, and deposit keys thereof at engine houses, &c.

39. The undertakers shall from time to time renew and keep in effective order every such fire-plug; and as soon as any such fire-plug is completed they shall deposit a key thereof at each place within the limits of the special Act where any public fire engine is kept, and in such other places as may be appointed by the town commissioners, and shall put up a public notice in some conspicuous place in each street in which such fire-plug is situated, showing its situation, which notice the undertakers may put up on any house or building in such street.

Expense of fire-plugs, &c., how to be borne.

40. The cost of such fire-plugs, and the expense of fixing, placing, and maintaining the same in repair, and of providing such keys as aforesaid, shall be defrayed by the town commissioners.

Fire-plugs to be placed near manufactories, at request, &c., of owners.

41. The undertakers shall, at the request and expense of the owner or occupier of any work or manufactory situated in any street in which there shall be a pipe of the undertakers, place and maintain in effective order a fire-plug (to be used only for extinguishing fires) as near as conveniently may be to such work or manufactory.

Pipes to be kept charged and water taken to extinguish fires without charge.

42. The undertakers shall at all times keep charged with water, under such pressure as aforesaid (4), all their pipes to which fire-plugs shall be fixed, unless prevented by frost, unusual drought, or other unavoidable cause or accident, or during necessary repairs, and shall allow all persons at all times to take and use such water for extinguishing fire, without making compensation for the same (5).

Penalty for refusal to fix, &c., fire-plugs, or

43. If, except when prevented as aforesaid, the undertakers neglect or refuse to fix, maintain, or repair such fire-plugs, or to furnish to the town commissioners a sufficient supply of water for the public purposes aforesaid (6), upon such terms as shall have been agreed on or settled as aforesaid, or if, except as aforesaid, they

(1) See *Guardians of Oldham Union* v. *Mayor of Oldham*, 23 L. T. 245.

(2) In the case of local authorities under the Public Health Act, 1875, the dispute must be settled by a court of summary jurisdiction. See the proviso to section 57 of that Act, *ante*, p. 75.

(3) See also section 66 of the Public Health Act, 1875, *ante*, p. 78. As to the responsibility of water companies, &c., for injuries caused by the bursting or faulty construction of fire plugs, see *Steggles* v. *New River Co.*, 13 W. R. 413; *Blyth* v. *Birmingham Waterworks Co.*, *ante*, p. 53; *Bayley* v. *Wolverhampton Waterworks Co.*, 6 H. & N. 241, 30 L. J. Ex. 57.

(4) See section 35, *ante*, p. 422.

(5) This section gives no right of action against a company for not keeping their pipes charged as required by a person, whose premises have been burned down in consequence: *Atkinson* v. *Newcastle & Gateshead Waterworks Co.*, *ante*, p. 54. See *Campbell* v. *E. London Waterworks Co.*, 26 L. T. N. S. 475. But as to the penalty for non-compliance with these provisions, see the next section.

(6) A workhouse is a house of which the guardians are owners, and a waterworks company are bound to supply them with water for domestic purposes, such supply not being a supply "for public purposes": *Liskeard Union* v. *Liskeard Waterworks Co.*, L. R. 7 Q. B. D. 505, 45 J. P. 780, 30 W. R. 292.

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occasional failure of supply of water.

neglect to keep their pipes charged under such pressure as aforesaid, or neglect or refuse to furnish to any owner or occupier entitled under this or the special Act to receive a supply of water during any part of the time for which the rates for such supply have been paid or tendered, they shall be liable to a penalty of ten pounds, and shall also forfeit to the town commissioners, and to every person having paid or tendered the rate, the sum of forty shillings for every day during which such refusal or neglect shall continue after notice in writing shall have been given to the undertakers of the want of supply (1).

And with respect to the communication pipes to be laid by the undertakers, be it enacted as follows (2):

Undertakers to lay down communication pipes, on request of occupier and with consent of owners in houses of limited value.

44. The undertakers shall, upon the request of the owner of any dwelling-house in any street in which pipes shall have been laid down by them, the annual value of which house shall not exceed ten pounds, or upon request of the occupier (*with the consent in writing of the owner or reputed owner of any such house, or of the agent of such owner*) (3), and upon payment or tender of the proportion of water rate in respect of such house by this or the special Act made payable in advance, lay down communication pipes and other necessary works for the supply of such house with water for domestic or other purposes, and shall keep the same in repair, and thereupon the occupier of such house shall be entitled to have a sufficient supply of water for his domestic purposes from the undertakers; and the undertakers may charge for such pipes and works, in addition to the water rate, such reasonable annual rent as shall be agreed upon, or in case of dispute, as shall be settled by such inspector as aforesaid, when appointed, and in the meantime as shall in England or Ireland be settled by two justices, and in Scotland by the sheriff (4); and such rent shall be chargeable on and recoverable from the occupier (5), or, in his default, from the owner of such house, at the same times and in the same manner as water rates; and such pipes and other works shall not be subject to distress or to the landlord's hypothec for rent, nor to be taken in execution under any process of a court of law or equity, or under any fiat or sequestration in bankruptcy, against such occupier or against such owner, unless he shall have become the proprietor of the said pipes and works under the provisions hereinafter contained.

Penalty on undertaker for refusal to lay communication pipes.

45. If upon such request and consent, and upon tender or payment of such proportion of rate as aforesaid, the undertakers for seven days neglect or refuse to lay down such communication pipes or other works, they shall be liable to forfeit to the person so making such request the sum of five pounds, and a further sum of forty shillings for every day during which such refusal or neglect shall continue after seven days from the making of such request and tender as aforesaid.

Undertakers to be at liberty to remove pipes, and recover expenses of owners or occupiers.

46. If the occupier for the time being of the house in which any such communication pipes or other works and engines shall have been laid down by the undertakers refuse to pay for a supply of water, or if such house be unoccupied for twelve months, the undertakers may demand from the owner thereof payment of the amount of the principal money invested by them in providing and laying down such communication pipes and other works and engines; and if such owner, after ten days notice given to him by the undertakers, neglect or refuse to pay such principal money, the undertakers may enter the house and remove such pipes and other works; and the balance of such principal money, after deducting the value

(1) See the preceding section.

(2) The provisions of this and the following part (sections 44—53) apply only in districts, or parts of districts, where the local authority lay any pipes for the supply of any of the inhabitants thereof. See the proviso to section 57 of the Public Health Act, 1875, *ante*, p. 75.

(3) In the case of local authorities this section is to have effect as if these words in brackets were omitted therefrom. See the proviso to section 57 of the Public Health Act, 1875.

(4) See note (2) to section 37, *ante*, p. 423.

(5) Any rent for pipes and works paid by an occupier may be deducted by him from any rent from time to time due from him to the owner. See the proviso to section 57 of the Public Health Act, 1875, *ante*, p. 75.

of such pipes and other works, with all arrear of rent for such pipes and works, shall, in default of payment, be recovered, with the costs incurred, from the owner or from the occupier for the time being in the same manner as water rates are directed by this or the special Act to be recovered: Provided always, that no greater sum shall be recovered from any such occupier than the amount of rent for the time being owing by him, unless he refuse to discover the amount of rent owing by him; and that every such occupier shall be entitled to deduct from the amount of rent payable by him the sum so recovered from him, or which he shall have paid, on demand.

No greater sum to be recovered from occupiers than amount of rent due.

47. The owner or reputed owner of any house where any such communication pipes or other works shall have been laid down by the undertakers may at any time pay off the amount then due to the undertakers in respect of the costs of providing and laying down such pipes and works, and all rent to that time due in respect thereof, and thereupon such pipes and works shall become the property of such owner, and all further rent in respect thereof shall cease to accrue to the undertakers.

Owner to be at liberty to purchase the pipes without notice.

And with respect to the communication pipes to be laid by the inhabitants, be it enacted as follows:

48. Any owner or occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act who shall wish to have water from the water-works of the undertakers brought into his premises, and who shall have paid or tendered to the undertakers the portion of water rate in respect of such premises, by this or the special Act directed to be paid in advance, may open the ground between the pipes of the undertakers and his premises, having first obtained the consent of the owners and occupiers of such ground, and lay any leaden or other pipes from such premises, to communicate with the pipes of the undertakers, such pipes to be of a strength and material to be approved of by the undertakers, or, in case of dispute, to be settled in England or Ireland by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid (1): Provided always, that every such owner or occupier shall, before he begins to lay any such pipe, give to the undertakers fourteen days notice of his intention to do so.

Power to inhabitants to lay service pipes, giving the undertakers notice of the same.

49. Before any pipe is made to communicate with the pipes of the undertakers, the person intending to lay such pipe shall give two days notice to the undertakers of the day and hour when such pipe is intended to be made to communicate with the pipes of the undertakers; and every such pipe shall be so made to communicate under the superintendence and according to the directions of the surveyor or other officer appointed for that purpose by the undertakers, unless such surveyor or officer fail to attend at the time mentioned in the said notice; and in case of any dispute as to the manner in which such pipe shall be so made to communicate, it shall in England or Ireland be settled by two justices, and in Scotland by the sheriff, or in either case by the inspector to be appointed as aforesaid (1).

Communication with the pipes of the undertakers to be made under the superintendence of their surveyor. As to the settling of disputes.

50. The bore of any such pipe as last aforesaid shall not exceed the prescribed limits, and where no limit shall be prescribed it shall not exceed half an inch, except with the consent of the undertakers.

Bore of service pipes.

51. Any person who shall have laid down any pipe or other works, or who shall have become the proprietor thereof, may remove the same, after having first given six days notice in writing to the undertakers of his intention so to do, and of the time of such proposed removal; and every such person shall make compensation to the undertakers for any injury or damage to their pipes or works which may be caused by such removal; and every person who shall remove any such pipe or other works without giving such notice as aforesaid shall forfeit to the undertakers a sum not exceeding five pounds, over and above the damage which he may be found liable to pay in any action at law, at the suit of the undertakers, for the damage done to their pipes or works.

Service pipes may be removed after giving notice of the same. Penalty on removing pipes without notice.

52. Any such owner or occupier may open or break up so much of the pavement of any street as shall be between the pipe of the undertakers and his house, building, or premises, and any sewer or drain therein, for any such purpose as aforesaid,

Power to inhabitants to break up pavements,

(1) See note (2) to section 37, *ante*, p. 422.

Secs. 52–59.

giving notice of the same.

doing as little damage as may be [1], and making compensation for any damage done in the execution of any such work: Provided always, that every such owner or occupier desiring to break up the pavement of any street, or any sewer or drain therein, shall be subject to the same necessity of giving previous notice, and shall be subject to the same control, restriction, and obligations in and during the time of breaking up the same, and also reinstating the same, and to the same penalties for any delay in regard thereto, as the undertakers are subject to by virtue of this or the special Act [2].

Owners or occupiers entitled to demand a supply of water for domestic purposes.

53. Every owner and occupier of any dwelling-house or part of a dwelling-house within the limits of the special Act shall, when he has laid such communication pipes as aforesaid, and paid or tendered the water rate payable in respect thereof, according to the provisions of this and the special Act, be entitled to demand and receive from the undertakers a sufficient supply of water for his domestic purposes [3].

And with respect to waste or misuse of the water supplied by the undertakers, be it enacted as follows [4]:

Persons using the water to provide cisterns and cocks.

54. If by the special Act it be provided that the water to be supplied by the undertakers need not be constantly laid on under pressure, every person supplied with water shall, when required by the undertakers, provide a proper cistern to hold the water with which he shall be so supplied, with a ball and stop cock in the pipe bringing the water from the works of the undertakers to such cistern, and shall keep such cistern, ball and stop cock, in good repair, so as effectually to prevent the water from running to waste; and in case any such person shall, when required by the undertakers, neglect to provide such cistern, ball, or stop cock, or to keep the same in good repair, the undertakers may cut off the pipe or turn off the water from the premises of such person until such cistern and ball and stop cock shall be provided or repaired, as the case may require.

Penalty for neglect.

Penalty for suffering cistern, &c., to be out of repair.

55. Every person supplied with water by the undertakers who shall suffer any such cistern, pipe, ball, or stop cock, to be out of repair, so that the water supplied to him by the undertakers shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Undertakers may repair cisterns, &c., and recover the expenses.

56. The undertakers may repair any such cistern, pipe, ball, or stop cock, so as to prevent any such waste of water, and the expenses of such repair shall be repaid to them by the person so allowing the same to be out of repair, and may be received as damages.

Power to surveyor employed by undertakers to enter houses to inspect, &c.

57. The surveyor, or any other person acting under the authority of the undertakers, may, between the hours of nine of the clock in the forenoon and four of the clock in the afternoon, enter into any house or premises supplied with water by virtue of this or the special Act, in order to examine if there be any waste or misuse of such water; and if such surveyor or other person at any such time be refused admittance into such dwelling-house or premises for the purpose aforesaid, or be prevented from making such examination as aforesaid, the undertakers may turn off the water supplied by them from such house or other premises.

Penalty for allowing persons to use the undertakers' water.

58. Every owner or occupier of any tenement supplied with water under this or the special Act who shall supply to any other person or wilfully permit him to take any such water from any cistern or pipe in such tenement, unless for the purpose of extinguishing any fire, or unless he be a person supplied with water by the undertakers, and the pipes belonging to him be, without his default, out of repair, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Penalty for taking the

59. Every person who, not having agreed to be supplied with water by the undertakers, shall take any water from any reservoir, watercourse, or conduit

(1) See note (3) to section 12, *ante*, p. 416.

(2) The owner is responsible for reinstating the street under this section, and the word "pavement" is not confined to a foot pavement: *Glover* v. *E. London Waterworks Co.*, 17 L. T. N. S. 475, 16 W. R. 310.

(3) See section 35, *ante*, p. 422.

(4) See note (2), *ante*, p. 424. See, further, the provisions on this subject contained in the Waterworks Clauses Act, 1863, *post*, pp. 434 *et seq.*

belonging to the undertakers, or any pipe leading to any such reservoir, water-course, or conduit, or from any cistern or other like place containing water belonging to the undertakers, other than such as may have been provided for the gratuitous use of the public, shall forfeit to the undertakers for every such offence a sum not exceeding ten pounds (1).

undertakers' water without agreement.

60. Every person who shall wilfully or carelessly break, injure, or open any lock, cock, valve, pipe, work, or engine belonging to the undertakers, or shall flush or draw off the water from the reservoirs or other works of the undertakers, or shall do any other wilful act whereby such water shall be wasted, shall forfeit to the undertakers for every such offence a sum not exceeding five pounds.

Penalty for destroying valves, &c.

And with respect to the provision for guarding against fouling the water of the undertakers, be it enacted as follows (2):

61. Every person who shall commit any of the offences next hereinafter enumerated shall for every such offence forfeit to the undertakers a sum not exceeding five pounds; (that is to say,)

Penalties for causing the water of the undertakers to be fouled, &c.

Every person who shall bathe in any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or wash, throw, or cause to enter therein any dog or other animal:

Every person who shall throw any rubbish, dirt, filth, or other noisome thing into any such stream, reservoir, aqueduct, or other waterworks as aforesaid, or wash or cleanse therein any cloth, wool, leather, or skin of any animal, or any clothes or other thing:

Every person who shall cause the water of any sink, sewer, or drain, steam engine, boiler, or other filthy water belonging to him or under his control, to run or be brought into any stream, reservoir, aqueduct, or other waterworks belonging to the undertakers, or shall do any other act whereby the water of the undertakers shall be fouled:

And every such person shall forfeit a further sum of twenty shillings for each day (if more than one) that such last mentioned offence shall be continued.

62. Every person making or supplying gas within the limits of the special Act who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, or waterworks belonging to the undertakers, or into any drain communicating therewith, any washing or other substance which shall be produced in making or supplying gas, or who shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks shall be fouled, shall forfeit to the undertakers for every such offence the sum of two hundred pounds; and such penalty shall be recovered, with full costs of suit, in any of the superior courts; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it has ceased (3).

Penalty for permitting substances produced in making gas to flow into the undertakers' works.

Penalty to be sued for within six months.

63. In addition to the said penalty of two hundred pounds, and whether such penalty have been recovered or not, the person making or supplying gas as aforesaid shall forfeit to the undertakers the sum of twenty pounds, to be recovered in like manner, for each day during which such washing or substance shall be brought or shall flow as aforesaid, or during which the act shall continue by which such water is fouled, after the expiration in either case of twenty-four hours from the time when notice of the offence has been served on such person by the undertakers.

Daily penalty during the continuance of the offence.

(1) It would seem that a local authority may erect a fountain in a public street to supply water for cattle on market days and for horses passing to and fro, &c., which shall yet not be for the gratuitous use of the public within the exception in this section. See *Hildreth* v. *Adamson*, 8 C. B. N. S. 587, 30 L. J. M. C. 204, 2 L. T. N. S. 359.

See also section 20 of the Waterworks Clauses Act, 1863, *post*, p. 438.

(2) The provisions of this and the following part (sections 61—74) are incorporated with the Public Health Act, 1875. See section 57 of that Act, *ante*, p. 75. See, further, the Waterworks Clauses Act, 1863, sections 16 *et seq.*, *post*, p. 437, the Rivers Pollution Prevention Act, 1876, *post*, p. 399, the Public Health Act, 1875, sections 68—70, and section 332, *ante*, pp. 79, 80, 221, and the Gasworks Clauses Act, 1847, section 21.

(3) See note (2), *supra*.

Secs. 64–68.

Penalty on gas makers causing water to be fouled.

64. Whenever the water supplied by the undertakers shall be fouled by the gas of any person making or supplying gas within the limits of the special Act, such person shall forfeit to the undertakers for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence (1).

Power to examine gas pipes, to ascertain cause of water being fouled.

65. For the purpose of ascertaining whether the water of the undertakers be fouled by the gas of any person making or supplying gas within the limits of the special Act, the undertakers may dig up the ground, and examine the pipes, conduits, and works of the persons making or supplying gas; provided that before proceeding so to dig and examine the undertakers shall give twenty-four hours' notice in writing to the person so making or supplying gas of the time at which such digging and examination is intended to take place, and they shall give the like notice to the persons having the control or management of the pavements or place where such digging shall take place, and they shall be subject to the like obligation of reinstating the road and pavement, and to the same penalties for delay, or any nonfeasance or misfeasance therein, as hereinbefore provided with respect to roads and pavements broken up by them for laying their pipes.

The expenses to abide the result of the examination.

66. If upon such examination it appear that such water has been fouled by any gas belonging to such person, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the person making or supplying gas; but if upon such examination it appear that the water has not been fouled by the gas of such person, then the undertakers shall pay all the expenses of the examination and repair, and also make good to the said person any injury which may be occasioned to his works by such examination.

How expenses to be ascertained.

67. The amount of the expenses of every such examination and repair, and any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are directed to be ascertained and recovered.

And with respect to the payment and recovery of the water rates be it enacted as follows:

Rates to be payable according to the annual value of the premises.

68. The water rates, except as hereinafter and in the special Act mentioned, shall be paid by and be recoverable from the person requiring, receiving or using the supply of water, and shall be payable according to the annual value of the tenement supplied with water, and if any dispute arise as to such value the same shall be determined by two justices (2).

(1) See the Gasworks Clauses Act, 1847, section 25, *post*, p. 454; *Millington* v. *Griffiths*, 30 L. T. N. S. 65.

(2) In estimating the annual value the amount of the rate itself may be deducted; *Sheffield Waterworks Co.* v. *Bennett*, L. R. 8 Ex. 196, 42 L. J. Ex. 121, 28 L. T. N. S. 509, 21 W. R. 74. The 46th section of the "New River Company Act, 1852," which incorporates this Act, provides that "nothing in any Act incorporated herewith shall prevent the company from recovering any sum of money not exceeding £50 which shall be due for water rate, by action or proceeding in such manner as is by law provided for the recovery of debts not exceeding £50." Held that if a *bonâ fide* dispute as to the annual value of the tenement has arisen before any proceeding has been taken for the recovery of the rate, the company must get such value determined by the justices before they can sue for more or less than £50: *New River Co.* v. *Mather*, L. R. 10 C. P. 442, 44 L. J. M. C. 105, 32 L. T. N. S. 658.

No dispute as to the annual value can arise where a water company are making the minimum charge to which they are entitled under their special Act. *Colne Valley Water Co.* v. *Treharne*, 48 J. P. 279.

See section 85, *post*, p. 432, and as to recovery of rates by action, see section 21 of the Waterworks Clauses Act, 1863," *post*, p. 438. The water rate must be calculated on the "rateable value," not on the "gross estimated" rental of the premises: *Warrington Waterworks Co.* v. *Longshaw*, L. R. 9 Q. B. D. 145, 51 L. J. Q. B. 498, 46 L. T. N. S. 815, 31 W. R. 11, 46 J. P. 773; and as to meaning of "annual value," see *Dobbs* v. *Grand*

Secs. 69–74.

69. When several houses or parts of houses in the separate occupation of several persons are supplied by one common pipe, the several owners or occupiers of such houses or parts of houses shall be liable to the payment of the same rates for the supply of water as they would have been liable to if each of such several houses or parts of houses had been supplied with water from the works of the undertakers by a separate pipe.

Where several houses supplied by one pipe each to pay.

70. The rates shall be paid in advance by equal quarterly payments, in England or Ireland, at Christmas Day, Lady Day, Midsummer Day, and Michaelmas Day, and in Scotland at Martinmas, Candlemas, Whitsuntide, and Lammas, and the first payment shall be made at the time when the pipe by which the water is supplied is made to communicate with the pipes of the undertakers, or at the time when the agreement to take water from the undertakers is made.

Rates to be paid quarterly.

71. The occupier of any dwelling-house or part of a dwelling-house liable to the payment of any water rate, who shall give notice of his intention to discontinue the use of the water supplied by the undertakers, or who shall remove from his dwelling between any two quarterly days of payment, shall pay the water rate in respect of such dwelling-house or part of a dwelling-house for the quarter ending on the quarterly day of payment next after his quitting the same or giving such notice.

Parties giving notice to discontinue use of water or removing, to pay to the next quarter day.

72. The owners of all dwelling-houses or parts of dwelling-houses occupied as separate tenements, the annual value of which houses or tenements shall not exceed the sum of ten pounds, shall be liable to the payment of the rates instead of the occupiers thereof; and the powers and provisions herein or in the special Act contained for the recovery of rates from occupiers shall be construed to apply to the owners of such houses and tenements; and the person receiving the rents of any such house or tenement as aforesaid from the occupier thereof, on his own account, or as agent or receiver for any person interested therein, shall be deemed the owner of such house or tenement.

Owners of houses not exceeding £10 rent to be liable to water rates.

73. Provided always, that when any owner shall pay any such rate in respect of any such dwelling-house or part of a dwelling-house which shall be in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums which shall be so by him paid during the continuance of such lease, unless it have been agreed that the owner shall pay the water rates in respect of such dwelling-house or part of a dwelling-house; and every such sum of money payable by the tenant to the owner, under the provision hereinbefore contained, may be recovered if the same be not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

Tenants under existing leases to repay the owner.

74. If any person supplied with water by the undertakers, or liable as herein or in the special Act provided to pay the water rate, neglect to pay such water rate at any of the said times of payment thereof, the undertakers may stop the water from flowing into the premises in respect of which such rate is payable, by cutting off the pipe to such premises, or by such means as the undertakers shall think fit, and may recover the rate due from such person, if less than twenty pounds, with the expenses of cutting off the water and costs of recovering the rate, in the same manner as any damages for the recovery of which no special provision is made are recoverable by this or the special Act; or if the rate so due amount to twenty pounds or upwards, the undertakers may recover the same, with the expenses of cutting off the water, by action, in any court of competent jurisdiction (1).

Rates how to be recovered.

Junction Waterworks Co., L. R. 9 App. Cas. 49, 53 L. J. Q. B. 50, 49 L. T. N. S. 541, 48 J. P. 5; *Smith* v. *Birmingham (Mayor of)*, L. R. 11 Q. B. D. 195, 52 L. J. M. C. 81, 49 L. T. N. S. 25, 31 W. R. 788, 47 J. P. 645.

As to requirement by company under powers of special Act to consumer to provide at his expense a meter or other automatic self-registering instrument for measurement of water used for bath, see *Sheffield Waterworks Co.* v. *Bingham*, L. R. 25 Ch. D. 443, 52 L. J. Ch. 624, 48 L. T. N. S. 604. But see *Sheffield Waterworks Co.* v. *Carter*, *post*, p. 430.

(1) See further section 21 of the Waterworks Clauses Act, 1863, *post*, p. 438.

Where a tenant has failed to pay the rates and a company have cut off the water under this section, they are not warranted in refusing to supply water to an incoming tenant, who has tendered the current quarter's rate and the estimated cost of restoring the communication, until the arrears due to them have been paid, but they cannot be made

Secs. 74–78.

And with respect to the amount of profit to be received by the undertakers when the waterworks are carried on for their benefit, be it enacted as follows:

Profits of the company to be limited.

75. The profits of the undertaking to be divided among the undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate (1).

If profits exceed the amount limited excess to be invested and form a reserved fund.

76. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in Government or other securities, and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed to a sum equal to one tenth part of the nominal capital of the undertakers, which sum shall form a reserve fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers; and if such fund be at any time reduced it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen.

Reserved fund not to be resorted to unless to meet an extraordinary claim.

77. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified, in England or Ireland, by two justices, and in Scotland by the sheriff, that the sum so proposed to be taken is required for the purpose of meeting any extraordinary claim within the meaning of this or the special Act.

When fund amounts to

78. When such fund shall, by accumulation or otherwise, amount to the pre-

liable to penalties under section 43, *ante*, p. 423, until the incoming tenant has restored the communication with their mains: *Sheffield Waterworks Co.* v. *Wilkinson*, L. R. 4 C. P. D. 410, 48 L. J. M. C. 145. But if the company have wrongly cut off the communication they cannot require the consumer to renew the communication: *Sheffield Waterworks Co.* v. *Carter*, L. R. 8 Q. B. D. 632, 51 L. J. M. C. 97, 30 W. R. 889, 46 J. P. 548.

(1) Water and gas companies are rateable to the poor in respect of their pipes and mains: *R.* v. *Bath Corporation*, 14 East 609, *R.* v. *Brighton Gaslight Co.*, 5 B. & C. 466, 4 L. J. K. B. 213. See also *R.* v. *Mile End Old Town*, 10 Q. B. 208, 16 L. J. M. C. 184, 11 Jur. 988; *R.* v. *W. Middlesex Waterworks Co.*, 1 El. & El. 716, 28 L. J. M. C. 135, 5 Jur. N. S. 1159; *R.* v. *Sheffield United Gaslight Co.*, 4 B. & S. 135, 32 L. J. M. C. 169, 9 Jur. N. S. 623; *R.* v. *Inhabitants of Lee*, L. R. 1 Q. B. 241, 35 L. J. M. C. 105, 13 L. T. N. S. 704, 14 W. R. 311.

A corporation is liable to be rated in respect of land and waterworks in several parishes which it occupies for the benefit of the town and inhabitants, though it is provided by the special Act that the charges for the water are to be kept down to the amount necessary to defray the expense of managing the works and supplying the water without making a profit on the supply: *Mayor, &c. of Liverpool* v. *Overseers of West Derby*, 6 E. & B. 704, 25 L. J. M. C. 112, 2 Jur. N. S. 1002. ee, also, *R.* v. *Overseers of Longwood*, 13 Q. B. 116, 21 L. J. M. C. 215; *R.* v. *Mayor of Manchester*, 21 L. J. M. C. 160. But the rate is to be made with reference to the amount of profit actually made, and not with reference to the amount which might be earned if the occupiers were not subject to restrictions: *Corporation of Worcester* v. *Droitwich Assessment Committee*, L. R. 2 Ex. D. 49.

A waterworks company is not liable to be assessed to the land tax for the land occupied by their pipes: *Chelsea Waterworks Co.* v. *Bowley*, 17 Q. B. 358, 20 L. J. M. C. 520.

Further as to the liability of a waterworks company for rates, see *E. London Waterworks Co.* v. *Mile End Old Town*, 17 Q. B. 512, 21 L. J. M. C. 49; *R.* v. *Manchester, &c., Waterworks Co.*, 1 B. & C. 630; *R.* v. *E. London Waterworks Co.*, 18 Q. B. 705, 21 L. J. M. C. 174, 16 Jur. 711; *R.* v. *Birmingham Waterworks Co.*, 1 B & S. 84, 4 L. T. N. S. 242.

scribed sum, or one-tenth part of the nominal capital, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable.

prescribed sum, interest to be applied to purposes of the undertaking.

79. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

If profits are less than the prescribed rate a sum may be taken from reserved fund to supply deficiency.

80. In England or Ireland the Court of Quarter Sessions, and in Scotland the sheriff of such county, may, on the petition of any two water rate payers within the limits of the special Act, appoint some accountant or other competent person, not being a proprietor of any waterworks, to examine and ascertain, at the expense of the undertakers, the actual state and condition of the concerns of the undertakers, and make report thereof to the said court at the then present or some following sessions, or to the sheriff (the amount of such expense to be determined by the said court or sheriff), and the said court or sheriff may examine any witnesses upon oath touching the truth of the said accounts, and the matters therein referred to; and if it thereupon appear to the said court or sheriff that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserve fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rates for water to be furnished by them as in the judgment of the said court or sheriff shall be proper, but so as such rates, when reduced, shall ensure to the undertakers, regard being had to the amount of profit before received, a profit as near as may be to the prescribed rate.

If profits are more than the amount prescribed, a rateable reduction to be made in the price of water.

81. Provided always, that if, in the case of any petition so presented, it appear to the said court or sheriff that there was no sufficient ground for presenting the same, the said court or sheriff may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court or sheriff), and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act.

Court may order petitioner to pay the costs of groundless petition.

82. If the undertakers shall for seven days after being required to produce to the said court or sheriff, or to the said accountant or other person as aforesaid, any books of account, or other books, bills, receipts, vouchers, or papers relating to their pecuniary affairs, refuse or neglect to produce such books, bills, receipts, vouchers, or papers, they shall forfeit the sum of one hundred pounds for every such refusal or wilful neglect, and the further sum of ten pounds for every day during which such refusal or wilful neglect shall continue after the expiration of the said seven days, such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the Superior Courts.

Penalty on undertakers refusing to produce books, vouchers, &c.

83. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply water under this or the special Act, cause an account in abstract to be prepared of the whole receipt and expenditure of all rates or other moneys levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual account shall be sent, free of charge, to the clerk of the peace for the county in which the waterworks are situated, if the waterworks are situated in England or Ireland, and if the waterworks are situated in Scotland to the sheriff clerk of such county, on or before the thirty-first day of January in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent to the said clerk shall be kept by him, and shall be open to inspection by all persons at all seasonable hours, on payment of one shilling for each inspection.

Annual account to be made up by undertakers, and sent to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection.

84. And with respect to tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the

Tender of amends.

Secs. 84–88.

execution of this or the special Act (1), or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such person make tender of sufficient amends to the person injured, such last-mentioned person shall not recover in any such action; and if no such tender have been made the defendant may, by leave of the court where such action is pending, at any time before issue joined, pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

Railways Clauses Consolidation Act, 1845, as to damages, &c., to be incorporated with this and the special Act.

85. If the waterworks be in England or Ireland, the clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices (2), shall be incorporated with this and the special Act, and if the waterworks be in Scotland the clauses of the Railways Clauses Consolidation Act (Scotland), 1845, with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff, or to justices (3), shall be incorporated with this and the special Act, and such clauses shall apply to the waterworks and to the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company."

In Ireland part of penalties to be paid to guardians of unions.

86. Provided always, that in Ireland, in the case of any penalty imposed by justices, where the application is not otherwise provided for, such justices may award not more than one half of such penalty to the informer, and shall award the remainder to the guardians of the poor of the union within which the offence shall have been committed, to be applied in aid of the poor rates of such union.

All things required to be done by two justices in England and Ireland may, in certain cases, be done by one, and in Scotland by the sheriff, &c.

87. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done, in England and Ireland, by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in Scotland by the sheriff or steward of any county, stewartry, or ward, or his substitute.

Penalties, &c., imposed in respect of offences committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

88. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for regulating the police courts in the metropolis" (4); and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police

(1) It is not necessary that the defendant should have acted in strict pursuance of the statute. It is sufficient if he was acting *bonâ fide*, and reasonably believed himself to be authorised or to be doing his duty: *Carter* v. *Filliter*, C. & M. 498; *Hughes* v. *Buckland*, 15 M. & W. 346; *Booth* v. *Clive*, 10 C. B. 827, 20 L. J. C. P. 151; *Gaby* v. *Wilts Canal Co.*, 3 M. & S. 580. "The object clearly is to protect persons acting *illegally*, but in supposed pursuance and with a *bonâ fide* intention of discharging their duty under the Act of Parliament. Where the law is not exceeded the protection is not required:" *Per* Lord Ellenborough, in *Theobald* v. *Crichmore*, 1 B. & Ald. 229. See further *Read* v. *Coker*, 13 C. B. 861, 22 L. J. C. P. 205, and the notes *ante*, p. 189. And see Rules of Supreme Court, Order 22.

(2) *I.e.*, 8 Vict. c. 20, ss. 140—161.

(3) *I.e.*, 8 Vict. c. 33, ss. 132—152.

(4) See 2 & 3 Vict. c. 71, ss. 45, 46.

magistrates by the said last-mentioned Act (1); and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Persons giving false evidence liable to penalties of perjury.

89. Every person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

And with respect to access to the special Act, be it enacted as follows:

Copies of special Act to be kept by undertakers in their office and deposited with the clerks of the peace, &c., and be open to inspection.

90. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situated, a copy of such special Act so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her Majesty, intituled, "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament" (2).

7 Will. IV. & 1 Vict. c. 83.

Penalty on undertakers failing to keep or deposit such copies.

91. If the undertakers fail to keep or deposit any of the said copies of the special Act, as hereinbefore mentioned, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Undertakers not exempt from the provisions of 57 Geo. III. c. 29, or from the laws regulating sewers.

92. And be it enacted that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of His late Majesty King George the Third, intituled "An Act for better paving, improving, and regulating the streets of the metropolis, and removing and preventing nuisances and obstructions therein," or from the laws of sewers for the time being in force within ten miles from the Royal Exchange in the City of London.

Undertakers not exempt from provisions of any future general Act.

93. And be it enacted that nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to waterworks, or any Act for improving the sanitary condition of towns and populous districts, which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

Act may be amended, &c.

94. And be it enacted that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

(1) An appeal lies to quarter sessions: 2 & 3 Vict. c. 71, s. 50.

(2) See section 9, *ante*, p. 415.

WATERWORKS CLAUSES ACT, 1863[1].

26 & 27 VICT. c. 93.

An Act for consolidating in One Act certain provisions frequently inserted in Acts relating to Waterworks. [28*th July*, 1863.]

Secs. 1—4.

10 & 11 Vict. c. 17.

Whereas the Waterworks Clauses Act, 1847, was passed in order to comprise in one Act sundry provisions which were at the time of the passing of that Act usually introduced into Acts of Parliament authorising the construction of certain waterworks:

And whereas sundry provisions of the like nature, but not comprised in the said Act, are now frequently introduced into Acts of Parliament relating to waterworks, and it is expedient to comprise such last-mentioned provisions also in one Act, and that as well for the purpose of avoiding the necessity of repeating such provisions in special Acts relating to waterworks, as for insuring greater uniformity in the provisions themselves:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as the Waterworks Clauses Act, 1863; and the Waterworks Clauses Act, 1847, and this Act may be cited together as the Waterworks Clauses Acts, 1847 and 1863.

Application of Act and interpretation of terms.

2. This Act shall apply to any waterworks to which any special Act hereafter passed and incorporating this Act relates; and every such special Act is hereinafter referred to as "the special Act."

Terms used in this Act have the same meanings as the same terms have when used in the Waterworks Clauses Act, 1847.

The provisions respecting the recovery of penalties contained in the last mentioned Act shall be incorporated with this Act.

Security of Reservoirs.

And with respect to the security of the reservoirs constructed by the undertakers, be it enacted as follows:

Power for justices to inquire as to danger of reservoir.

3. Whenever any person interested complains to two justices that any reservoir constructed by the undertakers is in a dangerous state, such justices shall forthwith make inquiry into the truth of the complaint; or two justices, on their own view, and without complaint by any person, may proceed under the present provisions as if a complaint had been so made to them.

Order of justices for immediate repair.

4. If, on any such inquiry, the justices are satisfied that the complaint is well founded, and that the reservoir is in a dangerous state, and that the danger is so imminent as not to admit of delay in removing the cause of complaint, they shall order such person as they think fit to enter on the property of the undertakers,

(1) The whole of this Act is incorporated with the Public Health Act, 1875. See section 57, *ante*, p. 75.

and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices on undertakers to repair reservoir.

5. If, on any such inquiry, the justices are satisfied that there is good cause of complaint, but are not satisfied that the reservoir is in such an imminently dangerous state as not to admit of delay in removing the cause of complaint, they shall issue their summons to the undertakers to answer the complaint; and upon hearing the parties, the justices may, or upon default of appearance of the undertakers, then in their absence, the justices shall order the undertakers, within such period as the justices think reasonable, and specify in the order, to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint.

Order of justices on failure of undertakers to repair.

If the undertakers fail to execute or do within that period any such work or thing, the justices who made the order, or any other two justices, on being satisfied of such failure, may either order such persons as the justices think fit to enter on the property of the undertakers, and to lower the water in the reservoir, and to execute and do all such works and things as the justices think requisite and proper for removing the cause of complaint; or may, if they think fit, by order impose on the undertakers a penalty, not exceeding ten pounds, for every day during which such failure continues after the making of the order imposing the penalty.

Form of order.

6. Any order of justices made in any of the cases aforesaid shall be in writing under their hands, and may be in the form set forth in the Schedule to this Act, with such variations as circumstances require (1).

Persons acting under order not trespassers.

7. Any person acting under and in pursuance of any such order shall not be deemed a trespasser; and if any person wilfully obstructs any person lawfully acting in obedience to any such order, or wilfully does, or instigates, or suffers to be done, anything in contravention thereof, he shall for every such offence be liable to a penalty not exceeding fifty pounds.

Order for payment of costs and expenses.

8. The justices may order all, or such part as they think fit, of the costs of and incident to the applying for and obtaining of any such order to be paid by the undertakers, and also all, or such part as the justices think fit, of the expenses of the works and things executed and done in pursuance of any such order by any person other than the undertakers, to be paid by the undertakers to such person as the justices appoint.

If the justices before whom the complaint is made think that there is no sufficient ground for the complaint, they may, if they think fit, order the complainant to pay to the undertakers the whole or any part of their costs of or incident to the complaint.

Appeal by undertakers.

9. If the undertakers consider themselves aggrieved by any order or determination of justices under the present provisions, they may in like manner and subject to the like conditions as by the Railways Clauses Consolidation Act, 1845, are provided in the case of appeals in respect of penalties, appeal to the court of general or quarter sessions for the county or place where the cause of appeal arises (2); and that court may, on the hearing of the appeal, either affirm or quash

(1) See *post*, p. 438.

(2) By the Railways Clauses Consolidation Act, 1845, 8 Vict. c. 20, it is provided as follows:—

Parties aggrieved may appeal to quarter sessions.

"Section 157. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen, but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognisances with two sufficient sureties before a justice conditioned duly to prosecute such appeal and to abide the order of the court thereon.

Notice.

Securities.

Secs. 9—14.

the order or determination, or make such other order in the premises as may seem fit, and may make such order as to the costs both of the original proceedings and of the appeal as may seem fit; but the order or determination appealed against shall, pending the appeal, continue in force.

Undertakers not to be responsible for consequences of order.

10. Notwithstanding anything in the special Act contained, the undertakers shall not be liable to pay any damages, penalties, costs, charges, or expenses for or in respect of, or be answerable or accountable for, any diminution or cessation of the supply of water, or any other breach or non-performance of their or any of their duties, liabilities, or obligations under the special Act, that may be occasioned by or result from the execution of any such order.

Provisions as to Scotland.

11. The present provisions with respect to the security of reservoirs shall apply to England and Ireland; and they shall also apply to Scotland, subject to the following variations, namely, the sheriff shall be deemed to be empowered thereby, as well as two justices; and the appeal given shall lie from two justices in manner provided by sections one hundred and fifty-one and one hundred and fifty-two of the Railways Clauses Consolidation (Scotland) Act, 1845, and shall lie from a sheriff substitute to the sheriff depute, where the matter comes in the first instance before a sheriff substitute; and in that case the sheriff depute shall hear and determine the appeal, and may either confirm, recall, vary, or supersede the order of the sheriff substitute as he thinks proper; and the costs of the appeal shall be in the discretion of the sheriff; and the order or judgment of the sheriff in the appeal shall be final.

Supply of Water.

And with respect to the supply of water to be furnished by the undertakers, be it enacted as follows:

Supply for other than domestic purposes.

12. A supply of water for domestic purposes shall not include a supply of water for cattle, or for horses, or for washing carriages, where such horses or carriages are kept for sale or hire or by a common carrier, or a supply for any trade, manufacture, or business, or for watering gardens, or for fountains, or for any ornamental purpose (1).

Want of supply for other than domestic purposes, when excused.

13. Where the undertakers are authorised by the special Act to supply water for other than domestic purposes, they shall not be liable, in the absence of express stipulation, under any agreement for the supply of water for other than domestic purposes, to any penalty or damages for not supplying such water, if the want of such supply arises from frost, unusual drought, or other unavoidable cause or accident.

Power to let meters for hire.

14. Where the undertakers are authorised by the special Act to supply water by measure, they may let for hire to any consumer of water so supplied any meter or instrument for measuring the quantity of water supplied and consumed, and any pipes and apparatus for the conveyance, reception, or storage of the water, for such remuneration in money as may be agreed upon between them and the consumer, which shall be recoverable in the same manner as rates due to the undertakers for water; and the meters, instruments, pipes, and apparatus shall not be subject to distress or to the landlord's hypothec for rent of the premises where the same are used, or be attached or taken in execution under any process of

Court may make such order as they think reasonable.

"Section 158. At the quarter sessions for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions, and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant or levied by distress upon his goods to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable, and they may make such order concerning the costs both of the adjudication and of the appeal as they may think reasonable."

(1) As to private baths, see *Weaver* v. *Corporation of Cardiff*, 48 L. T. N. S. 906, 47 J. P. 599; *Sheffield Waterworks Co.* v. *Bingham*, *ante*, p. 429, and *Sheffield Waterworks Co.* v. *Carter*, *ante*, p. 430.

any court of law or equity, or under or in pursuance of any adjudication or order in bankruptcy, or other legal proceeding, against or affecting the consumer of the water or the occupier of the premises, or other the person in whose possession the meters, instruments, pipes, and apparatus may be (1).

Power for ascertaining quantity consumed by meter, and for removing meters, &c.

15. The officers of the undertakers may enter any house, building, or lands to through, or into which water is supplied by them by measure, in order to inspect the meters, instruments, pipes, and apparatus for the measuring, conveyance, reception, or storage of water, or for the purpose of ascertaining the quantity of water supplied or consumed, and may from time to time enter any house, building, or lands, for the purpose of removing any meter, instrument, pipe, or apparatus the property of the undertakers; and if any person hinders any such officer from entering or making such inspection, or effecting such removal, he shall for every such offence be liable to a penalty not exceeding five pounds; but, except with the consent of a justice or the sheriff, this power of entry shall be exercised only between the hours of ten in the forenoon and four in the afternoon.

Protection of Water.

And with respect to the waste or misuse of the water supplied by or belonging to the undertakers, be it enacted as follows (2):

Power to cut off water in certain cases.

16. If any person supplied with water by the undertakers wrongfully does or causes or permits to be done anything in contravention of any of the provisions of the special Act, or wrongfully fails to do anything which, under any of those provisions, ought to be done for the prevention of the waste, misuse, undue consumption, or contamination of the water of the undertakers, they may (without prejudice to any remedy against him in respect thereof) cut off any of the pipes by or through which water is supplied by them to him, or for his use, and may cease to supply him with water, so long as the cause of injury remains or is not remedied (2).

Penalty for waste, &c., of water by non-repair of pipes, &c.

17. If any person supplied with water by the undertakers wilfully or negligently causes or suffers any pipe, valve, cock, cistern, bath, soil-pan, watercloset, or other apparatus or receptacle to be out of repair, or to be so used or contrived as that the water supplied to him by the undertakers is or is likely to be wasted, misused, unduly consumed, or contaminated, or so as to occasion or allow the return of foul air, or other noisome or impure matter, into any pipe belonging to or connected with the pipes of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for application of water contrary to agreement.

18. If any person—

First, not having from the undertakers a supply of water for other than domestic purposes, uses, for other than domestic purposes, any water supplied to him by the undertakers; or

Secondly, having from the undertakers a supply of water for any other than domestic purposes, uses, for any purposes other than those for which he is entitled to use the same, any water supplied to him by the undertakers—

he shall for every such offence be liable to a penalty not exceeding forty shillings, without prejudice to the right of the undertakers to recover from him the value of the water misused.

Penalty for extension or alteration of pipes.

19. It shall not be lawful for the owner or occupier of any premises supplied with water by the undertakers, or any consumer of the water of the undertakers, or any other person, to affix or cause or permit to be affixed any pipe or apparatus to a pipe belonging to the undertakers, or to a communication or service pipe belonging to or used by such owner, occupier, consumer, or other person, or to make any alterations in any such communication or service pipe, or in any

(1) A company cannot insist upon meters and meters only being used to measure the supply of water to baths: *Sheffield Waterworks Co.* v. *Carter*, *ante*, p. 430. But see *Sheffield Waterworks Co.* v. *Bingham*, *ante*, p. 429.

(2) See sections 54—60 of the Waterworks Clauses Act, 1847, *ante*, p. 426, as to waste or misuse of water, and sections 61—67 of the same Act against fouling water, and the Rivers Pollution Prevention Act *ante*, p. 399.

Secs. 19–21. apparatus connected therewith, without the consent in every such case of the undertakers; and if any person acts in any respect in contravention of the provisions of the present section, he shall for every such offence be liable to a penalty not exceeding five pounds, without prejudice to the right of the undertakers to recover damages from him in respect of any injury done to their property, and without prejudice to their right to recover from him the value of any water wasted, misused, or unduly consumed.

Penalty for use of water without agreement.

20. If any person, not being supplied with water by the undertakers, wrongfully takes or uses any water from any reservoir, watercourse, conduit, or pipe belonging to the undertakers, or from any pipe leading to or from any such reservoir, watercourse, conduit, or pipe, or from any cistern or other like place containing water belonging to the undertakers, or supplied by them for the use of any consumer of the water of the undertakers, he shall for every such offence be liable to a penalty not exceeding five pounds ([1]).

Recovery of Rates.

And with respect to the recovery of water rates and other money, be it enacted as follows:

Recovery of rates by action.

21. If any person refuses or neglects to pay to the undertakers any rate or sum due to them under the special Act, they may recover the same, with costs, in any court of competent jurisdiction; and their remedy under the present section shall be in addition to their other remedies for the recovery thereof ([2]).

SCHEDULE.

Form of Order of Justices.

To *A.B.*, of , &c.

We the undersigned, two of Her Majesty's Justices of the Peace, acting for the [county] of , do hereby order and direct you [and such person and persons as you may require to aid and assist you herein] forthwith to lower the water in the [*here describe the reservoir and the extent to which the water is to be lowered*], and to do all such works and things as are requisite to repair and make secure the said reservoir [and you shall do as little injury as possible to the property of the , and for acting as you are hereby directed this shall be your sufficient warrant].

Given under our hands this day of , one thousand eight hundred and .

A.B.
C.D.

([1]) See section 59 of the Waterworks Clauses Act, 1847, *ante*, p. 426.
([2]) See sections 68—74 of the Waterworks Clauses Act, 1847, *ante*, pp. 428, 429.

GASWORKS CLAUSES ACT, 1847.

10 VICT. c. 15.

An Act for consolidating in One Act certain provisions usually contained in Acts authorising the making of gasworks for supplying towns with gas.

[23*rd April*, 1847.]

Secs. 1—2.

Whereas it is expedient to comprise in one general Act sundry provisions usually contained in Acts of Parliament authorising the construction of gasworks for supplying towns with gas, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such gasworks as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows:

Interpretations in this Act.

2. The expression "the special Act," used in this Act, shall be construed to mean (2) any Act which shall be hereafter passed authorising the construction of gasworks, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" (2) shall mean the gasworks and the works connected therewith by the special Act authorised to be constructed; and the expression "the undertakers" (2) shall mean the persons by the special Act authorised to construct the gasworks (3).

"Special Act."

"Prescribed."

"The lands."

"The undertaking."

"The undertakers."

(1) The provisions of this Act are incorporated with every Provisional Order under the Gas and Water Facilities Act, 1870. See section 10 of the latter Act. See also sections 1 and 3 of the Gasworks Clauses Act, 1871, and note (2), *post*, p. 450. The powers of local authorities with regard to lighting are derived from the Public Health Act, 1875, sections 150, and 161—163; and see section 316, *ante*. See Introduction, *ante*, p. 12.

(2) As to the construction of this Act as incorporated by the Public Health Act, 1875, see section 316 of the latter Act, *ante*, p. 215. "Special Act" includes Provisional Order made under the Gas and Waterworks Facilities Act, 1870. See Gasworks Clauses Act, 1871, section 3, *post*, p. 450.

(3) An injunction may be obtained at the instance of ratepayers restraining a municipal corporation from using borough rates for the purpose of promoting a bill in Parliament to establish gasworks in a borough. So also with regard to local boards and improvement commissioners: *A.-G.* v. *Andrews*, 2 Mac. & G. 225, 20 L. J. Ch. 467;

Sec. 3.

Interpretations in this and the special Act.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number. Words importing the singular number only shall include the plural number, and words importing the plural number only shall include also the singular number:

Gender. Words importing the masculine gender shall include females:

"Person." The word "person" shall include corporation, whether aggregate or sole:

"Lands." The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure:

"Street." The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special Act:

"The gasworks." The expression the "gasworks" shall mean the gasworks and the works connected therewith by the special Act authorised to be constructed (1).

"Gas rate." The expression "gas rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of gas:

"Month." The word "month" shall mean calendar month:

"Superior Courts." The expression "Superior Courts" where the matter submitted to the cognizance of the Superior Courts arises in England or Ireland, shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster, and the Court of Pleas of the County of Durham; and where such matter arises in Scotland it shall mean the Court of Session:

"Oath." The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County." The word "county" shall include riding or other division of a county having a separate commission of the peace, and in Scotland stewartry, and any ward or other division of a county or stewartry having a separate sheriff; and it shall also include county of a city or county of a town:

"Justice." The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together (2):

"Two justices."

"Sheriff." The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland and the steward depute of the stewartry in Scotland in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively:

"Quarter sessions." The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the court of general or quarter sessions of the peace which shall be held at the place nearest to the gasworks, or the principal office thereof for the county or place in which the gasworks are situate, or for some division of such county having a separate commission of the peace.

A.-G. v. *Eastlake*, 11 Hare, 205. And now see the Borough Funds Act and notes thereto, *post*, as to municipal corporations or sanitary authorities promoting or opposing bills in Parliament. See also *Telford* v. *Metropolitan Board*, p. 143, and *A.-G.* v. *W. Hartlepool Commissioners*, L. R. 10 Eq. 152, 39 L. J. Ch. 624.

(1) As to the meaning of "gas," see *Stanley* v. *Western Insurance Co. Limited*, L. R. 3 Ex. 71, 37 L. J. Ex. 73.

(2) By 11 & 12 Vict. c. 43, s. 33, "any stipendiary magistrate shall have full power to do alone whatever is authorised to be done by one or *more* justice or justices of the peace."

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of the Act.

4. In citing this Act in other Acts of Parliament and in legal instruments, it shall be enough to use the expression "The Gasworks Clauses Act, 1847."

Form in which portions of this Act may be incoporated in other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act; and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows:

Power to break up streets, &c., under superintendence, and to open drains.

6. The undertakers (1), under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets (2) and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas, and for the purposes aforesaid may remove and use all earth and materials in and under such streets and bridges, and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the undertakers shall from time to time deem necessary for supplying gas to the inhabitants of the district included within the said limits, doing as little damage as may be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers (3).

Not to enter on private land without consent.

7. Provided always, that nothing herein shall authorise or empower the undertakers (4) to lay down or place any pipe or other works into, through, or against any building, or in any land, not dedicated to public use, without the consent of

(1) Includes an "urban authority." See Public Health Act, 1875, sections 161 and 316.

(2) See *ante*, pp. 45, 46, and the interpretation clause of this Act.

(3) As to taking up pavements generally, see *London & Blackwall Ry.* v. *Limehouse*, 26 L. J. Ch. 164; and see the Public Health Act, 1875, sections 149 and 153, *ante*.

An agreement between a highway board and a gas company for the latter to be allowed to break up a highway, and to pay the highway board a sum in respect thereof, and also to make good the surface, is not necessarily illegal: *Edgware Highway Board* v. *Harrow Gas Co.*, L. R. 10 Q. B. 92, 44 L. J. Q. B. 1, 31 L. T. N. S. 402, 23 W. R. 90.

Where servant of a gas company in breaking up concrete pavement caused a piece of concrete to fly up and break a window in a neighbouring house, the owner was held entitled to compensation: *Hornby* v. *Liverpool United Gas Co.*, 47 J. P. 231. As to right of gas company to support for their pipes, and right of landowner to compensation for burden thus imposed, and of owner of minerals for limitation thus put on user of them, see *Normanton Gas Co.* v. *Pope*, 52 L. J. Q. B. 629, 49 L. T. N. S. 798, 32 W. R. 134; and compare *Re Corporation of Dudley*, *ante*, p. 55. See now, however, as regards works constructed by a local authority, the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, s. 4, *ante*, p. 397.

As to the power of a railway company, for the purposes of its construction, to alter the position of the mains, &c., of a gas company, see the Railways Clauses Consolidation Act, 1845, 8 Vict. c. 20, ss. 18—23. And as to the power to alter mains, &c., for the construction of telegraphs, see the Telegraph Act, 1863, 26 & 27 Vict. c. 112, ss. 6, 8, and the Telegraph Act, 1878, 41 & 42 Vict. c. 76, ss. 3—8. See also the Towns Improvement Act, 1847, ss. 13, 61, 62, *post*.

As to the meaning of the words "doing as little damage as may be," and as to compensation, see notes (3) and (4) to section 12 of the Waterworks Clauses Act, 1847, *ante*, p. 416.

(4) See note (2), *ante*, p. 437.

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the owners and occupiers thereof; except that the undertakers (1) may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act or any other Act of Parliament, and may repair or alter any pipe so laid down (2).

Notice to be served on persons having control, &c., before breaking up streets or opening drains.

8. Before the undertakers (1) proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

Streets or drains not to be broken up except under superintendence of persons having control of the same.

9. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers (1) to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the undertakers (1) intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer.

If persons having the control, &c., fail to superintend, undertakers may perform the work without them.

Streets, &c., broken up to be reinstated without delay.

10. When the undertakers (1) open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times whilst any such road or pavement shall be so opened or broken up cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up, and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside (3).

Penalty for

11. If the undertakers (1) open or break up any street or bridge, or any sewer,

(1) See note (2), *ante*, p. 441.

(2) Arches under a public road, used as store-rooms, held to be buildings; the word applies to buildings below as well as on the soil: *Thompson* v. *Sunderland Gas Co.*, L. R. 2 Ex. D. 429, 46 L. J. Ex. 710, 37 L. T. N. S. 30, 25 W. R. 809.

Occupation roads laid out for the convenience of the inhabitants are not thereby dedicated to the public: *Selby* v. *Crystal Palace District Gas Co.*, 31 L. J. Ch. 595, 6 L. T. N. S. 790, 10 W. R. 636.

As to footpaths, see *Mercer* v. *Woodgate*, L. R. 5 Q. B. 26, 10 B. & S. 833, 39 L. J. M. C. 21, 21 L. T. N. S. 458; *Arnold* v. *Blaker*, L. R. 6 Q. B. 433, 40 L. J. Q. B. 185; *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96, 42 L. J. Q. B. 80, 28 L. T. N. S. 23, 37 J. P. 229; *Brackenborough* v. *Thorsby*, 19 L. T. N. S. 692.

A local board cannot fix a gas lamp to a private tenement without leave: *Meek* v. *Langdon*, 37 L. T. 181.

(3) See the Towns Improvement Clauses Act, 1847, sections 81—83, incorporated with the Public Health Act, 1875, section 160.

drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required, except in the cases in which the undertakers are hereby authorised to perform such works without any superintendence or notice, or if the undertakers make any delay in completing any such work or in filling in the ground, or in reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up, to be fenced, guarded, and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made a sum not exceeding five pounds for every such offence, and they shall forfeit an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

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delay in reinstating streets, &c.

12. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers (1); and such expenses may be recovered in the same manner as damages are recoverable under this or the special Act.

In case of delay other parties may reinstate and recover the expenses.

And with respect to the supply of gas, and the recovery of the rent to be paid for the same, be it enacted as follows:

13. The undertakers (1) may from time to time enter into any contract with any person for lighting or supplying with gas any public or private building (2), or for providing any person with pipes, burners, meters, and lamps, and for the repair thereof (3); and may also from time to time enter into any contract with the commissioners, trustees, or other persons having the control of the streets within the limits of the special Act for lighting the same or any of them with gas, and for providing such commissioners, trustees, or persons with lamps, lamp posts, burners, and pipes for such purpose, and for the repairs thereof, in such manner and upon such terms as shall be agreed upon between the undertakers and the said commissioners, trustees, or other persons.

Power of the company to contract for lighting streets, &c.

14. [*Power to undertakers to let meters. Meters not liable to distraint for rent, &c.*] (4).

15. [*Undertakers may enter buildings for ascertaining quantities of gas consumed*] (4).

16. If any person supplied with gas by virtue of this or the special Act neglect to pay the rent due for the same to the undertakers, the undertakers (1) may stop the gas from entering the premises of such person, by cutting off the service pipe, or by such means as the undertakers shall think fit, [*and recover the rent due from*

Recovery of rents due for gas.

(1) See note (2), *ante*, p. 439.

(2) See *Imperial Gaslight & Coke Co.* v. *W. London Gas Co.*, 15 L. T. N. S. 66, 14 W. R. 1019.

(3) There is no obligation upon a gas company to continue to supply a customer with gas for any particular period, nor does the circumstance of quarterly payment, or the hiring of a meter by the customer, or that the company is the only one in the neighbourhood, afford any ground for implying such a contract: *Hoddesdon Gas Co.* v. *Haselwood*, 6 C. B. N. S. 239, 28 L. J. C. P. 268, 5 Jur. N. S. 1013, 7 W. R. 415. But see section 36 of the Gasworks Clauses Act, 1871, *post*, p. 455.

At common law there is nothing to compel a company to charge a like price to all customers: *Hungerford Market Co.* v. *City Steamboat Co.*, 3 El. & El. 365.

(4) These sections, sections 14 and 15, are repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66. See the Gasworks Clauses Act, 1871, 34 & 35 Vict. c. 41, ss. 14, 16, 18 and 21, *post*. Gas meters since 1870 must be stamped in accordance with 22 & 23 Vict. c. 66, 23 & 24 Vict. c. 146, and 41 & 42 Vict. c. 49, s. 66.

Meters are mere chattels, though soldered to pipes: *R.* v. *Inhabitants of Lee*, L. R. 4 Q. B. 241, 35 L. J. M. C. 105, 13 L. T. N. S. 704, 14 W. R. 311.

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such person, if less than twenty pounds, together with the expense of cutting off th gas, and the costs of recovering the rent, in the same manner as any damages for th recovery of which no special provision is made are recoverable under this or th special Act, or if the rent so due amount to twenty pounds or upwards the under takers may recover the same, together with the expenses of cutting off the gas, b action in any court of competent jurisdiction (1).]

Power to take away pipes, &c., when supply of gas discontinued.

17. In all cases in which the undertakers (2) are authorised to cut off and tak away the supply of gas from any house or building or premises, under the provision of this or the special Act, the undertakers, their agents or workmen, after givin twenty-four hours previous notice to the occupier, may enter into any such house building, or premises, between the hours of nine in the forenoon and four in th afternoon, and remove and carry away any pipe, meter, fittings, or other works th property of the undertakers (3).

And with respect to waste or misuse of the gas, or injury to the pipes and othe works, be it enacted as follows:

Penalty for fraudulently using the gas of the undertakers.

18. Every person who shall lay or caused to be laid any pipe to communicat with any pipe belonging to the undertakers (2) without their consent, or shal fraudulently injure any such meter as aforesaid, or who, in case the gas supplied b the undertakers is not ascertained by meter, shall use any burner other than sucl as has been provided or approved of by the undertakers, or of larger dimension than he has contracted to pay for, or shall keep the lights burning for a longe time than he has contracted to pay for, or who shall otherwise improperly use o burn such gas, or shall supply any other person with any part of the gas supplied to him by the undertakers, shall forfeit to the undertakers the sum of five pound for every such offence, and also the sum of forty shillings for every day such pip shall so remain, or such works or burner shall be so used, or such excess be s committed or continued, or such supply furnished; and the undertakers may tak off the gas from the house and premises of the person so offending, notwithstandin any contract which may have been previously entered into (4).

Penalty for wilfully damaging pipes.

19. Every person who shall wilfully remove, destroy, or damage any pipe, pillar post, plug, lamp, or other work of the undertakers (2) for supplying gas, or wh shall wilfully extinguish any of the public lamps or lights, or waste or improperly us any of the gas supplied by the undertakers, shall for each such offence forfeit t the undertakers any sum not exceeding five pounds, in addition to the amount o the damage done.

Satisfaction for accidentally damaging pipes.

20. Every person who shall carelessly or accidentally break, throw down, o damage any pipe, pillar, or lamp belonging to the undertakers (2), or under thei control, shall pay such sum of money by way of satisfaction to the undertakers fo the damage done, not exceeding five pounds, as any two justices or the sheriff shal think reasonable.

And with respect to the provision for guarding against fouling water, or othe nuisance from the gas, be it enacted as follows (5):

(1) The portion of the section printed in italics is now repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66. See, however, as to recovery of gas rents, sections 39—41 of the Gasworks Clauses Act, 1871, 34 & 35 Vict. c. 41, *post*, pp. 456, 457.

(2) Repealed by Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66, "except so far as incorporated with the special Acts to which 34 & 35 Vict. c. 41 does not apply."

(3) See note (2), *ante*, p. 439.

(4) If gas has been taken, and the taking fraudulently concealed for more than six years, the remedy of the company will be notwithstanding barred by the Statute of Limitations: *Imperial Gaslight Co.* v. *London Gaslight Co.*, 10 Ex. 39, 23 L. J. Ex. 303, 18 Jur. 497.

Gas may be the subject of larceny: *R.* v. *White*, Dearsley's C. C. 203, 22 L. J. M. C. 123, 1 C. L. R. 489. See also *R.* v. *Firth*, L. R. 1 C. C. 172, 38 L. J. M. C. 54.

(5) See further the Public Health Act, 1875, sections 68 *et seq.*, and section 332, *ante*; the Waterworks Clauses Act, 1847, sections 61 *et seq.*, p. 427, 428; the Waterworks Clauses Act, 1863, sections 16 *et seq.*, p. 437; and the Rivers Pollution Act Prevention Act, 1876, p. 399.

21. If the undertakers (1) shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond, or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

Penalty on undertakers for causing water to be corrupted.

22. The said penalty of two hundred pounds shall be recovered, with full costs of suit, in any of the Superior Courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled, by any such act as aforesaid; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased (2).

Penalty to be sued for in Superior Court within six months.

23. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers (1) shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such water shall be fouled shall continue after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such last-mentioned person.

Daily penalty during the continuance of the offence.

24. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the undertakers (1), they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the undertakers shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of five pounds for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice (3).

Daily penalty during escape of gas after notice.

25. Whenever any water within the limits of the special Act shall be fouled by the gas of the undertakers (1) they shall forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

Penalty if water contaminated by gas.

26. For the purpose of ascertaining whether such water be fouled by the gas of the undertakers (1) the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits, and works of the undertakers; provided that such person, before proceeding so to dig and examine, shall give twenty-four hours notice in writing to the undertakers of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place; and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the undertakers for the purpose of laying their pipes.

Power to examine gas pipes to ascertain cause of contamination, if notice be given of the same.

27. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the undertakers (1), the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be

Expenses to abide result of examination.

(1) See note (2), *ante*, p. 439.

(2) This *pro tanto* repeals any similar provision in any previous local Act: *Parry* v. *Croydon Gas Co.*, 15 C. B. N. S. 568, 9 L. T. N. S. 694, 12 W. R. 212.

(3) As to liability for damage resulting from escape of gas, see *Holden* v. *Liverpool Gas Co.*, 3 C. B. 1, 15 L. J. C. P. 301, 10 Jur. 883; *Blenkiron* v. *Great Central Gas Co.*, 2 F. & F. 437, 3 L. T. N. S. 317; *Mose* v. *Hastings Gas Co.*, 4 F. & F. 324; *Burrows* v. *March Gas Co.*, L. R. 5 Ex. 67, 39 L. J. Ex. 33, 22 L. T. N. S. 24, 18 W. R. 348; *Parry* v. *Smith*, L. R. 4 C. P. D. 325, 48 L. J. C. P. 731, 41 L. T. N. S. 93, 27 W. R. 801.

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paid by the undertakers; but if upon such examination it appear that the water has not been fouled by the gas of the undertakers, the person causing such examination to be made shall pay all such expenses, and shall also make good to the undertakers any injury which may be occasioned to their works by such examination.

How expenses to be ascertained.

28. The amount of the expenses of every such examination and repair, and of any injury done to the undertakers (1), shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are to be ascertained and recovered.

Nothing to exempt undertakers from being indicted for a nuisance.

29. Nothing in this or the special Act contained shall prevent the undertakers (1) from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas (2).

And with respect to the amount of profit to be received by the undertakers (1) when the gasworks are carried on for their benefit, be it enacted as follows:

Profits of the company limited.

30. The profits of the undertaking to be divided amongst the undertakers (1) in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate (3).

If profits exceed the amount limited, excess to be invested and form a reserved fund.

31. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in Government or other securities; and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed a sum equal to one-tenth of the nominal capital of the undertakers (1), which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen.

Reserved fund not to be resorted to, unless to meet an extraordinary claim.

32. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified in England or Ireland by two justices, and in Scotland by the sheriff, that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act.

When fund amounts to prescribed sum, interest to be applied to purposes of the undertaking.

33. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one-tenth of the nominal capital of the company, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable.

(1) See note (2), *ante*, p. 439.

(2) As to nuisances under the Public Health Act, 1875, and generally, see sections 91—111, and sections 114, 115 of that Act and the notes thereto, *ante*; and see section 255, *ante*, as to proceedings in case of nuisances caused by the acts of two or more persons.

(3) See the notes to section 75 of the Waterworks Clauses Act, 1847, p. 430. Gasworks managed at a profit by a corporation, although the profits are applied to reduce the town rate, are not "occupied for a public purpose," and therefore not exempt from being rated: *Mayor, &c., of Limerick* v. *Commissioners of Valuation*, Ir. Rep. (C. L.) 6 Q. B. 420.

As to the rating of gasworks and the proper deductions to be made, see *R.* v. *Inhabitants of Lee*, L. R. 1 Q. B. 241, 35 L. J. M. C. 105.

Fixing pipes in the ground for the conveyance of gas to light a town is a rateable occupation of land: *R.* v. *Brighton Gaslight Co.*, 8 D. & R. 308, 5 B. & C. 406.

34. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

If profits are less than the prescribed rate, a sum may be taken from the reserved fund to supply deficiency.

35. In England or Ireland the court of quarter sessions, and in Scotland the sheriff, may, on the petition of any two gas ratepayers within the limits of the special Act, nominate and appoint some accountant or other competent person, not being a proprietor of any gasworks, to examine and ascertain, at the expense of the undertakers (the amount of such expense to be determined by the said court or sheriff), the actual state and condition of the concerns of the undertakers, and to make report thereof to the said court at the then present or some following sessions or to the sheriff; and the said court or sheriff may examine any witnesses upon oath touching the truth of the said accounts and the matters therein referred to; and if it thereupon appear to the said court or sheriff that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount hereinbefore limited have been paid, make such a rateable reduction in the rate for gas to be furnished by them as in the judgment of the said court or sheriff shall be proper, but so as such rates, when reduced, shall ensure to the undertakers (regard being had to the amount of profit before received) a profit as near as may be to the prescribed rate.

If profits are more than the amount prescribed, a rateable reduction to be made in the price of gas.

36. Provided always, that if, in the case of any petition so presented, it appear to the said court or sheriff that there was no sufficient ground for presenting the same, the said court or sheriff may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said court or sheriff), and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act.

Court may order petitioner to pay costs of groundless petition.

37. If the undertakers shall, for seven days after being required to produce to the said court or sheriff, or to the said accountant or other person as aforesaid, any books of account or other books, bills, receipts, vouchers, or papers relating to the pecuniary affairs of the undertakers, refuse or neglect to produce such books, bills, receipts, vouchers, or papers, they shall forfeit the sum of one hundred pounds for every such refusal or wilful neglect, and the further sum of ten pounds for every day such refusal or wilful neglect shall continue after the expiration of the said seven days, such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the Superior Courts.

Penalty on undertakers for refusing to produce books, vouchers, &c.

38. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply gas under the provisions of this or the special Act, cause an account in abstract to be prepared of the total receipts and expenditure of all rents or funds levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual account, if the gasworks be situated in England or Ireland, shall be transmitted, free of charge, to the clerk of the peace for the county in which the gasworks are situate, and if the gasworks be situated in Scotland, such copy shall be transmitted, free of charge as aforesaid, to the sheriff clerk of such county, and such transmission shall be made on or before the thirty-first day of January in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent to the said clerk of the peace or sheriff clerk shall be kept by him, and shall be open to inspection by all persons at all seasonable hours, on payment of one shilling for each inspection.

Annual account to be made up by undertakers, and sent to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection.

39. And with respect to tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect

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thereof such person make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender have been made the defendant may, by leave of the court where such action is pending, at any time before issue joined, pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court (1).

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

The Railways Clauses Consolidation Act, 1845, as to damages, &c., to be incorporated with this and the special Act.

40. If the gasworks be in England or Ireland, the clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices shall be incorporated with this and the special Act (2); and if the gasworks be in Scotland, the clauses of the Railways Clauses Consolidation Act (Scotland), 1845, with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special Act, and such clauses shall apply to the gasworks and to the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company."

41. [*In Ireland part of penalties to be paid to guardians of unions* (3).]

All things required to be done by two justices in England and Ireland may, in certain cases, be done by one, and in Scotland by the sheriff, &c.

42. All things herein, or in the special Act or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done in England and Ireland by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in Scotland by the sheriff or steward of any county, stewartry, or ward, or his substitute.

Penalties, &c., imposed in respect of offences committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

43. Every penalty of forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for regulating the police courts in the metropolis;" and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined; and such witnesses shall be entitled to the same allowance of expenses as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Persons giving false evidence liable to penalties of perjury.

44. Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

And with respect to access to the special Act, be it enacted as follows:

Copies of special Act to be kept by undertakers in their office,

45. The undertakers shall at all times, after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk

(1) See the note to section 84 of the Waterworks Clauses Act, 1847, *ante*, p. 432.

And as to compensation by local authorities, see section 308 of the Public Health Act, 1875, *ante*.

(2) *I.e.*, 8 Vict. c. 20, ss. 140—161.

(3) Repealed by Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situated, a copy of such special Act, so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled, "An Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

and deposited with the clerks of the peace, &c., and be open to inspection. 7 Will. IV. & 1 Vict. c. 83.

46. If the undertakers fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Penalty on undertakers failing to keep or deposit such copies.

47. And be it enacted, that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of His late Majesty King George the Third, intituled, "An Act for better paving, improving, and regulating the streets of the metropolis, and removing and preventing nuisances and obstructions therein," or from the laws of sewers for the time being in force within ten miles from the Royal Exchange in the City of London.

Undertakers not exempt from the provisions of 57 Geo. III. c. xxx., or from the laws regulating sewers.

48. And be it enacted, that nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to Her Majesty's duties of customs or excise, or any other revenue of the Crown, or to extend to or affect any claim of Her Majesty in right of her crown, or otherwise howsoever, or any proceedings at law or in equity, by or on behalf of Her Majesty, in any part of the United Kingdom of Great Britain and Ireland.

Nothing in this or the special Act to affect the rights of the Crown.

49. And be it enacted, that nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks, or any Act for improving the sanitary condition of towns and populous districts, which may be passed in the same session in which the special Act is passed, or any future session of Parliament.

Undertakers not exempted from provisions of any future general Act.

50. [Act may be amended, &c.] (1).

(1) Repealed by Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

THE

GASWORKS CLAUSES ACT, 1871.

34 & 35 VICT. c. 41.

An Act to amend the Gasworks Clauses Act, 1847. [13*th July*, 1871.]

Secs. 1—4.

Whereas it is expedient that the provisions contained in the Gasworks Clauses Act, 1847, should be amended:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

10 & 11 Vict. c. 15 and this Act to be construed together.

1. The Gasworks Clauses Act, 1847, and this Act shall be construed together as one Act, and the provisions of this Act shall be held to repeal and supersede such of the provisions of that Act as are inconsistent with this Act (1).

Short title.

2. This Act may be cited as "The Gasworks Clauses Act, 1871."

Application of Act.

3. The provisions of this Act shall apply to every gas undertaking authorised by any special Act hereafter passed, or by any Provisional Order made under the authority of the Gas and Waterworks Facilities Act, 1870, save where the said provisions are expressly varied or excepted by any such special Act or Provisional Order (2); and every such special Act and Provisional Order is in this Act included in the term "the special Act" (3).

Interpretation of terms.

4. Terms used in this Act have the same meanings respectively as the same terms have when used in the Gasworks Clauses Act, 1847, and in the Gas and Water Works Facilities Act, 1870.

The term "prescribed" in this Act shall mean prescribed by the special Act:

The term "premises" in this Act shall include house and building:

And the expression "superior courts" or "court of competent jurisdiction" in this Act, or in any Act wholly or partially incorporated herewith, shall be read and have effect as if the debt or demand in respect of which the expression is used were an ordinary simple contract debt and not a debt or demand created by statute.

(1) As to powers of local authorities, see note (1), *ante*, p. 439.

(2) The general rule of construction is that a general Act of Parliament does not repeal a previous particular Act unless there are express words, or unless the two Acts are necessarily inconsistent: *Thorpe* v. *Adams*, L. R. 6 C. P. 125, 40 L. J. M. C. 52, 23 L. T. N. S. 810. And where a general Act of Parliament is incorporated with a special Act, if there is any contradiction between them, the special Act is to prevail: *A.-G.* v. *Great Eastern Ry.*, L. R. 7 Ch. 475, 41 L. J. Ch. 505; and see *Metropolitan District Ry.* v. *Sharpe*, L. R. 5 App. Cas. 425, 50 L. J. Q. B. 14, 43 L. T. N. S. 130, 28 W. R. 617, *per* Selborne, L.C.

(3) This section makes the Gasworks Clauses Act, 1847, and this Act apply to all future companies without any incorporation being necessary: *Per* Quain, J., in *Commercial Gas Co.* v. *Scott*, L. R. 10 Q. B. 400, at p. 403, 44 L. J. Q. B. 215. See also *Dudley Gaslight Co.* v. *Warmington*, 50 L. J. M. C. 69, 44 L. T. N. S. 475, 29 W. R. 680, 45 J. P. 649.

General Provisions.

Prohibition against erecting gasworks elsewhere than on lands specified in schedule.

5. The undertakers (1) shall not manufacture gas, or any residual products, except upon lands described in the special Act, and they shall not store gas, except upon those lands, without the previous consent in writing of the owner, lessee, and occupier of every dwelling-house situate within three hundred yards of the limits of the site where such gas is intended to be stored.

Sale of superfluous lands.

6. The undertakers (1) may sell and dispose of any lands which are vested in them, or which they are authorised to purchase, or which they may hereafter require, and which shall not be required for the purposes of the undertaking, and the provisions of "The Lands Clauses Consolidation Act, 1845," sections 128 to 132 (both sections inclusive) (2), shall apply to any such sale; and the undertakers may also from time to time sell and dispose of any works, buildings, or erections on any lands belonging to them which shall not be required for the purposes of the undertaking.

Receipts of guardians, &c., to be sufficient discharge.

7. If any money be payable to a shareholder in a gas undertaking, being a minor, idiot, or lunatic, the receipt of his or her respective guardian or committee shall be a sufficient discharge to the undertakers (1) for the same.

For appointment of receiver.

8. The mortgagees of the undertakers (1) may enforce payment of arrears of interest or principal, or principal and interest, due on their mortgages, in England and Ireland by the appointment of a receiver, and in Scotland by the appointment of a judicial factor; and in order to authorise the appointment of a receiver or judicial factor in respect of principal, or principal and interest, the amount owing to the mortgagees by whom the application for a receiver is made, shall not be less than in the whole one thousand pounds, or such sum as shall be specified in the special Act.

Undertakers not exempted from indictment.

9. Nothing in this or the special Act shall exonerate the undertakers (1) from any indictment, action, or other proceeding for nuisance, in the event of any nuisance being caused by them.

Power to take easements, &c., by agreement.

10. Persons empowered by "The Lands Clauses Consolidation Act, 1845" (3), to sell and convey or release lands may, if they think fit, subject to the provisions of of that Act, and of "The Lands Clauses Consolidation Acts Amendment Act, 1860" (4), grant to the undertakers (1) any easement, right, or privilege, not being an easement of water, required for the purposes of the special Act, in, over, or affecting any such lands; and the provisions of the last-mentioned Acts with respect to lands and rent-charges, as far as the same are applicable in this behalf, shall extend and apply to such grants, or to such easement, rights, or privileges as aforesaid.

Supply of Gas to Owners and Occupiers of Premises.

Undertakers to furnish sufficient supply of gas to owners and occupiers within the limits of the special Act.

11. The undertakers (1) shall, upon being required so to do by the owner or occupier of any premises situate within twenty-five yards from any main of the undertakers, or such other distance as may be prescribed, give and continue to give a supply of gas for such premises, under such pressure in the main as may be prescribed, and they shall furnish and lay any pipe that may be necessary for such purpose, subject to the conditions following; (that is to say,)

The cost of so much of any pipe for the supply of gas to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such pipe as may be laid for a greater distance than thirty feet from any pipe of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of gas shall—

Serve a notice upon the undertakers (1) at their office, specifying the premises in respect of which such supply is required, and the day (not being an

(1) See note (2), *ante*, p. 439.
(2) See this Act, *post*.
(3) See this Act, *post*. See section 7.
(4) See this Act, *post*.

Secs. 11–16.

earlier day than a reasonable time after the date of the service of such notice) upon which such supply is required to commence;

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of gas for a period of at least two years, of such an amount that the rent payable for the same shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertakers in providing any pipe to be provided by them for the purpose of such supply; and

Give to the undertakers (1) (if required by them so to do) security for the payment to them of all moneys which may become due to them by such owner or occupier in respect of any pipe to be furnished by the undertakers and in respect of gas to be supplied by them.

Provided always, that the undertakers (1) may, after they have given a supply of gas for any premises, by notice in writing require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid, or is insufficient, and in case any such owner or occupier fails to comply with the terms of such notice, the undertakers may, if they please, discontinue to supply gas for such premises so long as such failure continues.

Quality of gas.

12. The quality of the gas supplied by the undertakers (1) shall, with respect to its illuminating power, be such as to produce at the testing place provided in conformity with this Act a light equal in intensity to that produced by the prescribed number of sperm candles of six in the pound, and such gas shall as to its purity not exhibit any trace of sulphuretted hydrogen when tested in accordance with the rules prescribed in that behalf in Part II. of the Schedule A. to this Act annexed.

Undertakers may require consumers to use meters.

13. Every consumer of gas supplied by the undertakers (1) shall, if required to do so by them, consume such gas by a meter duly stamped under the authority of an Act passed in the session of Parliament held in the twenty-second and twenty-third years of the reign of Her present Majesty, intituled "An Act for regulating measures used in sales of gas," and being a legal meter within the meaning of the said Act, or by a meter supplied or approved by the undertakers: Provided always, that where the provisions of the said Act are in force no meter shall be used unless the same shall be a legal meter within the meaning of the said Act, and that elsewhere the undertakers shall not refuse to approve of any meter which when duly tested according to the rules contained in the said Act for regulating measures used in sales of gas is found to be correct within the meaning of the said Act.

Undertakers to supply meters.

14. The undertakers (1) shall supply to any owner or occupier of premises within the limits of the special Act requiring the same a meter for registering gas supplied by them: Provided always, that such owner or occupier shall, if required, previous to receiving such meter, give to the undertakers security for payment to them of the price of such meter if he desires to purchase the same, or of the rent of such meter if he desires to hire the same.

Meters not to be connected or disconnected without notice.

15. No consumer shall connect any meter with any pipe through which gas is supplied by the undertakers (1) to such meter, or disconnect any meter from any such pipe, unless he shall have given to the undertakers not less than twenty-four hours notice in writing of his intention so to do, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings.

Nature and amount of security.

16. Where any owner or occupier is required by the special Act to give security to the undertakers (1), such security may be by way of deposit or otherwise, and of such amount as he and the undertakers agree on, or as, in default of agreement, may be determined, on the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties.

(1) See note (2), *ante*, p. 439.

Consumer to keep his meter in proper order.

17. Every consumer of gas supplied by the undertakers (1) shall at all times, at his own expense, keep all meters belonging to him whereby any gas of the undertakers is registered in proper order for correctly registering such gas, and in default of his so doing the undertakers may cease to supply gas through such meter. The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times, such taking off, removal, testing, inspecting, and replacing to be done at the expense of the undertakers if the meter be found in proper order, but otherwise at the expense of the consumer.

Power to the undertakers to let meters.

18. The undertakers (1) may let for hire any meter for ascertaining the quantity of gas consumed or supplied, and any fittings thereto, for such remuneration in money, and on such terms with respect to the repair of such meter and fittings, and for securing the safety and return to the undertakers of such meter, as may be agreed upon between the hirer and the undertakers, and such remuneration shall be recoverable in the same manner as the rents or sums due to the undertakers for gas, and such meters and fittings shall not be subject to distress, or to the landlord's remedy for rent of the premises where the same may be used, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the persons in whose possession the same may be.

Undertakers to keep meter let for hire in repair.

19. The undertakers (1) shall at all times, at their own expense, keep all meters let for hire by them to any consumer in proper order for correctly registering gas, and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times.

Register of gas meters to be *primâ facie* evidence.

20. The register of the meter shall be *primâ facie* evidence of the quantity of gas consumed, and in respect of which any rent is charged and sought to be recovered by the undertakers (1): Provided always, that if the undertakers and the consumer differ as to the quantity consumed, such difference may be determined, upon the application of either party, by two justices, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the justices shall be final and binding on all parties.

Power to enter buildings for ascertaining quantities of gas consumed.

21. Any officer appointed by the undertakers (1) may at all reasonable times enter any building or land lighted with gas supplied by the undertakers, in order to inspect the meters, fittings, and works for the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the undertakers a sum not exceeding five pounds.

Power to remove meter and fittings.

22. In all cases in which a consumer of gas supplied by the undertakers (1) ceases to require a supply of such gas, and in all cases in which the undertakers are authorised to take away and cut off the supply of gas from any premises, it shall be lawful for the undertakers, their agents or workmen, after twenty-four hours notice in writing, under the hand of the secretary, or other properly authorised officer of the undertakers, to the occupier, or if unoccupied, then to the owner or lessee, or to the agent of the owner or lessee, of any premises in which any pipes, meters, fittings, or apparatus belonging to the undertakers are laid or fixed, and through or in which the supply of gas is from any such cause discontinued to enter such premises between the hours of nine in the morning and four in the evening, for the purpose of removing and to remove such pipes, meters, fittings, or apparatus, repairing all damage caused by such entry or removal.

Recovery of charges for gas.

23. In case any person who shall have been supplied with gas by the undertakers (1) shall neglect or refuse to pay the amount due in respect of such supply, any justice may issue his summons to such person requiring him to appear at a time and place named therein, and then and there to show cause why the sum so demanded should not be paid; and if on the appearance of such person, or in

(1) See note (2), *ante*, p. 439.

Secs. 23–27. default of appearance after proof of the service of the summons, either personally or at the last known place of abode or of business of such person, no sufficient cause can be shown to the contrary, any justice may issue his warrant of distress for the seizure and sale of the goods and chattels of such person, for the recovery of the amount which may be proved before such justice to be due from such person, together with such costs, including the cost of cutting off the gas, if the same shall have been cut off by the undertakers, as to such justice shall seem just and reasonable.

Supply of Gas to Local Authorities.

Supply and price of gas to public lamps.

24. The undertakers (1) shall supply gas to any public lamps within the distance of fifty yards from any of the mains of the undertakers in such quantities as the local authority of each district or the trustees of any turnpike road or any highway board within the limits of the special Act may from time to time require to be supplied, and the price to be charged by the undertakers and to be paid to them for all gas so supplied shall be settled by agreement between the local authorities and the undertakers, and in case of difference by arbitration, regard being had to the circumstances of the case, and the prices charged to private consumers in the district.

As to consumption of gas supplied to the public lamps.

25. The gas supplied to the public lamps within the limits of the special Act shall be consumed by meter, at the option either of the local authority of the district or the undertakers (1), and in case of its being consumed by meter the meter shall be provided and fixed by the undertakers, and be paid for by the party requiring it.

If the gas is supplied to the public lamps in any district by average meter indication, the undertakers (1) shall, for securing uniformity of consumption between metered and unmetered lamps, from time to time provide the public lamps in such district with proper self-acting pressure regulators and burners to the satisfaction of the local authority of such district; and the average amount of the indications of all the meters attached to the public lamps within such district under the control of the local authority shall, except as hereinafter mentioned, be deemed to be the amount consumed by each such lamp in such district.

Governors for street lamps.

26. In case gas is supplied to the public lamps in any district by the undertakers (1), they or the local authority of such district may, at their own expense, cause to be affixed to each lamp the instrument known as a street lamp governor, and the undertakers or such local authority (as the case requires) shall be entitled to have access thereto for the purpose of examining the same.

For settlement of differences between the undertakers and the local authority.

27. Any difference which may arise between the undertakers (1) and any local authority in relation to the supply or consumption of gas to or by such local authority shall be from time to time settled by arbitration in manner provided by "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration (2).

Testing of Gas.

Testing place.

28. The undertakers (1) shall cause to be provided, at the place prescribed and within the prescribed time, a testing place, with apparatus therein, for the purposes following, or such of them as may be prescribed by the special Act; that is to say,—

1 For testing the illuminating power of the gas supplied:

2. For testing the presence of sulphuretted hydrogen in the gas supplied:

The said apparatus shall be in accordance with the regulations prescribed in Part I. of the Schedule A. to this Act annexed, or according to such rules as may from time to time be substituted in lieu thereof by any special Act, and shall be so situated and arranged as to be used for the purpose of testing the illuminating power and purity of the gas supplied by the undertakers, and the undertakers

(1) See note (2), *ante*, p. 439.

(2) That is, 8 Vict. c. 16, sections 128 *et seq.*, *post*.

shall at all times thereafter keep and maintain such testing place and apparatus in good repair and working order.

Appointment and powers of gas examiners.

29. The local authority of any district within the limits of the special Act, where the gas is not supplied by such local authority, may, after the passing of the special Act, from time to time appoint, or may appoint and keep appointed, a competent and impartial person to be a gas examiner to test the gas at the testing place provided in conformity with the provisions of this Act; and such gas examiner may there test the illuminating power and purity of the gas supplied by the undertakers (1), on any or every day between the hours of five o'clock and ten o'clock in the afternoon from the first day of October to the thirty-first day of March, both inclusive, and on any or every day between the hours of eight o'clock and eleven o'clock in the afternoon from the first day of April to the thirtieth day of September, both inclusive.

Two justices may appoint gas examiner.

30. Where no such gas examiner is appointed, or where the testing of the gas is imperfectly attended to by the local authority, two justices, on the application of consumers of the gas of the undertakers (1), not being less than five, by order in writing may appoint some competent and impartial person to be gas examiner, and such person may at any time within the hours aforesaid, on producing the said order, enter on the premises of the undertakers, and there test the illuminating power and purity of the gas supplied by them.

Representation of undertakers.

31. The undertakers (1) may, if they think fit, on each occasion of the testing of the gas by the gas examiner, be represented by some officer, but such officer shall not interfere in the testing.

Mode of testing.

32. Any tests taken in pursuance of this Act shall be taken in accordance with the rules prescribed in Part II. of the Schedule A. to this Act annexed.

Report of gas examiner.

33. The gas examiner shall, on the day immediately following that on which the testing of the illuminating power or purity of the gas has been conducted, make and deliver a report of the results of his testing to the local authority or justices by whom he was appointed, and to the undertakers (1), and such report shall be receivable in evidence.

Access to testing place.

34. The undertakers (1) shall give to the gas examiner and to his assistants, and to every local authority within the limits of the special Act and their agents, access to the testing place, and shall afford all facilities for the proper execution of this Act; and in case the undertakers make default in complying with any of the provisions of this section they shall for every such default be liable to a penalty not exceeding five pounds to the local authority or to the persons making the application.

Accounts.

Accounts, &c.

35. The undertakers (1) shall fill up and forward to the local authority of every district within the limits of the special Act, on or before the twenty-fifth day of March in each year, an annual statement of accounts, made up to the thirty first day of December then next preceding, as near as may be in the form and containing the particulars specified in the Schedule B. to this Act annexed.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling for each such copy (2).

The Board of Trade, with the consent of the undertakers, may alter the said forms for the purpose of adapting them to the circumstances of the undertaking, or of better carrying into effect the objects of this section.

In case the undertakers (1) make default in complying with the provisions of this section they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

Penalties.

Penalty for failure to supply gas.

36. Whenever the undertakers (1) neglect or refuse to give a supply of gas to

(1) See note (2), *ante*, p. 439.

(2) See *Dudley Gaslight Co.* v. *Warmington*, 50 L. J. M. C. 69, 44 L. T. N. S. 475, 29 W. R. 680, 45 J. P. 649.

Secs. 36–39.

any owner or occupier of premises within the limits of the special Act entitled to the same, under such pressure as is prescribed, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues (1).

Whenever the undertakers (2) neglect or refuse to supply gas as by this Act required to all or any of the public lamps in accordance with the provisions of this Act, they shall be liable to a penalty not exceeding forty shillings for each default.

If it shall be proved to the satisfaction of any two justices, not being shareholders in the undertaking, after hearing the parties, that on any day the gas supplied by the undertakers (2) is under less pressure, of less illuminating power, or of less purity than it ought to be according to the provisions of this or the special Act, the undertakers shall in every such case forfeit and pay to the local authority or other persons making application for testing the gas such sum, not exceeding twenty pounds, as the justices shall determine.

Penalties not cumulative.

Penalties imposed on the undertakers (2) for one and the same offence by several Acts of Parliament shall not be cumulative, and for such purpose the special Act and the Acts incorporated therewith shall be deemed several Acts.

Cost of experiment to be paid according to event.

37. Where the gas examiner is appointed by the justices as aforesaid, the costs of and attending such experiment, including the remuneration to be paid to the person making the same, and the costs of the proceedings before the justices, shall be ascertained by such justices, and in the event of any penalty being imposed on the undertakers (2) shall be paid, together with such penalty, by the undertakers, but in the event of no penalty being imposed the costs shall be in the discretion of the justices.

Penalty for injuring meters.

38. Every person who wilfully, fraudulently, or by culpable negligence injures or suffers to be injured any pipes, meter, or fittings belonging to the undertakers (2), or alters the index to any meter, or prevents any meter from duly registering the quantity of gas supplied, or fraudulently abstracts, consumes, or uses gas of the undertakers (2), shall (without prejudice to any other right or remedy for the protection of the undertakers or the punishment of the offender) for every such offence forfeit and pay to the undertakers a sum not exceeding five pounds, and the undertakers may in addition thereto recover the amount of any damage by them sustained; and in any case in which any person has wilfully or fraudulently injured or suffered to be injured any pipes, meter, or fittings belonging to the undertakers, or altered the index to any meter, or prevented any meter from duly registering the quantity of gas supplied, the undertakers may also, until the matter complained of has been remedied, but no longer, discontinue the supply of gas to the person so offending (notwithstanding any contract previously existing); and the existence of artificial means for causing such alteration or prevention, or for abstracting, consuming, or using gas of undertakers, when such meter is under the the custody or control of the consumer, shall be *primâ facie* evidence that such alteration, prevention, abstraction, or consumption, as the case may be, has been fraudulently, knowingly, and wilfully caused by the consumer using such meter.

Recovery of Gas Rents.

Incoming tenants not liable to pay arrears of gas rents, &c.

39. In case any consumer of gas supplied by the undertakers (2) leaves the premises where such gas has been supplied to him without paying the gas rent or meter rent due from him, the undertakers shall not be entitled to require from the next tenant of such premises the payment of the arrears left unpaid by the former tenant, unless such incoming tenant has undertaken with the former tenant to pay or exonerate him from the payment of such arrears.

(1) This applies not only to neglect or refusal to supply gas at a given pressure, but to neglect or refusal to supply it at all, and, therefore, a company is liable which improperly cuts off the supply of gas: *Commercial Gas Co.* v. *Scott*, L. R. 10 Q. B. 400, 44 L. J. Q. B. 215.

(2) See note (2), *ante*, p. 439.

Recovery of rents, &c.

40. If any person supplied with gas or with any gas meter or fittings by the undertakers (1) neglects to pay to the undertakers the rent due for such gas or the rent or money due to the undertakers for the hire or fixing of such meter, or any expenses lawfully incurred by the undertakers in cutting off the gas from the premises of such person, the undertakers may recover the sum so due in like manner as a penalty under this Act.

Recovery of sums due to undertakers.

41. Whenever any person neglects to pay any rent or sum due and payable by him to the undertakers (1), the undertakers may recover the same, with full costs of suit, in any court of competent jurisdiction, and the remedy of the undertakers under this enactment shall be in addition to their other remedies for the recovery of such rent or sum (2).

Legal Proceedings.

Contents of summons or warrant.

42. Any summons or warrant issued for any of the purposes of this Act may contain, in the body thereof or in a schedule thereto, several names and several sums.

Warrant of distress shall include costs.

43. Any justice who issues a warrant of distress in pursuance of the provisions of this Act may order that the costs of the proceedings for the recovery of the money to be levied shall be paid by the person liable to pay such money, and such costs shall be ascertained by the justice, and shall be included in the warrant of distress for the recovery of such money.

Summary proceedings for offences, penalties, &c.

44. All offences and penalties under this Act, and all money forfeited, and all money and costs by this Act directed to be recovered as penalties, may be prosecuted and recovered in manner directed by "The Gasworks Clauses Act, 1847," with respect to the recovery of penalties (3).

Service of notices by undertakers.

45. Every notice which the undertakers (1) are by this Act required to serve upon any person shall be served by being delivered to the person for whom it is intended, or by being left at his usual or last known place of abode, or sent by post addressed to such persons, or if such person or his address be not known to the undertakers, and cannot after due inquiry be found or ascertained, then by being affixed for three days to some conspicuous part of the premises to which such notice relates.

Liability to gas rent not to disqualify justices from acting.

46. No justice or judge of any county court or quarter sessions shall be disqualified from acting in the execution of this Act by reason of his being liable to the payment of any gas rent or other charge under this Act.

SCHEDULES.

SCHEDULE A.

Sched. A.

PART I.

Regulations in respect of testing apparatus.

1. *The apparatus for testing the illuminating power of the gas* shall consist of the improved form of Bunsen's photometer, known as Letheby's open 60-inch photometer, or Evans' enclosed 100-inch photometer, together with a proper meter, minute clock, governor, pressure gauge, and balance.

The burner to be used for testing the gas shall be such as shall be prescribed.

The candles used for testing the gas shall be sperm candles of six to the pound, and two candles shall be used together.

(1) See note (2) *ante*, p. 439.

(2) A gas company cannot enforce a distress warrant issued after the filing of a liquidation petition: *In re Roberts*, L. R. 6 Ch. D. 63, 37 L. T. N. S. 46, 25 W. R. 784.

See section 16 of the Act of 1847, 10 Vict. c. 15, *ante*, p. 443.

(3) Sections 40—44, *ante*, p. 448.

Sched. A.

2. *The apparatus*—

(*a.*) *For testing the presence in the gas of sulphuretted hydrogen.*—A glass vessel containing a strip of bibulous paper moistened with a solution of acetate of lead, containing sixty grains of crystallised acetate of lead dissolved in one fluid ounce of water.

Part II.

RULES AS TO MODE OF TESTING GAS.

I. *Mode of testing for illuminating power.*

The gas in the photometer is to be lighted at least fifteen minutes before the testings begin, and it is to be kept continuously burning from the beginning to the end of the tests.

Each testing shall include ten observations of the photometer made at intervals of a minute.

The consumption of the gas is to be carefully adjusted to five cubic feet per hour.

The candles are to be lighted at least ten minutes before beginning each testing, so as to arrive at their normal rate of burning, which is shown when the wick is slightly bent and the tip glowing. The standard rate of consumption for the candles shall be 120 grains each per hour. Before and after making each set of ten observations of the photometer the gas examiner shall weigh the candles, and if the combustion shall have been more or less per candle than 120 grains per hour he shall make and record the calculations requisite to neutralise the effects of this difference.

The average of each set of ten observations is to be taken as representing the illuminating power of that testing.

II. *Mode of testing.*

(*a.*) *For sulphuretted hydrogen.*—The gas shall be passed through the glass vessel containing the strip of bibulous paper moistened with the solution of acetate of lead for a period of three minutes, or such longer period as may be prescribed; and if any discolouration of the test paper is found to have taken place, this is to be held conclusive as to the presence of sulphuretted hydrogen in the gas.

Sched. B.

SCHEDULE B.

Form of Annual Accounts.

The Gas Company.

Year ended 31st December, 18 .

A.—Statement of Share Capital,

On the 31st December, 18 .

1. Description of Capital.	2. Maximum Dividend authorised.	3. Number of Shares issued.	4. Nominal Amount of Share.	5. Called up per Share.	6. Total paid up.	7. Amount issued but not paid up.	8. Remaining to be issued.	9. Total Amounts authorised.

B.—STATEMENT OF LOAN CAPITAL,

On the 31st December, 18 .

1. Description of Loan (Mortgage, Bond, Debenture, Stock, &c.)	2. Rate per Cent. of Interest.	3. Total Amounts borrowed at 31st December, 18 .	4. Remaining to be borrowed.	5. Total Amounts authorised.

Total share capital paid up (See A.) . . . £
Do. loan do. borrowed (See B.) . . . £

Total capital received . . . £

C.—CAPITAL ACCOUNT,

For the year ended 31st December, 18 .

—	Expenditure to 31st December, 18 .	Expended this Year.	Total to 31st December, 18 .	—	Certified Receipts, 31st December, 18 .	Received during Year.	Total Receipts to 31st December, 18 .
	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.
1. To expenditure to 31st December, 18				1. By ordinary shares of £ each . .			
Since that date.				2. By ditto of £ each			
2. To lands acquired, including law charges				3. By preference shares of £ each . .			
3. To new buildings, manufacturing plant, machines, storage works, and other structures connected with manufacture . .				4. By debenture stock			
4. To new mains and service pipes (not being in place of old ones), including laying same, paving, and other works connected with distribution				5. By mortgages and bonds			
5. To new meters (not in place of old ones), including fixing				6. By amount received in anticipation of calls			
6. To cost of promoting special Act . . .							
7. To special items (if any)							
Total expenditure . . .				Total			
To balance of capital account .							
			£				

D.—REVENUE ACCOUNT,

For the year ended 31st December, 18 .

	£ s. d.	£ s. d.		£ s. d.	£ s. d.
TO MANUFACTURE OF GAS.			BY SALE OF GAS.		
1. Coals, including dues, carriage, unloading, and all expenses of depositing same on works . .			1. Common gas (cubic feet), at / per 1,000 cubic feet . . .		
2. Purifying materials, oil, water, and sundries at works			2. Cannel gas (cubic feet), at / per 1,000 cubic feet . . .		
3. Salaries of engineers, including chief engineer (if any), superintendents, and officers at works			3. Public lighting and under contracts . . .		
4. Wages and gratuities at works			4. Rental of meters . .		
5. Repairs and maintenance of works and plant (including renewal of retorts) machines, apparatus, tools, materials, and labour . . £			BY RESIDUAL PRODUCTS.		
Less old material . £			5. Coke, less labour and cartage . . .		
TO DISTRIBUTION OF GAS.			6. Breeze, less labour and cartage . . .		
6. Salaries of surveyor, chief inspector, inspectors, assistant inspectors, and clerks in light office			7. Tar, less labour and cartage . . .		
7. Repair, maintenance, and renewal of mains, and of service pipes, including materials, laying and paving, and labour			8. Ammoniacal liquor, less labour and cartage .		
8. Repairing, renewing, and refixing meters . .					
TO PUBLIC LAMPS.					
9. Lighting and repairing .					
TO RENTS, RATES, AND TAXES.			9. By rents . . .		
10. Rents			10. By transfer fees . .		
11. Rates and Taxes . .			By other item (if any) .		
TO MANAGEMENT.					
12. Directors' allowances .					
13. Salaries of secretary, accountant, and clerks, office keepers, and messengers . . .					
14. Collectors' commission or salaries . . .					
15. Stationery and printing .					
16. General establishment charges and incidentals					
17. Auditor					
TO LAW AND PARLIAMENTARY CHARGES.					
18. Law . . , .					
19. Parliamentary (oppositions)					
20. To depreciation fund for works on leasehold lands (if any) . .					
21. To bad debts . . .					
To other items (if any) . .					
Total expenditure .					
Balance carried to Profit and Loss Account, E. . .			Total receipts . .	£	

E.—PROFIT AND LOSS ACCOUNT (NET REVENUE),

For the year ended 31st December, 18 .

Dr.	£ s. d.	Cr.	£ s. d.
1. To amount carried to Reserved Fund Account, F. (if any), from profits of 18		1. By balance of net profit brought from last account (31st December, 18) .	
2. To interest on temporary loans, and moneys received in anticipation of calls		2. By amount drawn from reserved fund (if any) .	
3. To ditto on mortgages and bonds accrued to 31st December, 18 .		Less dividend paid for the half-year ended 31st December, 18 . . .	
4. To ditto on debenture stock to ditto		3. Balance brought from Revenue Account, D., being profit for year to December, 18	
5. To half-year's dividend on 1st preferential to 30th June, 18 . . .		4. Interest on moneys deposited . .	
6. To ditto, 2nd preferential to ditto			
7. To ditto on ordinary shares at per cent . .			
To balance of net profit to be carried to next account subject to half-year's dividends to 31st December, 18			
£		£	

F.—RESERVED FUND ACCOUNT,

For the year ended 31st December, 18 .

£ s. d.	£ s. d.
1. Amount (if any) carried to Profit and Loss Account (E.) to make up deficiencies of dividends to 31st December, 18	1. By balance brought from last account
2. Amount paid for extraordinary claim or demand (if any) . . .	2. By balance brought from Profit and Loss Account (E.) . .
3. Amount of balance to be carried to next account	3. By interest on amount invested .
£	£

Like accounts must be given for depreciation fund for works on leaseholds, if any.

G.—STATEMENT OF COALS

During the year ended 31st December, 18 .

Description of Coal.	In store, 31st December, 18 .	Received during Year.	Carbonized or used during Year.	In store, 31st December, 18 .
	Tons.	Tons.	Tons.	Tons.
Common				
Cannel				

H.—Statement of Residual Products

For the year ended 31st December, 18 .

Description of Residual.	In Store, 31st December, 18 . Estimated.	Made during Year. Estimated.	Used in Manufacture during Year. Estimated.	Sold during Year.	In Store, 31st December, 18 . Estimated.
Coke— common, chaldrons of 36 bush.					
cannel " "					
Breeze " "					
Tar, gallons					
Ammoniacal liquor, butts of 108 gallons					

I.—General Balance Sheet.

Dr. On 31st December, 18 . Cr.

	£ s. d.		£ s. d.
1. To Capital Account— Balance at credit thereof (Account C.)		1. By cash at bankers	
2. To Profit and Loss Account— Balance at credit thereof (Account E.)		2. By cash on deposit or at interest .	
3. To Reserved Fund— Balance at credit thereof (Account F.)		3. By coals for stock on hand, 31st December, 18	
4. To Depreciation Fund (for works on leasehold lands)— Balance at credit thereof (Account .)		4. By coke and breeze " "	
5. To unpaid dividends . . .		5. By tar and other products " "	
6. To interest accrued and unpaid on mortgages, bonds, and debenture stock, and other loans, to 31st December, 18		6. By sundry stores . " "	
7. To sundry tradesmen and others, for amount due for coals, stores, &c., to 31st December, 18 . .		7. By gas and meter rental; balance of this account due to the company on 31st December, 18 , less deposits and prepayments . .	
8. To Wages and Contingencies— Amount due to 31st December, 18		8. By coke and other residual . " "	
To other items (if any) . . .		9. By sundry accounts " "	
		By special items (if any), including investments	

GAS AND WATER WORKS FACILITIES ACT, 1870.[1]

33 & 34 VICT. c. 70.

An Act to facilitate in certain cases the obtaining of powers for the construction of Gas and Water Works and for the supply of Gas and Water.

[*9th August*, 1870.]

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Secs. 1—3.

Preliminary.

1. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870." **Short title.**

2. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them; that is to say, **Interpretation of terms.**

The term "local authority" shall mean the bodies of persons named in the table in the Schedule (A) to this Act annexed:

The term "road" shall mean any carriageway being a public highway, and any bridge forming part of the same:

The term "road authority" shall mean any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority, shall mean the area within the jurisdiction of such local authority:

The term "The Lands Clauses Acts" means, so far as the Provisional Order in which that term is used relates to England or Ireland, the Lands Clauses Consolidation Act, 1845 [2]; and, so far as the same relates to Scotland, the Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, the Lands Clauses Consolidation Acts Amendment Act, 1860 [3].

Description of Cases within this Act.

3. This Act shall apply where powers are required for all or any of the purposes following:— **Act to apply to certain cases.**

(1.) To construct or to maintain and continue gasworks and works connected therewith, or to manufacture and supply gas in any district within which there is not an existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works or to manufacture and supply gas:

(2.) To construct or to maintain and continue waterworks and works connected therewith, or to supply water in any district within which there is not an

[1] See section 161 of the Public Health Act, 1875, *ante*, p. 132, which provides that where an urban authority may under that Act undertake to supply gas for the whole or any part of their district, a Provisional Order authorising a gas undertaking may be obtained by them under this Act and any Act amending it.

[2] See this Act, *post*.

[3] See this Act, *post*.

Secs. 3—5.

existing company, corporation, body of commissioners, or person empowered by Act of Parliament to construct such works and to supply water:

(3.) To raise additional capital necessary for any of the purposes aforesaid:

(4.) To enable two or more companies or persons duly authorised to supply gas or water in any district or in adjoining districts to enter into agreements jointly to furnish such supply, or to amalgamate their undertakings:

(5.) To authorise two or more companies or persons supplying gas or water in any district or in adjoining districts to manufacture and supply gas or to supply water, and to enter into agreements jointly to furnish such supply and to amalgamate their undertakings:

and such purposes, or any one or more of them, as the case may be, shall, for the purposes of this Act, be deemed to be included in the term "gas undertaking," or "water undertaking," according as the same relate to the supply of gas or water; provided that any gas or water company empowered as aforesaid may apply for and avail themselves of the facilities of this Act within their own districts respectively.

Provisional Orders authorising Gas and Water Undertakings.

By whom Provisional Orders authorising undertakings may be obtained.

4. Provisional Orders authorising any gas undertaking or water undertaking under the authority of this Act may be obtained in any district by any company, companies, or person; and in the construction of this Act the term "the undertakers" shall be deemed to include any such company, companies, or person (1).

Where the undertakers (1) require powers for the purpose of constructing gasworks or waterworks, or works connected therewith within any district, the consent of the local authority of such district shall be necessary before any Provisional Order can be obtained; and where in such district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road of such road authority, before any Provisional Order can be obtained, unless the Board of Trade (2) in any case in which the consent of the local authority or road authority is refused are of opinion, after inquiry, that, having regard to all the circumstances of the case, such consent ought to be dispensed with, and in such case they shall make a special report, stating the grounds upon which they have dispensed with such consent.

Notices and deposit of documents by promoters as in schedule.

5. The undertakers (1) intending to make an application for a Provisional Order in pursuance of this Act shall proceed as follows:—

(1.) On or before the first of November next before their application they shall give notice in writing of their intention to make the same to every company, corporation, or person (if any) supplying gas (if the proposed application relates to gasworks) or water (if the proposed application relates to waterworks) within the district to which the proposed application refers:

(2.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement, according to the regulations contained in Part One of the Schedule (B.) to this Act; and where it is proposed to abstract water from any stream for any waterwork, they shall give notice in writing of their intention to make such application to the owners or reputed owners, lessees or reputed lessees, and occupiers of all mills and manufactories or other works using the waters of such stream for a distance of twenty miles below the point at which such water is intended to be abstracted, such distance to be measured along the course of such

(1) By the Public Health Act, 1875, section 161, *ante*, p. 132, the term is to be deemed to include any "urban authority" obtaining a Provisional Order under this Act.

(2) In the case of an urban authority obtaining a Provisional Order under this Act, the Local Government Board is to be substituted for the Board of Trade. See the Public Health Act, 1875, section 161, *ante*, p. 132.

stream, unless such water shall within a less distance than twenty miles fall into or unite with any navigable stream, and then only to the owners or reputed owners, lessees or reputed lessees, and occupiers of such mills and manufactories as aforesaid which shall be situate between the point at which such water is proposed to be abstracted and the point at which such water shall fall into or unite with such navigable stream; and such notice shall state the name (if any) by which the stream is known at the point at which such water shall be immediately abstracted, and also the parish in which such point is situate, and the time and place of deposit of the plans and sections required by this Act to be deposited:

(3.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part Two of the same schedule, according to the regulations therein contained:

(4.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part Three of the same schedule, according to the regulations therein contained.

All maps, plans, and documents required by this Act to be deposited for the purposes of any Provisional Order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of his late Majesty King William the Fourth and the first year of Her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament"(1); and all the provisions of that Act shall apply accordingly.

Power for Board of Trade to determine on application and on objection.

6. The Board of Trade (2) shall consider the application, and also any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the undertakers may proceed with the application (3).

Power for Board of Trade to make Provisional Order.

7. Where it appears to the Board of Trade (2) expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requisitions of section five of this Act have been in all respects complied with, the Board of Trade (2) may settle and make a Provisional Order accordingly (4).

Every such Provisional Order if it relates to gasworks shall expressly restrict the undertakers (5) from manufacturing gas or any residual products arising in the manufacture of gas on any land except such as is specified in that behalf in the order; and shall also expressly restrict them from storing gas on any land except such as is specified in that behalf in the order within three hundred yards from any dwelling-house existing at the time when the undertakers propose to store gas on such land, without the consent in writing of the owner, lessee, and occupier of such dwelling-house.

Form and contents of Provisional Order.

Every such Provisional Order shall contain such other provisions as, according to the nature of the application and the facts and circumstances of each case, the Board of Trade thinks fit to submit to Parliament for confirmation in manner provided by

(1) See the Act, *post*.

(2) In the case of an urban authority, the Local Government Board. See note (2), *ante*, p. 464.

(3) As to Provisional Orders by the Local Government Board. See sections 297, 298 of the Public Health Act, 1875, *ante*, pp. 205—207.

A local inquiry may be held. See section 13 of the Amending Act, 1873, *post*, p. 474.

As to restraining by injunction the promotion of a Provisional Order, see *Telford* v. *Metropolitan Board*, L. R. 13 Eq. 574, 41 L. J. Ch. 589, 26 L. T. N. S. 150, 20 W. R. 481.

The sanction of a meeting of ratepayers under the Municipal Corporation (Borough Funds) Act, *post*, is not required by an urban authority promoting a Provisional Order under this Act.

(4) This order cannot be removed by *certiorari* to be quashed: *Frewen* v. *Hastings Board*, *ante*, p. 143.

(5) See note (1), *ante*, p. 464.

Secs. 7—11

this Act; but so that any such Provisional Order shall not contain any provision for empowering the undertakers (1) or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited (2).

Costs of Order.

The costs of and connected with the preparation and making of each Provisional Order shall be paid by the undertakers, and the Board of Trade (3) may require the undertakers (1) to give security for such costs before they proceed with the Provisional Order (4).

Publication of Provisional Order as in schedule.

8. When a Provisional Order has been made as aforesaid and delivered to the undertakers (1), the undertakers shall forthwith deposit and publish the same by advertisement according to the regulations contained in Part Four of the Schedule (B.) to this Act.

Confirmation of Provisional Order by Act of Parliament.

9. On proof to the satisfaction of the Board of Trade (3) of the completion of such publication as aforesaid, the Board of Trade (3) shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication in relation to any Provisional Order which shall have been published as aforesaid, not later than the twenty-fifth of April in any year procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to the Bill; but until confirmation by Act of Parliament a Provisional Order under this Act shall not have any operation.

If while any such Bill is pending in either House of Parliament a petition is presented against any Provisional Order comprised therein, the Bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a special Act.

The Act of Parliament confirming any Provisional Order under this Act shall be deemed a Public General Act.

Incorporation of general Acts in Provisional Order.

10. The provisions of the Lands Clauses Acts shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied or excepted by any such Provisional Order, and except as to the following provisions, namely,—

(1.) With respect to the purchase and taking of lands otherwise than by agreement.

(2.) With respect to the entry upon lands by the promoters of the undertaking.

Where a Provisional Order authorises a gas undertaking the provisions of the Gasworks Clauses Act, 1847 (5), shall be incorporated with such Provisional Order, save where the same are therby expressly varied or excepted.

Where a Provisional Order authorises a water undertaking the provisions of the Waterworks Clauses Act, 1847, and of the Waterworks Clauses Act, 1863, shall be incorporated with such Provisional Order, save where the same are thereby expressly varied or excepted.

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act.

Cesser of powers at expiration of prescribed time.

11. If any undertakers (6) empowered by any Provisional Order under this Act to make works do not, within three years from the date of such Provisional Order, or within any shorter period prescribed therein, complete the works; or,

If within one year from the date of the Provisional Order, or within such shorter time as is prescribed in the Provisional Order, the works are not substantially commenced; or,

(1) See note (1), *ante*, p. 464.

(2) As to the power to amend, &c., the Provisional Order by a further Provisional Order, see section 12 of the Amending Act, 1873, *post*, p. 473.

(3) See note (2) *ante*, *p.* 464.

(4) It seems that the costs of the solicitors of the promoters are to be taxed on the Chancery and not on the Parliamentary scale: *In re Morley*, L. R. 20 Eq. 17, 32 L. T. N. S. 524, 23 W. R. 532. See section 11 of the Amending Act, 36 & 37 Vict. c. 89, *post*.

(5) *Ante*, p. 439. See also the Gasworks Clauses Act, 1871, section 3, *ante*, p. 450.

(6) Includes an urban authority. See note (1), *ante*, p. 464.

If the works are commenced, but whilst the powers to carry them on exist are suspended without a reason sufficient in the opinion of the Board of Trade (1) to warrant such supension;

the powers given by the Provisional Order to the undertakers for executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade (1).

A statement in writing by the Board of Trade (1) to the effect that such works have not been completed, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purpose of this section of such non-completion, non-commencement, or suspension.

Gas rents and water rates in schedule.

12. The undertakers empowered by any Provisional Order under this Act may demand and take, in respect of gas or water supplied by them under the authority of such Provisional Order, rents and rates respectively not exceeding the sums specified in such Provisional Order, subject and according to the regulations therein specified.

Company not exempt from provisions of general Act.

13. Nothing in any Provisional Order, or Act confirming the same, shall exempt the undertaking, or the company, corporation, or person to whom it belongs, from the provisions of any general Act of Parliament relating to gasworks or waterworks passed after the passing of this Act, or from any revision or alteration under the authority of Parliament of the maximum rents and rates allowed to be taken under the Provisional Order.

Queen in Council may substitute any department for Board of Trade for the purposes of this Act.

14. For the purpose of carrying into effect the provisions of this Act, it shall be lawful for Her Majesty at any time after the passing of this Act, by Order in Council, to substitute for the Board of Trade any other department of Her Majesty's Government, and from and after such time as may be specified for the purpose in any such order, or if no time be specified therein from and after the date of such order, all matters to be done in pursuance of this Act by or in connection with the Board of Trade shall be done by or in connection with such substituted department (2).

Act not to apply to metropolis.

15. This Act shall not apply to any place within the metropolis, as the same is defined in the Metropolis Management Act, 1855 (3).

(1) In the case of an urban authority, the Local Government Board. Note (2), *ante*, p. 464.

(2) See note (2), p. 464.

(3) See *ante*, p. 42.

Sched A.

SCHEDULES.

SCHEDULE A.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.
England and Wales.	
Boroughs (1).	The mayor, aldermen, and burgesses acting by the council.
Any place other than a borough, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the local Act with powers of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.
Scotland.	
Places within the jurisdiction of any town council, and not subject to the separate jurisdiction of police commissioners or trustees	The town council.
In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act.	The police commissioners or trustees.
In any parish or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend.	The parochial board.
Ireland.	
The City of Dublin	The Right Honourable the Lord Mayor, aldermen, and burgesses, acting by the town council.
Towns corporate, with exception of Dublin.	The mayor, aldermen, and burgesses, acting by the town council.
Towns having commissioners under an Act made in the 9th year of the reign of George the Fourth, intituled "An Act to make provision for the Lighting, Cleansing, and Watching of Cities and Towns corporate and Market Towns in Ireland in certain cases."	The commissioners
Towns having municipal commissioners under 3 & 4 Vict. c. 108.	The municipal commissioners
Towns having town commissioners under the Towns Improvement (Ireland) Act, 1854 (17 & 18 Vict. c. 103), or any Acts amending the same, or under any local Act.	The town commissioners.
Townships having commissioners under local Acts.	The township commissioners.

(1) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales."

SCHEDULE B.

PROVISIONAL ORDERS.

PART I.

Advertisement in October or November of intended application.

(1.) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed new works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed new works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as hereinafter provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate: or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the London, Edinburgh, or Dublin Gazette, accordingly as the district is situate in England, Scotland, or Ireland.

PART II.

Deposit on or before 30th November.

(1.) The undertakers are to deposit—

1. A copy of the advertisement published by them.
2. If the application relates to gas, a map showing the land proposed to be used for the manufacture of gas, or of residual products arising in the manufacture of gas.
3. A proper plan and section of the proposed new works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

In England or Ireland, in the office of the clerk of the peace for every county, riding, or division; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

(3.) The documents aforesaid are also to be deposited at the office of the Board of Trade.

PART III.

Deposit on or before 23rd December.

(1.) The undertakers are to deposit at the office of the Board of Trade—

1. A memorial signed by the undertakers, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.

Sched. B.

2. A printed draft of the Provisional Order as proposed by the undertakers, with any schedule referred to therein.

3. An estimate of the expense of the proposed new works, if any, signed by the persons making the same.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the undertakers (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:—

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of the undertakers of [*short title of undertaking*]:

Showeth as follows;

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.,
C. D.,
Undertakers.

PART IV.

Deposit and advertisement of Provisional Order when made.

(1.) The undertakers are to deposit printed copies of the Provisional Order, when settled and made, for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of each.

(3.) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published.

GAS AND WATER WORKS FACILITIES ACT, 1870, AMENDMENT ACT, 1873. [1]

36 & 37 VICT. c. 89.

An Act to extend and amend the provisions of the Gas and Water Works Facilities Act, 1870. [*5th August*, 1873.]

Secs. 1—5.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as "The Gas and Water Works Facilities Act, 1870, Amendment Act, 1873."

Interpretation.

2. In this Act the several words and expressions to which by "The Gas and Water Works Facilities Act, 1870" [2], meanings are assigned, have the same respective meanings as in the said Act:

The expression "special Act" shall mean and include any Local and Personal Act conferring powers upon any local authority, corporation, commissioners, company, companies, or persons, for the construction and maintenance, or the maintenance and continuance of gasworks, and the manufacture and supply of gas in any district, and any Act amending the same, and shall include any Provisional Order made and confirmed under the authority of the Gas and Water Works Facilities Act, 1870, so far as such Act or Provisional Order is in force:

The expression "undertakers" in relation to a special Act shall mean the local authority, corporation, commissioners, company, companies, or persons acting in execution of such special Act [3]:

The expression "prescribed" shall mean prescribed by the special Act.

Cases to which Act applies.

3. This Act shall apply where the amendment of any special Act in force in any district is required by the undertakers [3], or, subject as is in this Act hereinafter provided, by the local authority of such district in relation to all or any of the matters following:

(1.) The illuminating power of the gas to be supplied;

(2.) The maximum price of the gas to be supplied;

(3.) The pressure at which the gas is to be supplied;

and such matters or any one or more of them, as the case may be, shall for the purposes of this Act be deemed to be included in the term "amendment of a special Act."

Undertakers may obtain Provisional Orders from Board of Trade.

4. Subject to the provisions of this Act, Provisional Orders making an amendment of a special Act, may be obtained on the application of the undertakers [3], or of the local authority of any district in which the same is in force, made previous to the fifteenth day of February, one thousand eight hundred and seventy-four.

Notices and deposit of documents as in schedule.

5. The undertakers [3] or local authority intending to make an application for a Provisional Order in pursuance of this Act shall proceed as follows:—

(1.) During the thirty days immediately preceding their application they shall publish notice of their intention to make such application by advertise-

[1] See note [1] to the Gas and Water Works Facilities Act, 1870, *ante*, p. 463.

[2] *Ante*, p. 463.

[3] This expression includes "urban authority." See note [1], *ante*, p. 464.

Secs. 5—8.

ment, according to the regulations contained in Part One of the schedule to this Act:

(2.) On or before the fifth day after the last publication of such advertisement they shall deposit the documents described in Part Two of the said schedule, according to the regulations therein contained.

Power for Board of Trade to determine on application and on objection.

6. The Board of Trade (1) shall consider the application, and inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the application may be proceeded with.

Power for Board of Trade to make Provisional Order.

7. Where, with a view to prevent undue loss to any undertakers (2) arising from unusual increase in the cost of production of gas, or to the prevention of undue accumulation of profits by undertakers, it appears to the Board of Trade (1) expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, and it has been proved to their satisfaction that all the requirements of this Act have been in all respects complied with, the Board of Trade (1) may settle and make a Provisional Order accordingly; provided that the operation of such Provisional Order shall be limited to such period (not exceeding two years) as the Board shall therein prescribe: Provided also, that where any addition shall be made by any such Provisional Order to the maximum price of gas prescribed by the special Act, provision shall be made by such Provisional Order that the undertakers being a person, company, or companies carrying on business under the special Act for his or their own pecuniary benefit, shall not divide more than at the rate of five per cent. per annum on their ordinary capital for any half year in which they shall have charged more than the maximum price prescribed by the special Act, or if such undertakers shall not have paid a dividend of five per cent. on such capital for each of the two financial years next preceding the application, more than such sum as shall have been the average amount of the dividend in such two years, and before allowing any such addition the Board of Trade shall ascertain the amount of dividend paid on such capital during the said two years the contracts, if any, for coal still in force, the present and former prices received by them for coke and residual products, the amount of gas unaccounted for and lost during each of the said two years, and their charges for gas during the same period.

Provisional Orders made to be taken as valid.

8. Every Provisional Order made by the Board of Trade (1) under the authority of this Act shall be signed by a secretary or assistant secretary of the Board of Trade (1), and shall take effect from a day subsequent to the date of the signing of the same to be named therein, (in this Act referred to as the commencement of such Provisional Order,) and every such Order purporting to be so signed shall be conclusive evidence of every fact and circumstance necessary to authorise the making thereof, and shall be deemed and taken to all intents and purposes whatsoever to have been made in pursuance of and in conformity with the provisions of this Act; and so long as such Provisional Order shall continue in force it shall be of the same force and effect as an Act of Parliament.

Provided always, that where an application under this Act has been made by any undertakers (2) for the grant of a Provisional Order for the amendment of a special Act, it shall be lawful for the local authority of the district in which such special Act is in force, at any time before the fifteenth February, one thousand eight hundred and seventy-four, to apply to the Board of Trade for the grant of a Provisional Order for the amendment of such special Act with respect to the illuminating power or the maximum price of the gas to be supplied by the undertakers, or with respect to the pressure at which such gas is to be supplied.

Provided also, that at any time during the continuance of any Provisional Order granted to any undertakers (2), it shall be lawful for the local authority of the district in which the same is in force to apply to the Board of Trade to revoke

(1) In the case of an urban authority, the Local Government Board. See note (2), *ante*, p. 464.

(2) Includes an urban authority. See note (1), *ante*, p. 464.

or amend such Provisional Order, and the Board of Trade may revoke or amend the same accordingly.

Publication of Provisional Orders in schedule.

9. When a Provisional Order has been made as aforesaid, and delivered to the persons who applied for the same, they shall, before the day named for the commencement of such Provisional Order, deposit and publish the same by advertisement according to the regulations contained in Part Three of the schedule to this Act.

Confirmation of Provisional Order by Act of Parliament.

10. The Board of Trade (1) shall, as soon as they conveniently can after the making of any Provisional Order under the authority of this Act, procure a Bill to be introduced into either House of Parliament for an Act to confirm the Provisional Order, which shall be set out at length in the schedule to such Bill.

If, while any such Bill is pending in either House of Parliament, a petition is presented against any Provisional Order comprised therein, the Bill, so far as it relates to the order petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Bill for a Local and Personal Act.

In case either House of Parliament shall refuse to confirm any Provisional Order under this Act, notice of such refusal shall forthwith be given by the Board of Trade to the persons who applied for the same, and to the local authority of any district to which such Provisional Order relates, and the Board of Trade shall cause a copy of such notice to be published as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or in such other newspaper circulating in such district as the Board of Trade may think proper.

Every such notice shall be signed by a secretary or assistant secretary of the Board of Trade, and from and after the expiration of a day to be named therein the Provisional Order to which it relates shall cease to have any operation: Provided always, that such notice shall not effect any act, matter, or thing done or suffered, or any liability incurred under such Provisional Order, nor the effect and validity of such Provisional Order previous to the day named in such notice.

The production of a copy of such notice purporting to be signed in manner by this section prescribed shall be evidence of the facts stated therein.

The Act of Parliament confirming any Provisional Order under this Act shall be deemed a Public General Act.

Costs of Order.

11. The costs of and connected with the preparation and making of a Provisional Order, and all proceedings in relation thereto, shall be paid by the persons applying for the same, and the Board of Trade may require them to give security for such costs before they proceed with the Provisional Order.

Such costs incurred by undertakers (2), being a company, companies, or person carrying on business under the special Act for their or his own pecuniary benefit, shall, if the same be not obtained, be paid out of the sum applicable to dividend, and if the same be obtained, shall be charged to ordinary expenses of management; and such costs incurred by any other undertakers (2) may be paid by them out of any funds which may from time to time be in their hands, and which may be applicable to the purposes of the special Act; and such costs incurred by any local authority may be paid by them out of the borough rate or district rate leviable by them for the purposes for which they are constituted by any general or special Acts (3).

Power of Board of Trade to revoke, amend, extend, or vary Provisional Order.

12. Where under the Gas and Water Works Facilities Act, 1870, or this Act, the Board of Trade have made any Provisional Order, they may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order.

Every application for such further Provisional Order shall be made in like manner and subject to the like conditions as the application for the former Provisional Order.

Every such further Provisional Order shall be made and confirmed in like manner in every respect as the former Provisional Order.

(1) In the case of an urban authority, the Local Government Board. See note (2), *ante*, p. 464.

(2) Includes an urban authority. Note (1), *ante*, p. 464.

(3) See the last paragraph of section 7 of the Act of 1870, *ante*, p. 466.

Secs. 13–15.

Authorising and regulating inquiries by the Board of Trade for purposes of Gas and Water Works Facilities Act, 1870, and this Act.

13. Where, in relation to any application for a Provisional Order under the Gas and Water Works Facilities Act, 1870, or under this Act, it is in the opinion of the Board of Trade (1) expedient that an inquiry should be held, they may order and direct such inquiry to be held at such time and place as they may think proper, subject to the provisions following:

1. The inquiry shall be held in public before an officer or officers to be appointed in that behalf by the Board of Trade (1), hereinafter called the Commissioner or Commissioners;
2. Ten days notice at the least shall be given by the Commissioner or Commissioners of the time and place at which the inquiry is to be commenced;
3. The inquiry shall be commenced at the time and place so appointed and the Commissioner or Commissioners may adjourn the inquiry from time to time as may be necessary to such time and place as he or they may think fit;
4. The Commissioner or Commissioners by summons shall, on the application of any party interested in the inquiry, require the attendance before him or them, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him or them, and every person summoned shall attend the Commissioner or Commissioners, and answer all questions touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by the Commissioner or one of the Commissioners for the purposes of the said inquiry shall, on summary conviction before two justices, or in Scotland before any sheriff or sheriff substitute, be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode;
5. The Commissioner or Commissioners shall make a report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry (2).

Rules for carrying Acts into effect.

14. The Board of Trade (1) may from time to time make, and when made, may rescind, annul, or add to, rules with respect to the following matters (3):

The proceedings to be had before the Board under the Gas and Water Works Facilities Act, 1870, or this Act; and

As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying the said Act or this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by the said Act or this Act, and shall be of the same force as if enacted in the said Act or this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament.

Act not to extend to metropolis.

15. This Act shall not apply to any place within the metropolis, as the same is defined in The Metropolis Management Act, 1855.

(1) In the case of an urban authority, the Local Government Board. See note (2) *ante*, p. 464.

(2) See sections 292 *et seq.* of the Public Health Act, 1875, *ante*, pp. 204 *et seq.*, as to local inquiries under that Act.

(3) See the regulations issued by the Local Government Board, *post*. The Board of Trade Rules will be found *post*.

SCHEDULE.

PART I.

Advertisement of intending Application.

(1.) Every advertisement is to contain the following particulars:

The objects of the intended application.

The name of an office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order when made, will be obtainable as hereinafter provided.

(2.) The advertisement is to be inserted twice at least in some one and the same newspaper published in the district affected by the proposed Provisional Order; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county. Such advertisements shall be so published that there shall be an interval of not less than ten days between each publication.

PART II.

(1.) The documents to be deposited at the office of the Board of Trade:—

1. A copy of each of the newspapers containing the advertisement.
2. A memorial signed by the persons applying for a Provisional Order, addressed to the Board of Trade, and praying for a Provisional Order.
3. A printed draft of the Provisional Order as proposed, with any schedule referred to therein.

(2.) A sufficient number of such printed copies are to be deposited at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The said memorial (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:—

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of of :

Showeth as follows:

1. Your memorialists have published, in accordance with the requirements of the Gas and Water Works Facilities Act, 1870, Amendment Act, 1873, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act*].

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.
C. D.
E. F.

PART III.

Deposit and Advertisement of Provisional Order when made.

(1.) The Provisional Order shall be published as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or in such other newspaper circulating in the district to which such Provisional Order relates as the Board of Trade shall direct.

(2.) A sufficient number of printed copies of the Provisional Order shall be deposited at the office named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

CONSPIRACY, AND PROTECTION OF PROPERTY ACT, 1875.

38 & 39 VICT. c. 86.

ARRANGEMENT OF CLAUSES.

Clause.
1. Short title.
2. Commencement of Act.

Conspiracy, and Protection of Property.

3. Amendment of law as to conspiracy in trade disputes.
4. Breach of contract by persons employed in supply of gas or water.
5. Breach of contract involving injury to persons or property.

Miscellaneous.

6. Penalty for neglect by master to provide food, clothing, &c., for servant or apprentice.
7. Penalty for intimidation or annoyance by violence or otherwise.
8. Reduction of penalties.

Legal Proceedings.

9. Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.
10. Proceedings before court of summary jurisdiction.
11. Regulations as to evidence.
12. Appeal to quarter sessions.

Definitions.

13. General definitions.
14. Definitions of "municipal authority" and "public company."
15. "Maliciously" in this Act construed as in Malicious Injuries to Property Act

Saving Clause.

16. Saving as to sea service.

Repeal.

17. Repeal of Acts.

Application of Act to Scotland.

18. Application to Scotland. Definitions.
19. Recovery of penalties, &c., in Scotland.
20. Appeal in Scotland as prescribed by 20 Geo. II. c. 43.

Application of Act to Ireland.

21. Application to Ireland.

CONSPIRACY, AND PROTECTION OF PROPERTY ACT, 1875.

38 & 39 VICT. c. 86.

An Act for amending the Law relating to Conspiracy, and to the Protection of Property, and for other purposes. [13*th August*, 1875.]

Secs. 1—4.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Conspiracy, and Protection of Property Act, 1875.

Commencement of Act.

2. This Act shall come into operation on the first day of September, one thousand eight hundred and seventy-five.

Conspiracy, and Protection of Property.

Amendment of law as to conspiracy in trade disputes.

3. An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime ([1]).

Nothing in this section shall exempt from punishment any persons guilty of a conspiracy for which a punishment is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the State or the Sovereign.

A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

Breach of contract by persons employed in supply of gas or water ([2]).

4. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having

([1]) In *R.* v. *Bunn and others*, 12 Cox C. C. 316 (1872), the defendants, servants of a gas company under contract of service, being offended by the dismissal of a fellow servant, agreed together to quit the service of their employers, without notice and in breach of their contracts of service, by reason of which the company were seriously impeded in the conduct of their business. It was held that the Trades Union Act (34 & 35 Vict. c. 31), which determined that no act shall be illegal merely because in restraint of trade, and defined "obstructing or molesting," and otherwise determined what shall be offences between masters and servants, had not affected the common law as to conspiracy, and that the defendants were rightly indicted for conspiracy at common law.

([2]) In *Cutler* v. *Turner*, L. R. 9 Q. B. 502, 43 L. J. M. C. 124, 30 L. T. N. S. 706, 22 W. R. 840, it was held that the order of a magistrate made under the Masters and Servants Act, 1867 (30 & 31 Vict. c. 141), awarding compensation for and imposing imprisonment in respect of a breach of contract, did not annul the contract, and proceedings might be taken under the Act in respect of subsequent breaches.

Secs. 4—7.

reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city, borough, town, place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place, where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor make default in complying with the provisions of this section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

Breach of contract involving injury to persons or property.

5. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing, or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour (1).

Miscellaneous.

Penalty for neglect by master to provide food, clothing, &c., for servant or apprentice.

6. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

Penalty for intimidation or annoyance by violence or otherwise.

7. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

1. Uses violence to or intimidates (2) such other person or his wife or children, or injures his property; or,
2. Persistently follows such other person about from place to place; or,
3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or,
4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,
5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

(1) See *Tomkinson* v. *West*, 32 L. T. N. S. 462, as to whether a married woman can enter into a contract within the section.

As to what contracts create the relation of master and servant, see *Willett* v. *Boote*, 6 H. & N. 26, 30 L. J. M. C. 6, 3 L. T. N. S. 276.

(2) See *O'Neill* v. *Longman* and *O'Neill* v. *Kruger*, 4 B. & S. 376 and 389, 32 L. J. M. C. 259.

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

Reduction of penalties.

8. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one-fourth of the penalty imposed by such Act (1).

Legal Proceedings.

Power for offender under this Act to be tried on indictment and not by court of summary jurisdiction.

9. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly (2).

Proceedings before court of summary jurisdiction.

10. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act.

Regulations as to evidence.

11. Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses.

Appeal to quarter sessions.

12. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made:

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof:

(3.) The appellant shall immediately after such notice enter into a recognisance before a justice of the peace, with or without sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court:

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognisance as aforesaid, release him from custody:

(5.) The Court of Appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the Court of Appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information in accordance with the opinion of the said Court of Appeal. The Court of Appeal may also

(1) See also the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 4.

(2) See *ib.*, s. 17.

Secs. 12–15.

make such order as to costs to be paid by either party as the court thinks just (1).

Definitions.

General definitions.

"The Summary Jurisdiction Act."

13. In this Act—

The expression "the Summary Jurisdiction Act" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same; (2) and

"Court of summary jurisdiction."

The expression "court of summary jurisdiction" means—

(1.) As respects the city of London, the Lord Mayor, or any alderman of the said city sitting at the Mansion House or Guildhall justice room; and

(2.) As respects any police court division in the metropolitan police district, any metropolitan police magistrate sitting at the police court for that division; and

(3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf; and

(4.) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act: Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or of any metropolitan police or stipendiary magistrate, in respect of any act or jurisdiction which may now be done or exercised by him out of court.

Definitions of "municipal authority" and "public company."

14. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works, the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any part thereof, shall for the purposes of this Act be deemed to be a municipal authority or company or contractor upon whom is imposed by Act of Parliament the duty of supplying such city, borough, town, or place, or part thereof, with gas or water.

"Maliciously" in this Act construed as in Malicious Injuries to Property Act.

15. The word "maliciously" used in reference to any offence under this Act shall be construed in the same manner as it is required by the fifty-eighth section of the Act relating to malicious injuries to property, that is to say, the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present

(1) See also the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 32.

The quarter sessions have no power to award costs against the convicting justices: *R.* v. *Goodall*, L. R. 9 Q. B. 557, 43 L. J. M. C. 119.

(2) See now the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49.

Majesty, chapter ninety-seven, to be construed in reference to any offence committed under such last-mentioned Act.

Saving Clause.

Saving as to sea service.

16. Nothing in this Act shall apply to seamen or to apprentices to the sea service.

Repeal.

17. [*Repeal of Acts.*] (1)

Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise.

18. [*Application of Act to Scotland.*]

19. [*Recovery of penalties, &c., in Scotland.*]

20. [*Appeal in Scotland.*]

21. [*Application of Act to Ireland.*]

(1) This section is repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39, "except from 'any order for wages' to 'not otherwise;'" but this repeal does not revive the repealed Acts 13 & 14 Vict. c. 21, s. 5: Maxwell on Interpretation of Statutes, p. 376.

LIMITED OWNERS RESERVOIRS AND WATER SUPPLY FURTHER FACILITIES ACT, 1877.

40 & 41 VICT. c. 31.

An Act to give further facilities to Landowners of limited interests in England and Wales and Ireland to charge their estates with the expenses of constructing Reservoirs for the storage of Water, and other similar purposes.

[*2nd August*, 1877.]

Secs. 1—5.

Whereas landowners of limited interests in England and Wales, with the approval of the Inclosure Commissioners, and in Ireland of the Commissioners of Public Works in Ireland, are enabled to charge their estates with sums expended by them in constructing reservoirs and other works for the supply of water, if it can be shown to the satisfaction of the said Commissioners that such works will effect a permanent yearly increase in the value of such estates for agricultural purposes exceeding the yearly amount proposed to be charged thereon, and are also enabled to charge their estates with sums subscribed for the construction of railways and navigable canals, if it can be shown to the satisfaction of the Commissioners that such railways and canals will effect a permanent yearly increase in the value of such estates for any purpose exceeding the yearly amount proposed to be charged thereon:

And whereas in many places it would greatly conduce to the affording of a plentiful supply of pure water to the inhabitants of villages and towns and to the industrial requirements of the locality, if facilities were given to landowners of limited interests to charge their estates, subject to the approval of the Commissioners, with sums expended by them in constructing reservoirs and other works for the supply of water, of a character permanently to increase the value of such estates for other than agricultural purposes, or to be otherwise permanently productive of profit to the owners of the estates, and if such landowners were also enabled to charge their estates with sums subscribed by them for the construction of waterworks on the same terms and conditions as those on which they are now enabled to charge their estates with subscriptions for the construction of railways and canals:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877.

Extent of Act.

2. This Act shall not extend to Scotland.

Act incorporated with 27 & 28 Vict. c. 114.

3. This Act shall be incorporated with the Improvement of Land Act, 1864, and the two Acts shall be read together as one Act.

Certain provisions of 26 & 27 Vict. c. 93, incorporated.

4. The provisions of the Waterworks Clauses Act, 1863, with respect to the security of the reservoirs constructed by the undertakers are incorporated with this Act; and in that Act, as incorporated with this Act, the expression "the special Act" shall mean and include the Improvement of Land Act, 1864, and this Act; and the expression "the undertakers" shall mean any person who constructs or erects any reservoir or dam under the authority of either of the last-mentioned Acts.

27 & 28 Vict. c. 114.

What to be deemed improvements within 27 & 28 Vict. c. 114.

5. The construction or erection of reservoirs or other works of a permanent character for the supply of water to persons residing or engaged in labour on the lands on which such works are situate, or on any other lands settled to the same uses, or for the more convenient or profitable user of such lands, or for the supply

of water to any sanitary or other local authority or water company, or to any manufacturer or other person, or for any one or more of such purposes, shall be deemed to be an improvement of land within the meaning of the ninth section of the Improvement of Land Act, 1864, and shall be sanctioned by the Commissioners, if it can be shown to their satisfaction that such reservoirs or works for the supply of water will for any purpose effect a permanent yearly increase in the value of the lands on which they are situate, or any other lands settled to the same uses, or will be permanently productive of a yearly revenue to the owner of such lands exceeding the yearly amount proposed to be charged thereon; and the construction of any such works shall be deemed to include the purchase by the landowner of any water right or other easement which might otherwise interfere with or prevent the construction of the same or any such supply of water as aforesaid.

In calculating whether the improvement is likely to effect a permanent increase of the yearly value of the land, or be productive of a yearly revenue to the landowner exceeding the yearly amount proposed to be charged thereon, it shall be lawful for the Commissioners to take into account the value of any contract, the terms of which have been agreed upon between the landowner and any sanitary or other local authority, or water company, or manufacturer or other persons, for the purpose of supplying such authority, company, person, or persons with water, as well as the effect on such value or revenue of any sum expended by the landowner in the construction of the works over and above the sum proposed to be charged upon the land.

When the improvement will afford a supply of water to persons residing or engaged in labour on the lands on which the proposed works will be situate, or on any other lands settled to the same uses, the Commissioners may, if they think fit, sanction the improvement, although it may not be shown that the same will effect a direct yearly increase in the value of the lands, or be productive of a yearly revenue to the owner of the lands exceeding the yearly amount proposed to be charged thereon.

Supply of water to local authority, &c.

6. Any landowner charging or proposing to charge his estate with the cost of the construction of reservoirs or other works for the supply of water under this Act may enter into any agreement for the supply of water to any sanitary or other local authority, water company, manufacturer, or other person, for any term not exceeding the number of years during which the cost of the improvement, or any part of it, is made a charge upon the estate: Provided that every such agreement be approved by the Commissioners, and that no premium or benefit in the nature of a premium be reserved thereby by the landowner.

Power to contract for execution of reservoirs, &c.

7. Any company now authorised to contract with landowners in England or Wales, or in Ireland, for the execution of any works for the improvement of land, or to make advances for the purpose of executing or assisting in the execution of such works, may, with the approval of the Commissioners, contract with any such landowner for the execution of any reservoirs or works of water supply, the cost of which may by this Act be charged upon the estates of such landowner, and may, with the like approval, make advances for the purpose of executing or assisting in the execution of such reservoirs or works; and for this purpose the execution of any such reservoirs or works shall be deemed to be an improvement of land within the meaning of any Act of Parliament or Articles of Association relating to any such company.

Subscriptions to waterworks.

8. Any landowner desiring to charge his estates with subscriptions for the construction of waterworks by a water company may charge his estates with such moneys on the same terms and conditions as he may under the Improvement of Land Act, 1864, charge his estates with moneys subscribed for the construction of railways or navigable canals; and for this purpose the provisions contained in sections seventy-eight to eighty-nine, both inclusive, of the Improvement of Land Act, 1864, shall apply, mutatis mutandis, to such subscriptions, as if the same had been subscribed for the construction of a railway or navigable canal.

Protection of rights.

9. Nothing in this Act shall be construed to authorise any landowner, or any water company, local authority, person, or persons authorised by any landowner, to injuriously affect any reservoir, canal, river, stream, or navigation, or the feeders

Secs. 9, 10.

thereof, or the supply, quality, or fall of water contained in any reservoir, canal, river, stream, or navigation, or in the feeders thereof, or any other water rights or easements in cases where any body of persons or person would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, canal, river, stream, navigation, feeders, or such supply, quality, or fall of water, or other water rights or easements, unless the landowner, water company, local authority, person, or persons first obtain the consent in writing of the body of persons or person so entitled as aforesaid.

Definitions.

10. In this Act the following words and expressions shall have the following meanings; that is to say:

"The Commissioners" means the Inclosure Commissioners of England and Wales, or the Commissioners of Public Works in Ireland, as the case may require;

"The Improvement of Land Act, 1864," means the 27th and 28th Vict., c. 114;

"Works for the supply of water" includes wells, pumps, reservoirs, cisterns, ponds, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, machinery, and things for supplying or used in supplying water;

"Water company" means any person or body of persons, corporate or unincorporate, supplying or who may hereafter supply water for his or their own profit;

"Local authority" means any authority having jurisdiction for any public local purpose.

The several words and expressions to which by the Improvement of Land Act, 1864, meanings are assigned, shall in this Act have the same respective meanings as in that Act.

ELECTRIC LIGHTING ACT, 1882.

45 & 46 VICT. c. 56.

ARRANGEMENT OF SECTIONS.

Section.
1. Short title.
2. Application of Act.
3. Granting of licenses authorising the supply of electricity.
4. Granting of Provisional Orders authorising the supply of electricity.
5. Making of rules as to application, &c., under Act.
6. Regulations to be inserted in licenses, &c.
7. Expenses of local authority.
8. Power of local authority to borrow money.
9. Accounts.
10. General powers of undertakers under license or Provisional Order.
11. Power for local authority to contract in certain cases and restrictions on assignments of powers, &c., of undertakers.
12. Incorporation of certain provisions of Clauses Consolidation Acts.
13. Restriction on breaking up of private streets, railways, and tramways.
14. Restrictions as to above-ground works.
15. Power to undertakers to alter position of pipes and wires.
16. Clause for protection of canals.
17. Compensation for damage.
18. Undertakers not to prescribe special form of lamp or burner.
19. Obligation on undertakers to supply electricity.
20. Charges for electricity.
21. Recovery of charges, &c.
22. Injuring works with intent to cut off supply of electricity.
23. Stealing electricity.
24. Power to enter lands or premises for ascertaining quantities of electricity consumed, or to remove fittings, &c.
25. Electric lines, &c., not to be subject to distress in certain cases.
26. Provision for protection of the Postmaster-General.
27. Purchase of undertaking by local authority.
28. Arbitration.
29. Power for Board of Trade to relieve gas undertakers from obligation to supply gas in certain cases.
30. Annual report by Board Trade.
31. Definition of local authority, &c.
32. Interpretation.
33. For the protection of mines.
34. Provision as to general Acts.
35. Saving for privileges of Postmaster-General.

As to Scotland.

36. Application of Act to Scotland.

As to Ireland.

37. Application of Act to Ireland.

Schedule.

ELECTRIC LIGHTING ACT, 1882.

45 & 46 VICT. c. 56.

An Act to facilitate and regulate the supply of Electricity for Lighting and other purposes in Great Britain and Ireland. [18*th August*, 1882.]

Secs. 1—3.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Electric Lighting Act, 1882.

Application of Act.

2. The provisions of this Act shall apply to every local authority (1), company (2), or person who may by this Act or any license (3) or Provisional Order (4) granted under this Act, or by any special Act to be hereafter passed (5), be authorised to supply electricity (6) within any area (in this Act referred to as "the undertakers") and to every undertaking so authorised, except so far as may be expressly provided by any such special Act; and every such license, Provisional Order, and special Act, is in this Act included in the expression "license order or special Act."

Granting of licenses authorising the supply of electricity.

3. The Board of Trade may from time to time license any local authority as defined by this Act (7), or any company or person, to supply electricity under this Act for any public or private purposes (8) within any area, subject to the following provisions:

(1.) The consent of every local authority having jurisdiction within the area or any part of the area within which a supply is licensed to be furnished shall be required to the application for a license, which consent such local authority is hereby authorised to give, with such conditions (if any) as, subject to the approval of the Board of Trade, the local authority may prescribe:

(2.) A license shall be for any period not exceeding seven years, but may, at or after the expiration of such license, be renewed from time to time for a like period with such consent as above mentioned upon such terms and conditions as the Board of Trade may determine (9):

(3.) "Public purposes" shall mean lighting any street or any place belonging to or subject to the control of the local authority, or any church or registered place of public worship, or any hall or building belonging to or subject to the control of any public authority, or any public theatre, but shall not include any other purpose to which electricity may be applied:

(1) See section 31 and Schedule.

(2) See section 32.

(3) See Form of License, *post*, p. 558.

(4) See Forms of Provisional Orders, *post*, pp. 507 and 534.

(5) See footnote to Gasworks Clauses Act, 1871, section 3, *ante*, p. 450. Prior to the passing of the General Act there had been special Acts passed for the lighting by electricity, amongst other places, of Blackpool, Liverpool, Over Darwen, Hull, Lancaster, Oldham, and Irvine Burgh.

(6) The definition of "electricity" in section 32 is rather loose, for it is defined to mean "electricity, electric current, or *any like agency*."

(7) See section 31.

(8) Lighting is the only "public purpose," see sub-section (3). "Private purposes" includes all purposes except "lighting" and the "transmission of telegrams." See sub-section (4).

(9) See Board of Trade Rules, *post*, p. 502.

(4.) "Private purposes" shall include any purposes whatever to which electricity may for the time being be applicable, not being public purposes, except the transmission of any telegram:

(5.) Every local authority, company, or person applying for a license (1) shall publish notice of their application by public advertisement in such manner and including such particulars as the Board of Trade may from time to time direct or approve; and such license shall not be granted by the Board of Trade until after the expiration of a period of three months from the date of the first publication of such advertisement, nor until opportunity has been given to all parties interested to make representations or objections to the Board of Trade with reference to the application:

(6.) No application for a license shall be made by any local authority (2) except in pursuance of a resolution to be passed at a special meeting of the local authority, and such special meeting shall only be held after one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given:

(7.) A license may, subject to the provisions of this Act, be granted to a local authority authorising them to supply electricity within any area although the same or some part thereof may not be included within their own district:

(8.) The license may make such regulations as to the limits within which and the conditions under which a supply of electricity is to be compulsory or permissive, and for enforcing the performance by the licensees of their duties in relation to such supply, and for the revocation of the license where the licensees fail to perform such duties, and generally may contain such regulations and conditions as the Board of Trade may think expedient:

(9.) Where in any area or part of an area in which any undertakers are authorised to supply electricity under any license the undertakers are not themselves the local authority, the license may contain any provisions and restrictions for enabling the local authority within whose jurisdiction such area or part of an area may be to exercise any of the powers of the undertakers under this Act with respect to the breaking up of any street (3) repairable by such local authority within such area or part of an area, and the alteration of the position of any pipes or wires being under such street, and not being the pipes or wires of the undertakers (4), on behalf and at the expense of the undertakers, and for limiting the powers and liabilities of the undertakers in relation thereto, which the Board of Trade may think expedient.

Granting of Provisional Orders authorising the supply of electricity.

4. The Board of Trade may, from time to time, by Provisional Order authorise any local authority, company, or person to supply electricity for any public or private purposes within any area, without requiring such consents as are required to the granting a license under this Act, and for such period, whether limited or unlimited, as the Board of Trade may think proper, but in all other respects

(1) See Board of Trade Rules with respect to applications for Licenses and Provisional Orders, *post*, p. 502.

(2) See form of application for a License, *post*.

(3) For meaning of the word "street," see section 32 and the following cases:—*L.* v. *Fullford*, *ante*, p. 127; *Le Neve* v. *The Vestry of Mile End Old Town*, *ante*, p. 46; S. E. & B. 1032; *London, Chatham & Dover Ry.* v. *Corporation of London*, 19 L. T. N. S. 250; *Pound* v. *The Plumstead Board*, L. R. 7 Q. B. 183, 41 L. J. M. C. 51, 25 L. T. N. S. 461, 20 W. R. 177; *Vestry of St. Mary, Islington* v. *Barrett*, L. R. 9 Q. B. 278, 43 L. J. Q. B. 100, 30 L. T. N. S. 11, 22 W. R. 402; *Souch* v. *East London Ry. Co.*, L. R. 16 Eq. 108; 42 L. J. Ch. 477; *Curtis* v. *Embery*, L. R. 7 Ex. 369; *Robinson* v. *Barton Local Board*, *ante*, p. 128. With respect to the breaking up of streets, see also rule ix. of the Board of Trade Rules, *post*, p. 503.

(4) See section 15.

Secs. 4—6.

subject to the like provisions as in the last section contained with respect to licenses, and subject also to the following provisions [1]:—

(1.) No Provisional Order shall authorise the supply of electricity by any undertakers within the district of any local authority (not being themselves the undertakers), unless notice that such Provisional Order has been or is intended to be applied for has been given to such local authority by the applicants in such manner as the Board of Trade may direct or approve [2] on or before the first day of July in the year in which such application is made; provided that in the case of any application made during the present year such notice shall be deemed to have been given in due time if the same is given within one month after the passing of this Act:

(2.) The Board of Trade may submit to Parliament for confirmation any Provisional Order granted by it in pursuance of this Act [3], but any such order shall be of no force unless and until it is confirmed by Act of Parliament:

(3.) If, while the Bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose as in the case of private Bill:

(4.) Any Act confirming any Provisional Order granted in pursuance of this Act may, on the application of the undertakers thereby authorised to supply electricity, be repealed, altered, or amended by any subsequent Provisional Order granted by the Board of Trade and confirmed by Parliament.

Making of rules as to application, &c., under Act.

5. The Board of Trade may from time to time make, and when made may rescind, alter, or repeal rules in relation to the applications for licenses or Provisional Orders [4], and to the payments to be made in respect thereof, and to the publication of notices and advertisements, and the manner in which and the time within which representations or objections with reference to any application are to be made, and to the holding of local inquiries [2] in such cases as they may think it advisable, and to any other matters arising under this Act.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the next session of Parliament.

Regulations to be inserted in licenses, &c.

6. The undertakers shall be subject to such regulations and conditions [1] as may be inserted in any licence, order, or special Act affecting their undertaking with regard to the following matters:

(*a.*) The limits within which and the conditions under which a supply of electricity is to be compulsory or permissive;

(*b.*) The securing a regular and efficient supply of electricity;

(*c.*) The securing the safety of the public from personal injury, or from fire or otherwise;

[1] See Board of Trade Rules, *post*, p. 502, and also forms of Provisional Orders, *post*, pp. 507 and 534.

[2] See rule viii., Board of Trade Rules, *post*, p. 503.

[3] Although the Provisional Orders are to be introduced by the Board of Trade, yet, in the event of opposition, there can be no doubt that in accordance with the usual practice which prevails with respect to disputed Provisional Orders, they will have to be supported in Committee by and at the expense of the private promoters who have applied for the Orders.

[4] See Board of Trade Rules, *post*, p. 502. The Board of Trade and Local Government Board are also empowered under their various Acts to hold local inquiries with regard to water and sewage schemes, the formation of districts, and other kindred matters. See also rule x., *post*, p. 504.

(*d.*) The limitation of the prices to be charged in respect of the supply of electricity;

(*e.*) The authorising inspection and inquiry from time to time by the Board of Trade and the local authority;

(*f.*) The enforcement of the due performance of the duties of the undertakers in relation to the supply of electricity by the imposition of penalties or otherwise, and the revocation of the license, order, or special Act where the undertakers have, in the opinion of the Board of Trade, practically failed to carry the powers granted to them into effect within a reasonable time, or discontinued the exercise of such powers; and

(*g.*) Generally with regard to any other matters in connection with the undertakings.

Provided always, that the Board of Trade may, from time to time, make such regulations as they may think expedient for securing the safety of the public from personal injury or from fire or otherwise (1), and may from time to time amend or repeal any regulations which may be contained in any such license, order, or special Act in relation thereto; and any regulations so made or amended by the Board of Trade shall, from and after the date thereof, have the like effect in every respect as though they had been originally inserted in the license, order, or special Act authorising the undertaking, and every regulation so repealed shall, from and after the date thereof, be repealed accordingly, but such repeal shall not affect any liability or penalty incurred in respect thereof prior to the date of such repeal or any proceeding or remedy which might have been had in relation thereto.

Any local authority within any part of whose district electricity is authorised to be supplied under any license, order, or special Act may, in addition to any regulations which may be made under the preceding provisions of this section for securing the safety of the public, from time to time make, rescind, alter, or repeal bye-laws (2) for further securing such safety; and there may be annexed to any breach of such bye-laws such penalties to be recovered in a summary manner as they may think necessary; Provided always, that no such bye-laws shall have any force or effect unless and until they have been confirmed by the Board of Trade and published in such manner as the Board of Trade may direct.

Expenses of local authority.

7. Any expenses incurred by a local authority under this Act, and not otherwise provided for, including any expenses incurred in connection with the obtaining by them, or any opposition to the obtaining by any other local authority, company, or person, of any license, order, or special Act under this Act, may be defrayed out of the local rate as defined in the schedule to this Act, and the local authority may from time to time cause such rates to be levied as may be necessary for the purpose of defraying such expenses; provided that where such local authority is a rural sanitary authority such expenses shall be deemed to be special expenses within the meaning of the Public Health Act, 1875 (3).

38 & 39 Vict. c. 55.

Power of local authority to borrow money.

8. A local authority authorised to supply electricity by any license, order, or special Act, may from time to time borrow money on such security, with such consent and subject to such provisions and restrictions with respect to borrowing and the repayment of loans, as are in the schedule to this Act in that behalf mentioned, and the money so borrowed shall be deemed to be borrowed under the enactments, subject to the provisions and restrictions of which it is borrowed, and the accounts of all receipts and expenditure by the local authority in pursuance of this Act, or any license, order, or special Act, shall be subject to such audit as is in the said schedule in that behalf mentioned: Provided always, that any moneys borrowed under this section by the local authority of any district to which the Local Loans Act, 1875 (4), extends, may, if it is thought fit, be borrowed in

38 & 39 Vict. c. 83.

(1) See rule iv., sub-section 8.

(2) See sections 182, 183, 184, 185, 187, and 188 of the Public Health Act, 1875, and notes thereto, *ante*, pp. 147—150.

(3) See sections 229 and 230 of the Public Health Act, 1875, and notes thereto, *ante*, p. 169, *et seq.*

(4) See the Local Loans Act, 1875, 38 & 39 Vict. c. 83, *post*.

Secs. 8—11.

manner provided in that Act; and in the construction of the said Act for the purposes of this Act the expression "prescribed" means prescribed by any conditions imposed by the authority whose consent is required to borrowing under this section.

Where any local authority is authorised by any Act to raise any money which they may be empowered to borrow for certain purposes by the issue of corporation or other stock, any money which a local authority may be authorised to borrow under this section may, if it is thought fit, be raised by them by the issue of such stock as aforesaid.

This section shall not apply to the mayor, commonalty, and citizens of the city of London or to the Metropolitan Board of Works, except in so far as the Metropolitan Board of Works may be concerned in the borrowing of any money by any vestry or district board (1).

Accounts.

9. The undertakers shall on or before the twenty-fifth day of March in every year fill up an annual statement of accounts of the undertaking made up to the thirty-first day of December then next preceding; and such statement shall be in such form and shall contain such particulars and shall be published in such manner as may from time to time be prescribed in that behalf by the Board of Trade.

The undertakers shall keep copies of such annual statement at their office, and sell the same to any applicant at a price not exceeding one shilling a copy (2).

In case the undertakers make default in complying with the provisions of this section, they shall be liable to a penalty not exceeding forty shillings for each day during which such default continues.

General powers of undertakers under license or Provisional Order.

10. The undertakers may, subject to and in accordance with the provisions and restrictions of this Act, and of any rules made by the Board of Trade in pursuance of this Act (3), and of any license, order, or special Act authorising or affecting their undertaking, and for the purpose of supplying electricity, acquire such lands (4) by agreement (5), construct such works, acquire such licenses for the use of any patented or protected processes, inventions, machinery, apparatus, methods, materials, or other things, enter into such contracts, and generally do all such acts and things as may be necessary and incidental to such supply.

Power for local authority to contract in certain cases and restrictions on assignments of powers, &c., of undertakers.

11. Any local authority who have obtained a license, order, or special Act for the supply of electricity, may contract with any company (6) or person (7) for the execution and maintenance of any works needed for the purposes of such supply, or for the supply of electricity within any area mentioned in such license, order, or special Act, or in any part of such area; but no local authority, company, or person shall by any contract or assignment transfer to any other company or person, or divest themselves of any legal powers given to them, or any legal liabilities imposed on them by this Act (7), or by any license, order, or special Act, without the consent of the Board of Trade.

(1) By section 183 (18 & 19 Vict. c. 120), vestries and district boards are empowered to borrow money on the security of their rates, subject to the sanction of the Metropolitan Board of Works having been previously obtained. The Metropolitan Board of Works (Loans) Act, 1875, authorises the Board to raise money and to make loans to vestries and district boards.

(2) See section 35, Gasworks Clauses Act, 1871, and notes thereto, *ante*, p. 455.

(3) See rule xii. of Board of Trade Rules, *post*, p. 504.

(4) "Land" includes easements in or relating to lands. See section 12, *post*.

(5) This Act contains no power for the compulsory acquisition of land.

(6) Gas and water companies, incorporated by a special Act, cannot contract except in the manner and subject to the conditions mentioned in such special Act or the general Act which controls the special Act: *Homersham* v. *Wolverhampton Waterworks Co.*, 6 Exch. 137, 20 L. J. Ex. 193, 6 Rail. Cas. 790.

(7) The extent to which local authorities will be held irresponsible at common law for the acts of their contractor is thus stated in Addison on Torts, 3rd ed., p. 197. "If any excavations or constructions of any kind are authorised to be made over or across a public thoroughfare, by private individuals or a public company, or by commissioners, and the

Sec. 12.

Incorporation of certain provisions of Clauses Consolidation Acts.

12. The provisions of the following Acts shall be incorporated with this Act; that is to say:

(1.) The Lands Clauses Acts (1), except the enactments with respect to the purchase and taking of lands otherwise than by agreement, and except the enactments with respect to the entry upon lands by the promoters of the undertaking; and

(2.) The provisions of the Gasworks Clauses Act, 1847, with respect to breaking up streets for the purpose of laying pipes (2), and with respect to waste or misuse of the gas or injury to the pipes and other works (3), except so much thereof as relates to the use of any burner other than such as has been provided or approved of by the undertakers; and — 10 & 11 Vict. c. 15.

(3.) Sections thirty-eight to forty-two inclusive, and sections forty-five and forty-six, of the Gasworks Clauses Act, 1871 (4). — 34 & 35 Vict. c. 41.

For the purposes of this Act, in the construction of all the enactments incorporated by this section "the special Act" means this Act inclusive of any license, order, or special Act; and the "promoters" or "undertakers," and "the undertaking," as the case may be, mean the undertakers and the undertaking respectively under this Act.

In the construction of the said Lands Clauses Act, "land" includes easements in or relating to lands.

In the construction of the said Gasworks Clauses Act, 1847, and the Gasworks Clauses Act, 1871, the said Acts shall be construed as if "gas" meant "electricity," and as if "pipe" meant "electric line," and "works" meant "works" as defined by this Act, and as if "the limits of the special Acts" meant the area within which the undertakers are authorised to supply electricity under any license, order, or special Act.

All offences, forfeitures, penalties, and damages under the said incorporated provisions of the said Acts or any of them may be prosecuted and may be recovered in manner by the said Acts respectively enacted in relation thereto, provided that sums recoverable under the provisions of section forty of the Gasworks Clauses Act, 1871, shall not be recovered as penalties, but may be recovered summarily as civil debts.

works are lawful in themselves, and can be done without injury to individuals and without creating any nuisance, and the persons directing the works to be executed employ a contractor to do the work, who selects the workmen and has the entire conduct and management of the work, the persons so employing the contractor and authorising the execution of the works are not themselves responsible for nuisances or injuries arising from the incompetence of the contractor or for the negligent execution of the works by him, his servants, or agents, or for damage from things done by the contractor or his workmen, which were never authorised or ordered to be done by the company or commissioners." See *Mersey Docks Trustees* v. *Gibbs*, L. R. 1 E. & I. App. 93, 35 L. J. Ex. 225, 12 Jur. N. S. 571, 14 L. T. N. S. 677; *Gray* v. *Pullen*, 32 L. J. Q. B. 169, 8 L. T. N. S. 201, 11 W. R. 616; *Knight* v. *Fox*, 5 Exch. 721, 20 L. J. Exch. 9; *Overton* v. *Freeman*, 11 C. B. 867, 21 L. J. C. P. 52; *Peachy* v. *Rowland*, 13 C. B. 182, 22 L. J. C. P. 81; and *Scott* v. *Manchester* (*Mayor, &c.*), 2 H. & N. 204, 26 L. J. Exch. 406.

For exceptions to the above general rule, however, see *Ellis* v. *Sheffield Gas Co.*, *Bower* v. *Peate*, *Percival* v. *Hughes*, *ante*, pp. 78, 79; *Burgess* v. *Gray*, 1 C. B. 578.

(1) See section 32 as to what is included in the expression "Lands Clauses Acts." The sections of these Acts which are principally applicable are sections 61—65 of the Act of 1845, which relate to the purchase of land by agreement. For decisions upon these sections, see Lands Clauses Acts, 1845, 8 Vict. c. 18, *post*.

(2) See Gasworks Clauses Act, 1847, sections 6—12 and notes thereto, *ante*, pp. 441—443.

(3) See Gasworks Clauses Act, 1847, sections 18—20 and notes thereto, *ante*, p. 444.

(4) See sections 38—42 Gasworks Clauses Act, 1871, and notes thereto, *ante*, pp. 456, 457.

Secs. 13–16.

Restriction on breaking up of private streets, railways, and tramways.

13. Nothing in this Act or in any Act incorporated therewith shall authorise or empower the undertakers to break up any street which is not repairable by such local authority, or any railway or tramway, without the consent of the authority, company, or person by whom such street, railway, or tramway is repairable, unless in pursuance of special powers in that behalf inserted in the license, order, or special Act, or with the written consent of the Board of Trade, and the Board of Trade shall not in any case insert any such special powers in any license or Provisional Order, or give any such consent until notice has been given to such authority, company, or person, by advertisement or otherwise, as the Board of Trade may direct, and an opportunity has been given to such authority, company, or person to state any objections they may have thereto (1).

Restrictions as to above-ground works.

14. Notwithstanding anything in this Act or in any Act incorporated therewith, the undertakers shall not be authorised to place any electric line above ground, along, over, or across any street, without the express consent of the local authority, and the local authority may require the undertakers to forthwith remove any electric line placed by them contrary to the provisions of this section, or may themselves remove the same, and recover the expenses of such removal from the undertakers in a summary manner; and where any electric line has been placed above ground by the undertakers in any position, a court of summary jurisdiction, upon complaint made, if they are of opinion that such electric line is or is likely to become dangerous to the public safety, may, notwithstanding any such consent as aforesaid, make an order (2) directing and authorising the removal of such electric line by such person and upon such terms as they may think fit.

Power to undertakers to alter position of pipes and wires.

15. Subject to the provisions of this Act and of the license, order, or special Act authorising them to supply electricity, and to any bye-laws made under this Act (3), the undertakers may alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers under this Act, on previously making or securing such compensation to the owners of such pipes or wires, and on complying with such conditions as to the mode of making such alterations as may before the commencement of such alterations be agreed upon between the undertakers and owners, or in case of difference as may be determined in manner prescribed by the license or Provisional Order authorising the undertakers to supply electricity, or where no such manner is prescribed as may be determined by arbitration (4), and any local or other public authority, company, or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such local or other public authority, company, or person in relation to such street or place, subject to the like provisions, conditions, and restrictions as are in this section contained with reference to the alteration of the position of any pipes or wires by the undertakers.

Clause for protection of canals.

16. If at any time after the undertakers have placed any works under, in, upon, over, along or across any canal, any person having power to construct docks, basins or other works upon any land adjoining to or near such canal, constructs any dock, basin or work on such land, but is prevented by the works of the undertakers from forming a communication for the convenient passage of vessels with or without masts between such dock, basin or other work, and such canal; or if the business of such dock, basin or other work is interfered with by reason or in consequence of any such works of the undertakers, then the undertakers at the request of such person, and on having reasonable facilities afforded them by him for placing works round such dock, basin or other work, under, in, upon, over, along or across land belonging to or under his control, shall remove and place their

(1) See Board of Trade Rules, rule vi., sub-sections (2) and (7), *post*, p. 503.

(2) This order is to be enforced in accordance with the provision contained in section 34, Summary Jurisdiction Act, 1879.

(3) See sections 182, 183, 184, 185, 187, and 188 of the Public Health Act, 1875, and notes thereto, *ante*, pp. 147—150.

(4) See section 28 and note thereto.

work accordingly. If any dispute arises between the undertakers and such person as to the facilities to be afforded to the undertakers, or as to the direction in which the works are to be placed, it shall be determined by arbitration (1).

Compensation for damage.

17. In the exercise of the powers in relation to the execution of works given them under this Act, or any license, order, or special Act, the undertakers shall cause as little detriment and inconvenience and do as little damage as may be, and shall make full compensation (2) to all bodies and persons interested for all damage sustained by them by reason or in consequence of the exercise of such powers, the amount and application of such compensation in case of difference to be determined by arbitration (1).

Undertakers not to prescribe special form of lamp or burner.

18. The undertakers shall not be entitled to prescribe any special form of lamp or burner to be used by any company or person, or in any way to control or interfere with the manner in which electricity supplied by them under this Act, and any license, order, or special Act is used: Provided always that no local authority, company, or person shall be at liberty to use any form of lamp or burner or to use the electricity supplied to them for any purposes, or to deal with it in any manner so as to unduly or improperly interfere with the supply of electricity supplied to any other local authority, company, or person by the undertakers, and if any dispute or difference arises between the undertakers and any local authority, company, or person entitled to be supplied with electricity under this Act, or any license, order, or special Act, as to the matters aforesaid, such dispute or difference shall be determined by arbitration (1).

Obligation on undertakers to supply electricity.

19. Where a supply of electricity is provided in any part of an area for private purposes (3), then, except in so far as is otherwise provided by the terms of the license, order, or special Act authorising such supply, every company or person within that part of the area shall, on application, be entitled to a supply on the same terms on which any other company or person in such part of the area is entitled under similar circumstances to a corresponding supply.

Charges for electricity.

20 The undertakers shall not, in making any agreements for a supply of electricity, show any undue preference to any local authority, company, or person, but, save as aforesaid, they may make such charges for the supply of electricity, as may be agreed upon, not exceeding the limits of price imposed by or in pursuance of the license, order, or special Act authorising them to supply electricity.

Recovery of charges, &c.

21. If any local authority, company, or person neglect to pay any charge for electricity or any other sum due from them to the undertakers in respect of the supply of electricity to such local authority, company, or person, the undertakers may cut off such supply, and for that purpose may cut or disconnect any electric line or other work through which electricity may be supplied, and may, until such charge or other sum, together with any expenses incurred by the undertakers in cutting off such supply of electricity as aforesaid, are fully paid, but no longer, discontinue the supply of electricity to such local authority, company, or person.

Injuring works with intent to cut off supply of electricity.

22. Any person who unlawfully and maliciously cuts or injures any electric line or work with intent to cut off any supply of electricity shall be guilty of felony, and be liable to be kept in penal servitude for any term not exceeding five years, or to be imprisoned with or without hard labour for any term not exceeding two years; but nothing in this section shall exempt a person from any proceeding for any offence which is punishable under any other provision of this Act, or under any other Act, or at common law, so that no person be punished twice for the same offence.

Stealing electricity.

23. Any person who maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes, or uses any electricity shall be guilty of simple larceny, and punishable accordingly (4).

(1) See section 28, and note thereto.

(2) See section 308 of the Public Health Act, 1875, and notes thereto, *ante*, p. 211.

(3) See section 3, sub-section 4.

(4) See Gasworks Clauses Act, 1847, section 18, and notes thereto, *ante*, p. 444, and Gasworks Clauses Act, 1871, section 28, and note thereto, *ante*, p. 454.

Secs. 24–26.

Power to enter lands or premises for ascertaining quantities of electricity consumed, or to remove fittings, &c.

24. Any officers appointed by the undertakers may at all reasonable times enter any premises to which electricity is or has been supplied by the undertakers, in order to inspect the electric lines, meters, accumulators, fittings, works, and apparatus for the supply of electricity belonging to the undertakers, and for the purpose of ascertaining the quantity of electricity consumed or supplied, or where a supply of electricity is no longer required, or where the undertakers are authorised to take away and cut off the supply of electricity from any premises, for the purpose of removing any electric lines, accumulators, fittings, works, or apparatus belonging to the undertakers, repairing all damage caused by such entry, inspection, or removal (1).

Electric lines, &c., not to be subject to distress in certain cases.

25. Where any electric lines (2), meters, accumulators, fittings, works, or apparatus belonging to the undertakers are placed in or upon any premises not being in the possession of the undertakers for the purpose of supplying electricity under this Act, or any license, order, or special Act, such electric lines, meters, accumulators, fittings, works, or apparatus shall not be subject to distress or to the landlord's remedy for rent of the premises where the same may be, nor to be taken in execution under any process of a court of law or equity, or any proceedings in bankruptcy against the person in whose possession the same may be (3).

Provision for protection of the Postmaster-General.

41 & 42 Vict. c. 76.

26. No alteration in any telegraph line of the Postmaster-General shall be made by the undertakers except subject to the provisions of the Telegraph Act, 1878 (4).

The undertakers shall not in the exercise of the powers conferred by this Act, or by any license, order, or special Act, lay down any electric line or do any other work for the supply of electricity whereby any telegraphic line of the Postmaster-General is or may be injuriously affected, and before any such electric line is laid down or work is done within ten yards of any part of a telegraphic line of the Postmaster-General (other than repairs or the laying of connections with mains where the direction of the electric lines so laid down crosses the line of the Post master-General at right angles at the point of shortest distance and continues the same for a distance of six feet on each side of such point) the undertakers or their agents, not more than twenty-eight nor less than seven clear days before commencing such work, shall give written notice to the Postmaster-General specifying the course and nature of the work, including the gauge of any electric lines, and the undertakers and their agents shall conform with such reasonable requirements, either general or special, as may from time to time be made by the Postmaster-General for the purpose of preventing any telegraphs of the Postmaster-General from being injuriously affected by the said work.

Any difference which arises between the Postmaster-General and the undertakers or their agents, with respect to any requirements so made, shall be determined by arbitration (5).

In the event of any contravention of, or wilful non-compliance with, this section by the undertakers or their agents, the undertakers shall be liable to a fine not exceeding ten pounds for every day during which such contravention or non-compliance continues, or, if the telegraphic communication is wilfully interrupted, not exceeding fifty pounds for every day on which such interruption continues.

Provided that nothing in this section shall subject the undertakers or their agents to a fine under this section, if they satisfy the Court having cognizance of the case that the immediate execution of the work was required to avoid an

(1) For a similar provision, see the Gasworks Clauses Act, 1871, section 21, *ante*, p. 453, and the Waterworks Clauses Act, 1847, section 57, *ante*, p. 426.

(2) See section 32.

(3) This statutory exemption is rendered necessary because electric lines, &c., are chattels, not fixtures: *Darly* v. *Harris*, 1 Q. B. 894, and *Reg.* v. *Lee* (*Inhabitants*), L. R. 1 Q. B. 241, 35 L. J. M. C. 105, 13 L. T. N. S. 704, 14 W. R. 311, and would therefore, in the absence of such an exemption, be subject to distress.

(4) See Telegraph Act, 1878, 41 & 42 Vict. c. 76, *post*.

(5) See section 28.

accident, or otherwise was a work of emergency, and that they forthwith served on the postmaster or sub-postmaster of the postal telegraph office nearest to the place where the work was done a notice of the execution thereof, stating the reason for executing the same without previous notice.

For the purposes of this section a telegraphic line of the Postmaster-General shall be deemed to be injuriously affected by a work if telegraphic communication by means of such line is, whether through induction or otherwise, in any manner affected by such work, or by any use made of such work.

For the purposes of this section, and subject as therein provided, sections two, seven, eight, nine, ten, eleven, and twelve of the Telegraph Act, 1878 (1), shall be deemed to be incorporated with this Act, as if the undertakers were undertakers within the meaning of those sections, without prejudice nevertheless to any operation which the other sections of the said Act would have had if this section had not been enacted.

Purchase of undertaking by local authority.

27. Where any undertakers are authorised by a Provisional Order or special Act to supply electricity within any area, any local authority within whose jurisdiction such area or any part thereof is situated may, within six months after the expiration of a period of twenty-one years, or such shorter period as is specified in that behalf in the application for the Provisional Order or in the special Act, from the date of the passing of the Act confirming such Provisional Order, or of such special Act, and within six months after the expiration of every subsequent period of seven years, or such shorter period as is specified in that behalf in the application for the Provisional Order or in the special Act, by notice in writing require such undertakers to sell, and thereupon such undertakers shall sell to them their undertaking, or so much of the same as is within such jurisdiction, upon terms of paying the then value of all lands, buildings, works, materials, and plant of such undertakers suitable to and used by them for the purposes of their undertaking within such jurisdiction, such value to be in case of difference determined by arbitration (2). Provided that the value of such lands, buildings, works, materials, and plant shall be deemed to be their fair market value at the time of the purchase, due regard being had to the nature and then condition of such buildings, works, materials, and plant, and to the state of repair thereof, and the suitability of the same to the purposes of the undertaking (3), and, where a part only of the undertaking is purchased, to any loss occasioned by severance; but without any addition in respect of compulsory purchase or of goodwill or of any profits which may or might have been or be made from the undertaking, or of any similar considerations. The Board of Trade may determine any other questions which may arise in relation to such purchase, and may fix the date from which such purchase is to take effect, and from and after the date so fixed, or such other date as may be agreed upon between the parties, all lands, buildings, works, materials, and plant so purchased as aforesaid shall vest in the local authority which has made the purchase, freed from any debts, mortgages, or similar obligations of such undertakers or attaching to the undertaking, and the powers of such undertakers in relation to the supply of electricity under this Act or such Provisional Order or special Act as aforesaid within such area or part thereof as aforesaid shall absolutely cease and determine, and shall vest in the local authority aforesaid.

Arbitration.

28. Where any matter is by this Act, or any license, order, or special Act, directed to be determined by arbitration (4), such matter shall, except as otherwise expressly provided, be determined by an engineer or other fit person to be nominated as arbitrator by the Board of Trade on the application of either party, and the expenses of the arbitration shall be borne and paid as the arbitrator directs.

(1) See Telegraph Act, 1878, 41 & 42 Vict. c. 76, *post*.

(2) See section 28.

(3) For a similar provision, see section 7 of the Artisans' and Labourers' Dwellings Act (1868) Amendment Act, 1879, *post*, p. 610.

(4) For the matters to be determined by arbitration under this Act, see sections 15, 16, 17, 18, 26 and 27.

Secs. 28–32.

Any license or Provisional Order granted under this Act shall be deemed to be a special Act within the meaning of the Board of Trade Arbitrations, &c., Act, 1874 (1).

Power for Board of Trade to relieve gas undertakers from obligation to supply gas in certain cases.

29. Where a supply of electricity is authorised in any area by any license, order, or special Act, and a supply of gas by any gas undertakers is also authorised within such area or any part thereof by any Provisional Order or special Act under the provisions of which such gas undertakers are under any general or limited obligation to supply gas upon demand (2), the Board of Trade may, upon the application of such gas undertakers, inquire into the circumstances of the case, and if they are satisfied that any specified part of such area is sufficiently supplied with electric light, and that the supply of gas in such specified part has ceased to be remunerative to the gas undertakers, and that it is just that such gas undertakers should be relieved from the obligation to supply gas upon demand as aforesaid, the Board of Trade may in their discretion make an order relieving the gas undertakers from such obligation, within such specified part of such area, either wholly or in part, and upon such terms and conditions as they may think proper; and from and after the date of such order such gas undertakers shall be so relieved accordingly. All expenses of the Board of Trade in connection with any such inquiry or order shall be borne and paid by the gas undertakers, upon whose application the inquiry or order was made.

Annual report by Board of Trade.

30. Not later than the first day of July in each year the Board of Trade shall lay before both Houses of Parliament a report respecting the applications to and proceedings of the Board of Trade under this Act during the year then last past.

Definition of local authority, &c.

31. In this Act, unless the context otherwise requires, the expressions "local authority" and "local rate" mean, as respects each district set forth in the first column of the schedule to this Act annexed, the authority and rate mentioned opposite to that district in the second and third columns of that schedule; and such schedule, and the notes appended thereto, shall be of the same validity as if enacted in the body of the Act.

Interpretation.

32. In this Act, unless the context otherwise requires—

The expression "electricity" means electricity, electric current, or any like agency:

The expression "electric line" means a wire or wires, conductor, or other means used for the purpose of conveying, transmitting, or distributing electricity with any casing, coating, covering, tube, pipe, or insulator enclosing, surrounding, or supporting the same, or any part thereof, or any apparatus connected therewith, for the purpose of conveying, transmitting, or distributing electricity or electric currents:

The expression "works" means and includes electric lines, also any buildings, machinery, engines, works, matters, or things of whatever description required to supply electricity and to carry into effect the object of the undertakers under this Act:

The expression "company" means any body of persons corporate or unincorporate:

8 & 9 Vict. c. 18. 23 & 24 Vict. c. 106. 32 & 33 Vict. c. 18.

The expression "Lands Clauses Acts" means the Lands Clauses Consolidation Acts, 1845, 1860, and 1869:

The expression "street" (3) includes any square, court, or alley, highway, lane, road, thoroughfare, or public passage, or place, within the area in which the undertakers are authorised to supply electricity by this Act or any license, order, or special Act:

32 & 33 Vict. c. 73.

The expression "telegram" has the same meaning as in the Telegraph Act, 1869 (4).

(1) See Board of Trade Arbitration Act, 1874, *post*, p. 505.

(2) See sections 11 and 24 of the Gasworks Clauses Act, 1871 (*ante*, pp. 451, 454), as to the obligations of gas undertakers to supply gas on demand.

(3) See note (3) to p. 487.

(4) See Telegraph Act, 1869, 41 & 42 Vict. c. 76, section 3, *post*.

A telephonic message has been held to be a telegram within the meaning of the Telegraph Acts, 1863 and 1869: *Att.-Gen.* v. *The Edison Telephone Company of London (Limited)* L. R. 6 Q. B. D. 244, 50 L. J. Q. B. 145, 43 L. T. N. S. 697, 29 W. R. 428.

33. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any electric line shall be laid to work such mines and minerals (1).

For the protection of mines.

34. Nothing in this Act shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of electricity which may be passed in this or any future session of Parliament.

Provision as to general Acts.

35. Nothing in this Act, or in any license, order, or special Act, shall affect the exclusive privileges conferred upon the Postmaster-General by the Telegraph Act, 1869, or authorise or enable any local authority, company, or person to transmit any telegram (2) or to perform any of the incidental services of receiving, collecting, or delivering telegrams, or give to any local authority, company, or person, any power, authority, or facility of any kind whatever, in connection with the transmission of telegrams, or the performance of any of the incidental services of receiving, collecting, or delivering telegrams.

Saving for privileges of Postmaster-General.

As to Scotland.

36. [*Application of Act to Scotland.*]

As to Ireland.

37. [*Application of Act to Ireland.*]

(1) See Public Health Act, 1875, section 334 and note thereto, *ante*, p 221.
(2) *Vide* section 32.

SCHEDULE.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose Consent is required to borrowing by Local authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
ENGLAND AND WALES						
The city of London and the liberties thereof.	The Mayor, Commonalty, and Citizens acting by the Commissioners of Sewers.	The consolidated sewers rate.				
Parts of the metropolis which the Metropolitan Board of Works are authorised to light.	The Metropolitan Board of Works.	The consolidated rate.				
Parish mentioned in Schedule A. to the Metropolis Management Act, 1855.	The vestry.	The lighting rate or other fund or rate applicable for lighting.	The local rate as herein defined.	The Metropolitan Board of Works.	Those contained in sections one hundred and eighty-three to one hundred and ninety-one (both inclusive) of the Metropolis Management Act, 1855.	That prescribed by section one hundred and ninety-five of the Metropolis Management Act, 1855.
District mentioned in Schedule B. to the Metropolis Management Act, 1855.	The district board.					

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose Consent is required to borrowing by Local Authority.	Provisions and restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
Urban sanitary district (1).	The urban sanitary authority (1).	The fund or rate applicable to the general purposes of the Public Health Act, 1875, in the district, or any other fund or rate applicable to lighting under any local Act.	The local rate as herein defined and any property of the local authority.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act, 1875.	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	In the case of boroughs (2), that prescribed by section two hundred and forty-six of the Public Health Act, 1875, and in the case of other urban sanitary authorities that prescribed by section two hundred and forty-seven of the same Act.
Rural sanitary district (1).	The rural sanitary authority (1).	The rate or rates out of which special expenses incurred in respect of the contributory place or places (1) comprised within the area of supply are payable under the Public Health Act, 1875.	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-three of the Public Health Act 1875.	Those contained in sections two hundred and thirty-three, two hundred and thirty-four, and two hundred and thirty-six to two hundred and thirty-nine (both inclusive) of the Public Health Act, 1875.	That prescribed by section two hundred and forty-eight of the Public Health Act, 1875.

NOTES.

(1.) "Urban sanitary district," "urban sanitary authority," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the Public Health Act, 1875.

(2.) "Borough" means any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled, "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and the Acts amending the same.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose consent is required to borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
		SCOTLAND.				
Places within the jurisdiction of any town council, and not subject to any such separate jurisdiction as hereinafter mentioned. Places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act, and not subject to such jurisdiction as hereinafter mentioned.	The town council The police commissioners or trustees.	The police or burgh assessment, or rate of the nature of a burgh assessment.	The local rate as herein defined.	One of Her Majesty's Principal Secretaries of State.	Those contained in section eighty-six of the Public Health (Scotland) Act, 1867.	That prescribed by sections seventy-seven and seventy-eight of the General Police and Improvement (Scotland) Act, 1862, provided that the expression "Commissioners" shall include town council.
Places within the jurisdiction or limits of any public commissioners or board (other than any of the bodies hereinbefore mentioned) charged by any local Act with the duty of lighting the district within their jurisdiction or limits with gas.	The commissioners or board.	The gas rates leviable by the commissioners or board.	The local rate as herein defined, and the rates, charges, and other securities provided by the local Act.	One of Her Majesty's Principal Secretaries of State.	Those contained in the local Act with respect to the borrowing of money for the purposes thereof.	That prescribed by the local Act.
Any county or part thereof over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend, and not within the jurisdiction or limits of such public commissioners or board as above mentioned.	The county road board.	The county road assessment.	The local rate as herein defined.	One of Her Majesty's Principal Secretaries of State.	Those contained in sections seventy-five to seventy-nine, both inclusive, of the Roads and Bridges (Scotland) Act, 1878.	That prescribed by section one hundred and twenty of the Roads and Bridges (Scotland) Act, 1878.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.	Security upon which Loans are to be contracted.	Authority whose consent is required to borrowing by Local Authority.	Provisions and Restrictions as to borrowing and the Repayment of Loans.	Mode of Audit of Accounts of Local Authority.
			IRELAND.			
Urban sanitary district (1).	The urban sanitary authority (1).	The rate or rates applicable to the general purposes of the Public Health (Ireland) Act, 1878, or any other fund or rate applicable to lighting under any Local Act.	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-seven of the Public Health (Ireland) Act, 1878.	Those contained in sections two hundred and thirty-seven, two hundred and thirty-eight and two hundred and forty to two hundred and forty-three (both inclusive) of the Public Health (Ireland) Act, 1878.	That prescribed by section two hundred and forty-eight of the Public Health (Ireland) Act, 1878.
Rural sanitary district (1).	The rural sanitary authority (1).	The rate or rates out of which special expenses incurred in respect of the contributory place or places (1) comprised within the area of supply are payable under the Public Health (Ireland) Act, 1878.	The local rate as herein defined.	The authority whose consent is required to loans under section two hundred and thirty-seven of the Public Health (Ireland) Act, 1878.	Those contained in sections two hundred and thirty-seven, two hundred and thirty-eight, and two hundred and forty to two hundred and forty-three (both inclusive) of the Public Health (Ireland) Act, 1878.	That prescribed by section two hundred and forty-eight of the Public Health (Ireland) Act, 1878.

NOTE.

(1.) "Urban sanitary district," "urban sanitary authority," "rural sanitary district," "rural sanitary authority," and "contributory place," have the meanings respectively assigned to them in the Public Health (Ireland) Act, 1878.

RULES

MADE BY THE BOARD OF TRADE WITH RESPECT TO APPLICATIONS FOR LICENSES AND PROVISIONAL ORDERS, &c.

Rule I.—No application for a license or for the renewal of a license can be entertained unless proof of the consent of the local authority to such application is given to the Board of Trade.

Rule II.—When applications for Provisional Orders authorising the supply of electricity within the district of any local authority are received by the Board of Trade from such local authority, and also from any other authority, company, or person, the Board of Trade will give a preference to the application of the local authority of the district in every case where, in the opinion of the Board of Trade, no special circumstances exist which render such a preference inexpedient.

Application and Deposit.

Rule III.—Every application for a license or Provisional Order must be made by memorial signed by, or on behalf of the applicants, headed with a short title descriptive of the proposed undertaking (corresponding with that at the head of the advertisement hereinafter mentioned) addressed to the Board of Trade, and praying for a license or Provisional Order. With the memorial must be deposited six copies of the license or order, as proposed by the applicants, with the schedule or schedules (if any) referred to therein.

Rule IV.—The deposited copies of the proposed license or order must be in print. They must be printed on one side only of the page of paper, so as to leave the back of the page blank, and each schedule annexed must begin a new page.

The names and addresses of the parliamentary agents or solicitors for the license or order must be printed on the outside of the draft.

There must be a notice at the end of the draft, stating that objections are to be made by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it "Electric Lighting Act," and that this letter is to be sent to the Board of Trade within two months from the date of the newspaper containing the first advertisement of the application.

The draft must contain amongst other things—

1. Address and description of the applicants.
2. A description of the proposed area of supply.
3. A statement of the purposes for which a supply is to be given, viz., any or all of the public or private purposes specified in section *three* of the Act.
4. A general description of the proposed works.
5. Provisions concerning the breaking up of streets not repairable by a local authority and concerning interference with railways and tramways, where powers are sought to be obtained by the license or order for those purposes.
6. Conditions of supply, including price, nature and amount of supply, obligation to supply, &c.
7. Period for which concession is sought.
8. Provisions for securing the safety of the consumer and of the public from injury by shock, fire, or otherwise.
9. Provisions for enforcing the performance by the undertakers of their duties in relation to the supply of electricity and for the revocation of the license or order where the undertakers fail to perform such duties.

The applicants are also to deposit a sufficient number of such printed drafts at offices in London and within the proposed area of supply to be specified in the advertisement, such copies to be there furnished to all persons applying for them, at a price of not more than one shilling each.

Rule V.—There must also be deposited with the memorial,—

A published map of the district on a scale of not less than one inch to a mile, or if there is no published map, then the best map procurable showing the boundaries of the proposed area of supply, and the streets and other places in, over, or along which it is proposed to place any electric lines or other works.

A copy of the said map is also to be deposited for public inspection—

In England or Ireland, in the office of the clerk of the peace for every county, riding, or division, and of the local authority of every district.

In Scotland in the office of the principal sheriff clerk, for every county, district, or division, and of the local authority of every district

in which the proposed area of supply or any part thereof is situate.

Rule VI.—There must also be deposited with the memorial,—

1. A list of the local authorities in whose districts the area of supply is situate.

2. A list of the streets not repairable by a local authority and of the railways and tramways (if any) which the applicants propose to take powers to break up.

3. A list of the canals and navigable rivers (if any) which the undertakers will be empowered under the license or order to cross.

4. A statement of the capital proposed to be expended and employed in connection with the undertaking, and the mode in which such capital is to be provided.

5. If the applicants are a company incorporated under the provisions of the Companies' Act, a copy of the memorandum and articles of association.

6. A fee of £50 by cheque payable to an "Assistant Secretary of the Board of Trade" to cover ordinary expenses. If in consequence of inquiries or otherwise additional expense is incurred, the amount will be charged to the applicants and must be paid by them in addition to the ordinary fee.

7. Where the undertakers under any license, order, or special Act desire the consent of the Board of Trade to enable them to break up any street not repairable by a local authority or any railway or tramway which they are not empowered to break up under such license, order, or special Act, the memorial must specially request such consent and must describe accurately the street, railway, or tramway which they propose to acquire power to break up.

Rule VII.—Where the approval or consent of any local authority is required to any application for a license or order, such approval or consent must be given by a resolution passed at a special meeting of the local authority held after one month's previous notice of the same, and of the purpose thereof, has been given in the manner in which notices of meetings of such local authority are usually given, and the fact that such a resolution was duly passed must be proved by furnishing a certificate signed by the secretary or clerk to such local authority embodying copies of the notice and of the resolution, and certifying that the notice was duly given and the resolution duly passed.

Rule VIII.—In any case where a local authority, company, or person is required by the Act to give notice to the local authority of the district, "in such manner as the Board of Trade may direct or approve," such notice shall be given in writing, and shall be served, either by leaving the same at the offices of the said local authority on or before the appointed day or by forwarding the same by post in a registered letter so that the same would in ordinary course of post be delivered on or before the appointed day.

Procedure.

Rule IX.—Applicants for a license or Provisional Order must proceed as follows, *subject in the case of a license to the application having been previously entertained by the Board of Trade, vide Rule I.:—*

They shall publish notice by advertisement of their application, or in the case of a Provisional Order, of their intended application, and every such advertisement shall contain the following particulars:

1. The objects of the application.

2. Address and description of applicants.

3. A general description of the nature of the proposed works.

4. A description of the proposed area of supply.

5. The names of the streets and other places in, over, or along which it is proposed to place any electric lines or other works.

6. A list of the streets not repairable by a local authority and of the railways and tramways (if any) which the applicants propose to take powers by the license or order to break up.

7. A list of the canals and navigable rivers which the undertakers will be empowered under the license or order to cross.

8. An office in London, and another office within the proposed area of supply, at which printed copies of the draft license or order when applied for, and of the license or order when made, can be obtained at a price of not more than one shilling each.

The advertisement is to be headed with a short title, descriptive of the undertaking (corresponding with that at the head of the memorial), and it must state that every local or other public authority, company, or person desirous of making any representation to the Board of Trade, or of bringing before them any objection respecting the application, may do so by letter addressed to the Board of Trade, marked on the outside of the cover enclosing it, "Electric Lighting Act," within two months from the date of the newspaper containing the first advertisement.

The advertisement is to be inserted, once at least in each of two successive weeks in one and the same newspaper, published and circulating in the proposed area of supply, or in such other newspaper as the Board of Trade may direct; and once at least in the London, Edinburgh, or Dublin Gazette, accordingly, as the proposed area of supply is situate in England, Scotland, or Ireland.

Rule X.—In all cases of applications for a license, renewal of license, or Provisional Order, to which objection is made by any person locally interested, the Board of Trade will, if either the applicants or the objectors so desire, hold a local inquiry of which due notice will be given.

Rule XI.—If any local or other public authority, company, or person, desires to have any clauses or other amendments inserted in the license or order, they must deliver the same to the parliamentary agents or solicitors for the order, and also to the Board of Trade on or before the time limited for bringing objections.

Rule XII.—When a license or Provisional Order is ready, and before the same is delivered, the applicants must deposit at the office of the Board of Trade a description of the lands (if any) which they propose to purchase for the purposes of the license or Provisional Order, and must produce to the Board of Trade the contracts for the purchase of all such lands.

Rule XIII.—When a license or Provisional Order has been made by the Board of Trade and delivered to the applicants, they shall forthwith deposit printed copies for public inspection in the offices specified in Rule V., and shall supply copies to all persons applying for the same, and shall further publish the same as the Board of Trade may direct.

Special Provisions as to Provisional Orders.

Rule XIV.—In the case of Provisional Orders the following additional regulations must be observed.

1. The advertisements must be inserted in October or November.

2. A copy of the advertisement and map must be deposited on or before the 30th November in the offices specified in Rule V., and at the Board of Trade.

The Memorial must be lodged on or before 21st December.

4. The parliamentary agents or solicitors for the order must be prepared to prove compliance with the provisions of the Act and these rules by the 25th January and all such proofs must be completed on or before the 25th February. Six days' notice will be given of the day and hour at which such agents or solicitors are to attend for the purpose at the Board of Trade, and printed forms of proof will accompany the notice. These forms should be filled up and brought with the requisite documents to the Board of Trade at the time fixed for receiving proof.

The Board of Trade, T. H. Farrer,
October 1882. Secretary.

Note.—*These Rules are with the following exceptions the same as those issued in August last.*

Rule V. The words "the lands which the applicants propose to take for the purposes of the license or order" have been omitted.

Rule IX. The wording of the first few lines of this Rule have been altered in order to make its meaning more clear.

BOARD OF TRADE ARBITRATIONS, INQUIRIES, &c.

37 & 38 VICT. c. 40.

An Act to amend the powers of the Board of Trade with respect to inquiries, arbitrations, appointments, and other matters under special Acts, and to amend the Regulation of Railways Act, 1873, *so far as regards the reference of differences to the Railway Commissioners in lieu of arbitrators.*

[30th July, 1874.]

Secs. 1—3.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as the Board of Trade Arbitrations, &c. Act, 1874.

Part I.

Board of Trade Inquiries, &c.

Power of Board of Trade as to inquiry.

2. Where, under the provisions of any special Act, passed either before or after the passing of this Act, the Board of Trade are required or authorised to sanction, approve, confirm, or determine any appointment, matter, or thing, or to make any order or to do any other act or thing for the purposes of such special Act, the Board of Trade may make such inquiry as they may think necessary for the purpose of enabling them to comply with such requisition or exercise such authority.

Where an inquiry is held by the Board of Trade for the purposes of this section, or in pursuance of any general or special Act passed either before or after the passing of this Act, directing or authorising them to hold any inquiry, the Board of Trade may hold such inquiry by any person or persons duly authorised in that behalf by an order of the Board of Trade, and such inquiry if so held shall be deemed to be duly held.

Expenses connected with arbitration, sanction, &c.

3. Where application is made in pursuance of any special Act passed either before or after the passing of this Act, to the Board of Trade to be arbitrators, or to appoint any arbitrator, referee, engineer, or other person, or to hold any inquiry, or to sanction, approve, confirm, or determine, any appointment, matter, or thing, or to make any order, or to do any other act or thing for the purposes of such special Act, all expenses incurred by the Board of Trade in relation to such application and the proceedings consequent thereon, shall, to such amount as the Board of Trade may certify by their order to be due, be defrayed by the parties to such application, and (subject to any provision contained in the said special Act) shall be defrayed by such of the parties as the Board of Trade may by order direct, or if so directed by an order of the Board of Trade shall be paid as costs of the arbitration or reference.

The Board of Trade may, if they think fit, on or at any time after the making

Secs. 3—8.

of the application, by order require the parties to the application, or any of them, to pay to the Board of Trade such sum as the Board of Trade think requisite for or on account of those expenses, or to give security to the satisfaction of the Board of Trade for the payment of those expenses on demand, and if such payment or security is not made or given may refuse to act in pursuance of the application.

All expenses directed by an order of the Board of Trade or an award in pursuance of this section to be paid may be recovered in any court of competent jurisdiction as a debt, and if payable to the Board of Trade, as a debt to the Crown, and an order of the Board of Trade shall be conclusive evidence of the amount of such expenses.

Meaning of "special Act."

4. In this part of this Act the term "special Act" means a local or local and personal Act, or an Act of a local and personal nature, and includes a provisional order of the Board of Trade confirmed by Act of Parliament and a certificate granted by the Board of Trade under the Railways Construction Facilities Act, 1864.

Order of Board of Trade may be in writing.

An order of the Board of Trade for the purposes of this part of this Act, or of any such special Act as is referred to in this part of this Act, may be made by writing under the hand of the President or of one of the secretaries of the Board.

Repeal of 35 & 36 Vict. c. 18.

5. The Act of the session of the thirty-fifth and thirty-sixth years of the reign of Her present Majesty, chapter eighteen, intituled "An Act for regulating inquiries by the Board of Trade," is hereby repealed, without prejudice to anything done or suffered under that Act.

Part II.

Reference to Railway Commissioners.

Power of Board of Trade to appoint Railway Commissioners to be arbitrators or umpire.

6. Where any difference to which a railway company or canal company is a party is required or authorised under the provisions of any general or special Act passed either before or after the passing of this Act, to be referred to the arbitration of or to be determined or settled by the Board of Trade, or some person or persons appointed by the Board of Trade, the Board of Trade may, if they think fit, by order in writing under the hand of the President or one of the secretaries of the Board, refer the matter for the decision of the Railway Commissioners, and appoint them arbitrators or umpire, as the case may be, and thereupon the Commissioners for the time being shall have the same powers as if the matter had been referred to their decision in pursuance of the Regulation of Railways Act, 1873, and also any further powers which the Board of Trade, or an arbitrator or arbitrators, or umpire, appointed by the Board of Trade, would have had for the purpose of the arbitration, if the difference had not been referred to the Commissioners: Provided always, that this section shall not apply to any case in which application is made to the Board of Trade for the appointment of an umpire under the twenty-eighth section of "The Lands Clauses Consolidation Act, 1845."

Declaration as to powers of Commissioners in arbitrations.

7. Where any difference is referred for the decision of the Commissioners in pursuance of the Regulation of Railways Act, 1873, as amended by this part of this Act, the Commissioners shall have the same power by their decision of rescinding, varying, or adding to any award or other decision previously made by any arbitrator or arbitrators (including therein the Board of Trade) with reference to the same subject-matter as any arbitrator or arbitrators would have had if the difference had been referred to him or them.

Duration, &c., of part of Act, and construction with 36 & 37 Vict. c. 48.

8. This part of this Act shall be construed as one with the Regulation of Railways Act, 1873, and shall continue in force for the same time as that Act and no longer, but the expiration of this part of this Act shall not affect the validity of anything done before such expiration.

The Regulation of Railways Act, 1873, together with this part of this Act, may be cited as the Regulation of Railways Acts, 1873 and 1874.

FORM OF COMPANY PROVISIONAL ORDER.[1]

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(2) ELECTRIC LIGHTING.

Provisional Order authorising the Company, , to erect and maintain Electric Lines and Works, and to supply Electricity within the parish of in the county of .

Preliminary.

Secs. 1—3.

Short title.

1. This Order may be cited as "The (2) Electric Lighting Order, 1883."

Interpretation.

2. This Order is to be read and construed subject in all respects to the provisions of the Electric Lighting Act, 1882, and of any other Acts or parts of Acts incorporated therewith, which said Act and Acts and parts of Acts are in this Order collectively referred to as "the principal Act"; and the several words, terms, and expressions to which by the Electric Lighting Act, 1882, meanings are assigned shall have in this Order the same respective meanings, provided that in this Order—

The expression "main" shall mean any continuous metallic conductor which may be laid down by the undertakers in any street or public place, and through which electricity may be supplied, or intended to be supplied by the undertakers for the purposes of general supply, or for charging storage batteries used for the purposes of general supply:

The expression "service line" shall mean any continuous metallic conductor through which electricity may be supplied, or intended to be supplied by the undertakers to any particular consumer on the parallel system, either from any main or directly from the premises of the undertakers:

The expression "charging main" shall mean a main which for the time being is being used solely for the purpose of charging storage batteries:

The expression "distributing main" shall mean the portion of any main which is used for the purpose of giving origin to service lines for the purposes of general supply:

The expression "general supply" shall mean the supply of electricity to ordinary consumers, and, unless otherwise specially agreed with the local authority, to the public lamps, but shall not include the supply of electricity to any one or more particular consumers under special agreement:

The expressions "Schedule A.," "Schedule B.," "Schedule C.," and "Schedule D." shall mean the Schedules A., B., C., and D. to this Order annexed respectively.

Commencement of Order.

3. This Order shall come into force and have effect upon the day when the Act confirming this Order is passed, which date is in this Order referred to as "the commencement of this Order."

(1) This and the following Order (at p. 534) are two of several Orders made by the Board of Trade and confirmed by Parliament in the Session of 1883. This Order was confirmed by the statute, 46 & 47 Vict. c. 222.

(2) The name of the place should be inserted.

Secs. 4—7.

Address and Description of the Undertakers.

Address and description of undertakers.

4. The undertakers for the purpose of this Order are the Company, , being a company, &c., and having its registered office at , and having its capital divided into shares of each.

Provided that if the undertaking or any part thereof is at any time purchased by or transferred to any other body or persons in accordance with the provisions of this Order, or of the principal Act, such body or persons shall, from the date of such purchase or transfer, be the undertakers in relation to such undertaking or part thereof for the purposes of this Order in lieu of the Company above mentioned.

Area of Supply (1).

Area of supply.

5. The area within which the undertakers are authorised to supply electricity under this Order shall be the whole of the area included in Schedule A. (which said area is more particularly delineated upon the map deposited at the Board of Trade by the undertakers together with this Order, and thereon coloured yellow and red) together with so much of the area included in Schedule B. (which said area is more particularly delineated upon the map above mentioned, and thereon edged round with blue) as may hereafter be added to the area of supply in accordance with the direction of the Board of Trade as by this Order provided.

Extension of area of supply.

6. At any time after the commencement of this Order the undertakers may apply to the Board of Trade to direct that any part or parts of the area included in Schedule B., and not removed from the operation of this Order as hereinafter mentioned, shall be added to the area of supply.

Notice of every such application shall be published by public advertisement once at least in each of two successive weeks in some one and the same local newspaper, and shall be served upon the local authority.

Where any such application has been made the Board of Trade upon being satisfied that such notice has been duly published, and served as aforesaid, and after giving an opportunity to the local authority to make representations or objections with reference to the application, may at the expiration of a period of one month after the publication of the first of such advertisements, direct all or any part of the additions to the area of supply therein specified to be made, and the area of supply shall be extended accordingly: Provided that if the Board of Trade are of opinion that such additions or some of them have not been reasonably or fairly selected, having regard to the future development of electric lighting in the district, they may refuse to direct the same to be added to the area of supply, except upon the terms that some other part or parts of the area included in Schedule B. should also be added to the area of supply.

Removal of certain parts of area included in Schedule B. from operation of Order.

7. If at any time after the expiration of a period of two years after the commencement of this Order the local authority should be desirous that any part or parts of the area included in Schedule B. which may not for the time being be included in the area of supply should be added to the area of supply, they may serve a notice upon the undertakers requiring them to apply to the Board of Trade to direct that such part or parts as particularly specified in such notice shall be added to the area of supply; and if the undertakers for the period of three months after the service of such notice upon them as aforesaid refuse or neglect to apply to the Board of Trade to direct that such part or parts shall be added to the area of supply in compliance with the terms of such notice, the Board of Trade, upon the application of the local authority, and upon being satisfied that such notice has

(1) These clauses are for the purpose of granting powers to the undertakers of enlarging the area of their operations without necessarily having to come for a new Provisional Order. It is impossible to foresee how far this precedent will be followed in future years. This probably will be adhered to until electric lighting has become a well-known branch of industry, the capabilities and profits of which are thoroughly known.

been duly served, and that such refusal or neglect has continued for the period aforesaid, may direct that such part or parts, or any portion thereof, be removed from the operation of this Order, either absolutely or subject to the contingency of a license or Provisional Order being obtained by some other authority, or by some company or person, authorising them to supply electricity within such part or parts or portion thereof, and may order any costs and expenses incurred by the local authority in connection with any such application by them as aforesaid to be paid to the local authority by the undertakers; and where any such part or parts or portion thereof may have been removed from the operation of this Order under the provisions of this section, the powers of the undertakers to apply to the Board of Trade to direct that such part or parts or portion thereof, as the case may be, shall be added to the area of supply shall absolutely cease and determine from and after the date when such removal is directed to take place.

Capital (1).

Separate capital for undertaking.

8. The undertakers, within a period of six months after the commencement of this Order, and before exercising any of the powers by this Order conferred on them in relation to the execution of works, shall cause a sum of three thousand five hundred pounds to be appropriated as a separate capital for the purposes of the undertaking, such appropriation being effected either by a special resolution setting aside a portion of the capital of the undertakers, or in such other manner as may be approved of by the Board of Trade, with the consent of the local authority, and they shall also within the period aforesaid deposit or secure to the satisfaction of the Board of Trade a sum of three hundred and fifty pounds in respect of the said sum so appropriated as aforesaid.

If the undertakers fail to appropriate or to deposit or secure any such sum as aforesaid, in accordance with the provisions of this section within the said period of six months, or such extended period as may from time to time be approved of by the Board of Trade, this Order may be revoked by the Board of Trade upon such terms as they may think just.

Any sum deposited or secured by the undertakers under the provisions of this section shall be repaid or released to them from time to time in sums of not less than one hundred pounds, when and so soon as it may be certified by an inspector to be appointed by the Board of Trade that amounts equal to the sums so to be repaid or released have been expended by the undertakers upon works executed for the purposes of the undertaking, or that distributing mains have been duly laid down in accordance with the provisions of this Order in every street or part of a street specified in that behalf in Schedule A., or at such earlier dates and by such instalments as may from time to time be approved of by the local authority.

Separate capital to be increased when area of supply added to.

9. Where any part or parts of the area included in Schedule B. may be hereafter added to the area of supply by the direction of the Board of Trade under the provisions of this Order, the undertakers, within a period of six months after the date when such addition is directed to take effect, and before exercising any of the powers by this Order conferred on them in relation to the execution of works within the part or parts so added, shall cause the separate capital appropriated for the purposes of the undertaking to be increased by such a sum as may be prescribed in that behalf by the Board of Trade; such appropriation being effected in some such manner as in the last section mentioned; and shall also within the period aforesaid deposit and secure to the satisfaction of the Board of Trade such sum as may be prescribed in that behalf by the Board of Trade in respect of the said increase of the separate capital so prescribed as aforesaid.

If in any case the undertakers fail to appropriate or to deposit or secure the sums prescribed in that behalf respectively as aforesaid in accordance with the provisions of this section within the said period of six months after the date

(1) These clauses varied considerably in different Orders. The present ones may be taken as the standard form, which will be little departed from without the consent of the local authorities.

Secs. 9–12.

when any such addition as aforesaid has been directed to take effect or such extended period as may from time to time be approved of by the Board of Trade, this Order may be revoked by the Board of Trade as to the whole or (with the consent of the undertakers) any part of such addition to the area of supply upon such terms as they may think just.

Any sum deposited or secured by the undertakers under the provisions of this section shall be repaid or released to them when and so soon as they have executed such works (if any) as may be prescribed in that behalf by the Board of Trade, or at such earlier dates and by such instalments as may be approved of by the local authority.

Separate capital to be applied for purposes of undertaking.

10. The undertakers shall, except with the special approval of the Board of Trade, to be previously given, at all times cause such sums as may have been appropriated as a separate capital for the purposes of the undertaking, together with such increases thereof as may from time to time be made in accordance with the provisions of the last preceding section, to be kept appropriated for the said purposes, and shall keep accounts thereof distinct from the accounts kept by them in respect of any other undertaking.

If the undertakers make default in complying with any of the requirements of this section in respect of the appropriation of any capital for the purposes of the undertaking, this Order may be revoked by the Board of Trade, if they think fit, upon such terms as they may think just.

Nature and Mode of Supply (1).

Description of systems of supply.

11. Subject to the provisions of this Order, and of the principal Act, the undertakers may supply electricity within the area of supply for all public and private purposes as defined by the said Act.

Such electricity may be supplied by means of any one or more of the following systems:—

(*a.*) The "parallel system," that is to say, a system under which the electricity used by each consumer is drawn off from a double series of mains (in this Order referred to as "the positive and negative mains") in connection respectively with the positive and negative poles of the immediate source of supply by means of service lines forming a series of parallel circuits.

(*b.*) The "series system," that is to say, a system under which the whole current is utilised at various points situated successively in the same circuit, and is not divided up for the purpose of utilisation into different parallel circuits which supply different consumers:

(*c.*) Any other system which may be approved of by the Board of Trade either for general or special use.

Provided that under no such system shall the undertakers permit any part of any circuit to be connected with earth, except so far as may be necessary for carrying out the provisions of this Order as regards the regulations for safety and as regards testing, unless such connection is hereafter approved of by the Board of Trade, with the concurrence of the Postmaster-General, either for general use or for individual cases, and then subject only to such regulations as the Board of Trade may from time to time impose.

Works (2).

Powers for execution of works.

12. Subject to the provisions of this Order and the principal Act, the undertakers may from time to time exercise all or any of the powers conferred on them by this Order and the principal Act, and may break up and otherwise interfere with the several railways and tramways specified in Schedule D. to this Order, so far as the same may be or be upon any land dedicated to public use, and they may

(1) These clauses are standard ones which are in all Orders, and will probably be used in all cases.

(2) Standard clauses.

from time to time construct distributing boxes in any street for the purpose of supplying electricity.

Every such distributing box shall be for the exclusive use of the undertakers and under their sole control, except so far as the Board of Trade may otherwise order, and shall be used by the undertakers only for the purpose of leading off service lines and other distributing conductors, or for examining, testing, regulating, measuring, directing, or controlling the supply of electricity, or for examining or testing the condition of the mains or other portions of the electric lines or works, or for other like purposes connected with the undertaking, and the undertakers may place therein meters, switches, and any other suitable and proper apparatus for any of the above purposes, and may maintain and use the same.

Notice of works, with plan, to be served on the Postmaster-General and local authority.

13. Where the exercise of any of the powers of the undertakers in relation to the execution of any works (including the construction of distributing boxes) will involve the placing of any works in, over, along, or across any street or public bridge, the following provisions shall have effect:—

(*a.*) One month before commencing the execution of such works (not being the repairs, renewals, or amendments of existing works of which the character and position are not altered), the undertakers shall serve a notice upon the Postmaster-General and the local authority, describing the proposed works, together with a plan of the works showing the mode and position in which such works are intended to be executed, and the manner in which it is intended that such street or bridge, or any sewer, drain, or tunnel therein or thereunder should be interfered with, and shall, upon being required to do so by the Postmaster-General or the local authority, from time to time give him or them any such further information in relation thereto as he or they may desire.

(*b.*) The Postmaster-General or the local authority may in his or their discretion approve of any such works or plan, with or without any amendments or alterations, or disapprove the same, and may give notice of such approval or disapproval to the undertakers.

(*c.*) Where the Postmaster-General or the local authority disapprove of any such works or plan, the undertakers may appeal to the Board of Trade against such disapproval, and the Board of Trade may inquire into the matter and may allow or disallow such appeal, and approve any such works or plan, with or without any amendments or alterations, or disapprove the same: Provided that nothing in this Order shall authorise the undertakers to place any electric line above ground, along, over, or across any street without the express consent of the local authority.

(*d.*) If the Postmaster-General or the local authority fail to give any such notice of approval or disapproval to the undertakers within three weeks after the service of the notice upon them, he or they shall be deemed to have approved of such works or plan.

(*e.*) Notwithstanding anything in this Order or the principal Act, the undertakers shall not be entitled to execute any such works as above specified, except so far as the same may be of a description and in accordance with a plan which has been approved or is to be deemed to have been approved by the Postmaster-General and the local authority, or by the Board of Trade as above mentioned under this Order; but where any such works and such plan are so approved or to be deemed to be approved, the undertakers may cause such works to be executed in accordance with such plan, subject in all respects to the provisions of this Order and of the principal Act.

(*f.*) If the undertakers make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of this Order or the principal Act) make full compensation to the Postmaster-General and the local authority for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for

Secs. 13, 14.

every day after the first day during which such default continues; provided that the undertakers shall not be subject to any such penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

As to streets not repairable by the local authority, railways, &c.

14. Where the exercise of the powers of the undertakers in relation to the execution of any works will involve the placing of any works in, over, along, or across any street or part of a street not repairable by the local authority, or over or under any railway, tramway, or canal, the following provisions shall have effect, unless otherwise agreed between the parties interested:—

(*a.*) One month before commencing the execution of any such works (not being the repairs, renewals, or amendments of existing works of which the character and position are not altered) the undertakers shall, in addition to any other notices which they may be required to give under this Order or the principal Act, serve a notice upon the authority, company, or persons liable to repair such streets or parts of streets, or the authority, company, or persons for the time being entitled to work such railway or tramway, or the owners of such canal, as the case may be, (in this section referred to as the "owners,") describing the proposed works, and stating the amount of compensation proposed to be made in respect thereof, and the manner in which such compensation is proposed to be paid or secured, together with a plan of the works showing the mode and position in which such works are intended to be executed and placed, and shall upon being required to do so by any such persons as aforesaid, from time to time give them any such further information in relation thereto as they may desire.

(*b.*) Every such notice shall contain a reference to this section, and direct the attention of the owners to whom it is given to the provisions thereof.

(*c.*) Within three weeks after the service of any such notice and plan upon any owners, such owners may, if they think fit, serve a requisition upon the undertakers requiring that any question in relation to such works and any other question arising upon such notice or plan as aforesaid shall be settled by arbitration; and thereupon such question shall be settled by arbitration accordingly.

(*d.*) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of such street, railway, tramway, or canal, and may, if he thinks fit, require the undertakers to execute any temporary or other works so as to avoid interference with any traffic so far as may be possible.

(*e.*) Where no such requisition as in this section mentioned is served upon the undertakers, or where, after any such requisition has been served upon them, any question required to be settled by arbitration has been so settled, the undertakers, upon paying or securing any compensation which they may be required to pay or secure in the manner proposed by them or settled by arbitration as aforesaid, may cause the works specified in such notice and plan as aforesaid to be executed, and may from time to time repair, renew, and amend the same (provided that their character and position are not altered), but subject in all respects to the provisions of this Order and the principal Act, and only in accordance with the notice and plan so served by them as aforesaid or such modifications thereof respectively as may have been settled by arbitration as hereinbefore mentioned, or as may be agreed upon between the parties.

(*f.*) If the undertakers make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they be liable to make under the provisions of this Order or the principal Act) make full compensation to the owners affected thereby for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to

a further penalty not exceeding five pounds for every day after the first day during which such default continues; provided that the undertakers shall not be subject to any such penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

As to alteration of pipes, wires, &c., under streets.

15. The undertakers may from time to time alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers under the principal Act or this Order; and any local or other public authority, company, or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such local authority, company, or person in relation to such street or place, subject to the following provisions, unless otherwise agreed between the parties interested:—

(*a.*) One month from commencing any such alteration the undertakers, or such local or other public authority, company, or person (as the case may be), in this section referred to as "the operators," shall serve a notice upon the authority, company, or persons for the time being entitled to such pipes, wires, electric lines, or works (as the case may be), in this section referred to as the "owners," describing the proposed alteration, and stating the amount of compensation proposed to be made in respect thereof, and the manner in which such compensation is proposed to be paid or secured, together with a plan showing the manner in which it is intended that such alterations shall be made, and shall, upon being required to do so by any such owners, from time to time give them any such further information in relation thereto as they may desire.

(*b.*) Within three weeks after the service of any such notice and plan upon any owners, such owners may, if they think fit, serve a requisition upon the operators requiring that any question in relation to such works and any other question arising upon such notice or plan as aforesaid shall be settled by arbitration; and thereupon such question shall be settled by arbitration accordingly.

(*c.*) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of such pipes, wires, electric lines, or works, and may, if he thinks fit, require the operators to execute any temporary or other works so as to avoid interference with any purpose for which such pipe, wire, electric line, or work is used so far as may be possible.

(*d.*) Where no such requisition as in this section mentioned is served upon the operators, the owners shall be held to have agreed to the notice or plan served on them as aforesaid, and in such case, or where, after any such requisition has been served upon them, any question required to be settled by arbitration has been so settled, the operators, upon paying or securing any compensation which they may be required to pay or secure in the manner proposed by them or settled by arbitration as aforesaid, may cause the alterations specified in such notice and plan as aforesaid to be made, but subject in all respects to the provisions of this Order and the principal Act, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been settled by arbitration as hereinbefore mentioned, or as may be agreed upon between the parties.

(*e.*) At any time before any operators are entitled to commence any such alterations as aforesaid the owners may serve a statement upon them, stating that they desire to execute such alterations themselves, and where any such statement has been served upon the operators they shall not be entitled to proceed themselves to execute such alterations except where they have notified to such owners that they require them to execute such alterations, and such owners have refused or neglected to comply with such notification as hereinafter provided.

Secs. 15, 16.

(*f.*) Where any such statement as last aforesaid has been served upon the operators, they shall not more than forty-eight hours and not less than twenty-four hours before the execution of such alterations is required to commence, serve a notification upon the owners stating the time when such alterations are required to be commenced, and the manner in which such alterations are required to be made.

(*g.*) Upon receipt of any such notification as last aforesaid, the owners may proceed to execute such alterations as required by the operators subject to the like restrictions and conditions as the operators would themselves be subject to in executing such alterations so far as the same may be applicable.

(*h.*) If the owners decline, or for twenty-four hours after the time when any such alterations are required to be commenced, neglect to comply with such notification, the operators may themselves proceed to execute such alterations in like manner as they might have done if no such statement as aforesaid had been served upon them.

(*i.*) All expenses properly incurred by any owners in complying with any notification of any operators under the last preceding sub-section shall be repaid to them by such operators, and may be recovered summarily before any court of summary jurisdiction, who shall have power to determine the amount thereof.

(*j.*) Any owners may, if they think fit, by any statement served by them upon any operators under this section, require the operators to give them such security for the repayment to them of any expenses to be incurred by them in executing any alterations as above mentioned, as may be agreed upon between such owners and operators, or in default of agreement as may be determined by arbitration, and where any operators have been so required to give security they shall not be entitled to serve a notification upon the owners requiring them to execute such alterations until such security has been duly given.

(*k.*) If the operators make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of this Order or the principal Act) make full compensation to the owners affected thereby for any loss, damage, or penalty which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues; provided that the operators shall not be subject to any such additional penalties as aforesaid if the Court having cognizance of the case are of opinion that the case was one of emergency, and that the operators complied with the requirements of this section so far as was reasonable under the circumstances.

Laying of electric lines, pipes, &c., near those of gas or water company or of undertakers.

16. Whenever the undertakers require to dig or sink any trench for laying down any new electric lines (other than service lines) or other works near to which any pipe belonging to any gas or water company, or any branch or service pipe for the supply of gas or water has been lawfully placed, or where any gas or water company require to dig or sink any trench for laying down any new mains or pipes other than service pipes or other apparatus near to which any electric lines or works of the undertakers have been lawfully placed, the undertakers or such gas or water company (as the case may be), in this section referred to as the "operators," shall, unless otherwise agreed between the parties interested, give to such gas or water company, or to the undertakers (as the case may be), in this section referred to as "the owners," not more than forty-eight hours' and not less than twenty-four hours' notice before commencing to dig or sink such trench as aforesaid, and such owners shall be entitled by their officers to superintend the digging or sinking of such trench, and the operators shall conform with such reasonable requirements as may from time to time be made by the owners or such officer for the protection of every such pipe, electric line, or work and for securing

the same from injury, and they shall also repair any damage that may be done thereto.

If the operators make default in complying with any of the requirements or restrictions of this section, they shall make full compensation to all owners affected thereby for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues: Provided that the operators shall not be subject to any such penalty if the court having cognizance of the case are of opinion that the case was one of emergency and that the operators complied with the requirements and restrictions of this section so far as was reasonable under the circumstances, or that the default in question was due to the fact that the operators were ignorant of the position of the pipe, electric line, or work affected thereby, and that such ignorance was not owing to any negligence on the part of the operators.

For the purposes of this section the expression "gas or water company" shall include any local authority or other body supplying gas or water.

For protection of telephone companies, &c.

17. Seven days before commencing to lay down any electric line, or to supply electricity through any electric line in any manner whereby the work of telegraphic or telephonic communication through any wires or lines lawfully laid down or placed in any position may be injuriously affected, the undertakers shall, unless otherwise agreed between the parties interested, give to the persons for the time being entitled to such wires or lines notice in writing specifying the course, nature, and gauge of such electric lines, and the amount and nature of the current intended to be sent along the same, and the extent to and manner in which, if at all, earth returns are proposed to be used; and the undertakers shall conform with such reasonable requirements as may from time to time be made by such persons as aforesaid for the purpose of preventing the communication through such wires or lines from being injuriously affected as aforesaid.

If any difference arises between any such persons and the undertakers with respect to the reasonableness of any requirements so made, such difference shall be determined by arbitration.

Provided that nothing in this section shall apply to repairs or renewals of existing electric lines so long as the character and position thereof is not altered, nor to the laying of connexions with mains where the direction of the electric line so laid down crosses the direction of the said telegraphic or telephonic wires or lines at right angles at the point of shortest distance, and such directions continue the same for a distance of six feet on each side of such point.

If the undertakers make default in complying with any of the requirements or restrictions of this section they shall make full compensation to the persons entitled to any such wire or line as aforesaid for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding five pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding forty shillings for every day after the first day during which such default continues: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency, and that the undertakers complied with the requirements and restrictions of this section so far as was reasonable under the circumstances, or that the default in question was due to the fact that the undertakers were ignorant of the position of the wires or lines affected thereby, and that such ignorance was not owing to any negligence on the part of the undertakers.

Exercise of powers of Undertakers as to breaking up Streets, &c., by Local Authority, &c. (1)

Local authority, &c., may give notice of

18. The local authority, and the authority, company, or persons for the time being entitled to work any railway or tramway which the undertakers may be

(1) Standard clauses.

Secs. 18, 19.

desire to break up streets, &c., on behalf of undertakers.

empowered to break up for the purposes of this Order if they think fit may from time to time give a notice to the undertakers stating that they desire to exercise or discharge all or any part of any of the powers or duties of the undertakers as therein specified in relation to the breaking up, filling in, reinstating, or making good any streets, bridges, sewers, drains, or tunnels, vested in or under the control or management of the local authority or any such railway or tramway (as the case may be).

Every such notice shall be served upon the undertakers, and may from time to time be amended or revoked by another notice similarly served.

Proceedings where local authority, &c., give such notice.

19. Where the local authority, or the authority, company, or persons for the time being entitled to work any railway or tramway (in this section referred to as "the givers of the notice") have given notice that they desire to exercise or discharge any specified powers and duties of the undertakers as in the last section mentioned, then so long as such notice remains in force the following provisions shall have effect:—

(*a.*) The undertakers shall not be entitled to proceed themselves to exercise or discharge any such specified powers or duties as aforesaid, except where they have required the givers of the notice to exercise or discharge such powers or duties, and the givers of the notice have refused or neglected to comply with such requisition, as hereinafter provided, or in cases of emergency.

(*b.*) In addition to any other notices which they may be required to give under the provisions of this Order or the principal Act, the undertakers shall, not more than forty-eight hours and not less than twenty-four hours before the exercise or discharge of any such powers or duties so specified as aforesaid is required to commence, serve a requisition upon the givers of the notice stating the time when such exercise or discharge is required to be commenced and the manner in which any such powers or duties are required to be exercised or discharged.

(*c.*) Upon receipt of any such requisition as last aforesaid, the givers of the notice may proceed to exercise or discharge any such powers or duties as required by the undertakers subject to the like restrictions and conditions as the undertakers would themselves be subject to in such exercise or discharge so far as the same may be applicable.

(*d.*) If the givers of the notice decline, or for twenty-four hours after the time when any such exercise or discharge of any powers or duties is by any requisition required to be commenced, neglect to comply with such requisition, the undertakers may themselves proceed to exercise or discharge the powers or duties therein specified in like manner as they might have done if such notice as aforesaid had not been given to them by the givers of the notice.

(*e.*) In any case of emergency the undertakers may themselves proceed to at once exercise or discharge so much of any such specified powers or duties as aforesaid as may be necessary for the actual remedying of any defect from which the emergency arises without serving any requisition on the givers of the notice.

(*f.*) If the undertakers exercise or discharge any such specified powers or duties as aforesaid otherwise than in accordance with the provisions of this section, they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such offence continues.

(*g.*) All expenses properly incurred by the givers of the notice in complying with any requisition of the undertakers under this section shall be repaid to them by the undertakers, and may be recovered summarily before any court of summary jurisdiction, who shall have power to determine the amount thereof.

(*h.*) The givers of the notice may from time to time, if they think fit, require the undertakers to give them such security for the repayment to them of any expenses to be incurred by them under this section, as may be

agreed upon between them and the undertakers, or in default of agreement as may be determined by arbitration. If the undertakers fail to give any such security within seven days after being required to do so or in case of difference after the delivery of the arbitrator's award, they shall not be entitled to serve any further requisition upon such givers of notice requiring them to exercise or discharge any powers or duties under this section, until such security has been duly given.

Provided that nothing in this or the last preceding section shall in any way affect the rights of the undertakers to exercise or discharge any powers or duties conferred or imposed upon them by this Order or the principal Act, in relation to the execution of any works beyond the actual breaking up, filling in, reinstating, or making good any such streets, bridges, sewers, drains, or tunnels, or railway or tramway, as in the last section mentioned.

Compulsory Works (1).

Mains, &c., to be laid down in area included in Schedule A.

20. The undertakers shall, within a period of two years after the commencement of this Order, lay down suitable and sufficient distributing mains for the purposes of general supply upon the parallel system, in every street and part of a street specified in that behalf in Schedule A., and shall thereafter maintain the same.

In addition to the mains in this section above specified, the undertakers shall, at any time after the expiration of the period of two years after the commencement of this Order, lay down and maintain suitable and sufficient distributing mains for the purposes of general supply upon the parallel system in every other street or part of a street (where part only of a street is included within the area of supply) within the area included in Schedule A. upon being required to do so in manner by this Order provided.

All such mains as last above mentioned shall be laid down by the undertakers within six months after any requisition in that behalf which may be served upon them in accordance with the provisions of this Order has become binding upon them, or such further time as may in any case be approved of by the Board of Trade.

If undertakers fail to lay down mains, &c., order may be revoked.

21. If the undertakers make default in laying down any mains in accordance with the provisions of the last preceding section, within the periods prescribed in that behalf respectively, the Board of Trade may upon the application of the local authority revoke this Order as to the whole or (with the consent of the undertakers) any part of the area affected thereby, or if the undertakers so desire, may, after having given an opportunity to the local authority to make representations and objections with reference thereto, suffer the same to remain in force as to such area or part thereof, subject to such conditions as they may think fit to impose, and any conditions so imposed shall be binding on and observed by the undertakers, and shall be of the like force and effect in every respect as though they were contained in this Order.

Mains, &c., to be laid down in area included in Schedule B. on requisition.

22. At any time after the date when any addition to the area of supply of any part of the area included in Schedule B. is directed to take effect the undertakers shall cause suitable and sufficient distributing mains, for the purposes of general supply upon the parallel system, to be laid down in every street or part of a street (where part only of a street is included within the area of supply) within the part so added to the area of supply, upon being required to do so in manner by this Order provided (2).

All such mains as in this section above mentioned shall be laid down by the undertakers within six months after any requisition in that behalf which may be served upon them in accordance with the provisions of this Order has become binding upon them, or such further time as may in any case be approved of by the Board of Trade.

If the undertakers make default in laying down any distributing mains in accordance with the provisions of this section, the Board of Trade may upon the

(1) Standard clauses. (2) Standard wherever there is an area B.

Secs. 22–25.

application of the local authority revoke this Order as to the whole or (with the consent of the undertakers) any part of such addition to the area of supply, or if the undertakers so desire may, after having given an opportunity to the local authority to make representations or objections with reference thereto, suffer the same to remain in force as to such addition or part thereof, subject to such conditions as they may think fit to impose, and any conditions so imposed shall be binding on and observed by the undertakers, and shall be of the like force and effect in every respect as though they were contained in this Order.

Manner in which requisition is to be made.

23. Any requisition requiring the undertakers to lay down distributing mains for the purposes of general supply in any street or part of a street under the last preceding sections may be made by two or more owners or occupiers of premises along such street or part of a street, or, where the local authority has the control and management of the public lamps in such street or part of a street, by the local authority.

Every such requisition shall be signed by the owners and occupiers making such requisition, or by the local authority, as the case may be, and shall be served upon the undertakers.

Forms of requisitions shall be kept by the undertakers at their office, and a copy shall be supplied to any owner or occupier of premises within the district and to the local authority on applying for the same at the price of one shilling a copy, and any requisition so supplied shall be deemed valid in point of form.

Provisions on requisition by owners or occupiers.

24. Where any such requisition is made by any such owners or occupiers as aforesaid, the undertakers (if they think fit) may, within fourteen days after the service of the requisition upon them, serve a notice on all the persons by whom such requisition is signed, stating that they decline to be bound by such requisition unless such persons or some of them will bind themselves to take a supply of electricity for three years, of such amount in the aggregate (to be specified by the undertakers in such notice) as will at the rates of charge for the time being charged by the undertakers for a supply of electricity from distributing mains to ordinary consumers within the area of supply produce an annual sum (to be specified by the undertakers in such notice) amounting to not less than twenty per centum upon the expense of providing and laying down the required distributing mains and any other mains which may be necessary for the purpose of connecting such distributing mains with the nearest available source of supply, and thereupon such requisition shall not be binding on the undertakers unless within fourteen days after the service of such notice on all the persons signing such requisition has been effected, or in case of difference, the delivery of the arbitrator's award, there be tendered to the undertakers an agreement severally executed by such persons or some of them, binding them to take for a period of three years at the least such specified amounts of electricity respectively as will in the aggregate, at the rates of charge above specified, produce an annual sum amounting to not less than twenty per centum upon the expense of providing and laying down such distributing mains and other mains as above mentioned, nor unless sufficient security for the payment to the undertakers of all moneys which may become due to them from such persons under such agreement is offered to the undertakers (if required by them by such notice as aforesaid) within the period limited for the tender of the agreement as aforesaid.

If any difference arises between the undertakers and any persons signing any such requisition as to the reasonableness of the amounts specified by the undertakers in their notice, or as to the sufficiency of any security offered to them under this section, such difference shall be determined by arbitration.

Provisions on requisition by local authority.

25. Where any such requisition is made by the local authority it shall not be binding on the undertakers unless at the time when such service is effected, or within fourteen days thereafter, there be tendered to the undertakers (if required by them) an agreement executed by the local authority, and binding them to take for a period of three years at the least a supply of electricity for lighting such public lamps in the street or part of a street in respect of which such requisition is made as may be under their management or control.

Maps.

Map of area of supply to be made.

26. The undertakers shall forthwith, after commencing to supply electricity under this Order, cause a map to be made of the area of supply on such a scale as may from time to time be prescribed by the local authority with the approval of the Board of Trade, and shall cause to be marked thereon the line of all their then existing mains, service lines, and other underground works and distributing boxes, and shall once in every year correct such map and make such additions thereto as will show the line of all their then existing mains, service lines, and other underground works and distributing boxes.

Deposit and inspection of maps.

27. Every map so made for the undertakers, or a copy thereof, with the date expressed thereon of the last time when it was so corrected, shall be kept by the undertakers at their principal office within the area of supply, and a copy of every such map shall within one month after such map is made be served by the undertakers upon the Board of Trade, and upon the Postmaster-General, and upon the local authority.

Every copy of the said map as last corrected which may be served upon the local authority shall be kept by them at their office, and shall at all reasonable times be open to the inspection of all applicants, and such applicants may take copies of the same or any part thereof.

The local authority may demand and take from every such applicant as aforesaid such fee not exceeding one shilling for each inspection of such map or copy, and such further fee not exceeding one shilling for each copy of the same, or any part thereof, taken by such applicant, as they may from time to time prescribe.

Penalty on undertakers in respect of maps.

28. If the undertakers fail to comply with any of the requirements of the last preceding sections of this Order with respect to maps, they shall for every such offence be liable to a penalty not exceeding ten pounds, and to a further penalty not exceeding two pounds for every day after the first day during which such offence continues.

Regulations as to Supply on the Parallel System (1).

Provisions as to parallel system.

29. The following provisions shall apply to the supply of electricity by the undertakers upon the parallel system:—

Notice of intention to supply through any distributing mains to be given to local authority.

(*a.*) One week at least before commencing to supply electricity through any distributing main the undertakers shall serve a notice upon the local authority of their intention to commence such supply, and that the said main is ready to be tested.

Undertakers to provide constant supply.

(*b.*) From and after the time when the undertakers commence to supply electricity through any distributing main, they shall maintain in such main a current of electricity sufficient for the use of all the consumers for the time being entitled to be supplied from such main, and such supply shall, except so far as may be otherwise agreed upon from time to time between the local authority and the undertakers, be constantly maintained at such pressure as may be fixed under the provisions of this Order: Provided that during the six months after the undertakers first commence to supply electricity under this Order, or such longer period as may in any case be approved of by the Board of Trade, the undertakers need not maintain a supply of electricity during the hours between sunrise and sunset in each day; and that, for the purposes of testing or for any other purpose which the Board of Trade may consider necessary for the efficient working of the undertaking, the Board of Trade may from time to time permit the undertakers to discontinue the supply of electricity at such intervals of time and for such periods as the Board of Trade may think expedient.

Pressure in mains during supply.

(*c.*) During the whole of the period when a supply of electricity is required to be maintained by the undertakers in the distributing mains under this Order (in this Order termed "the hours of supply") the potential at

(1) Standard clauses.

Sec. 29.

corresponding points of the positive and negative distributing mains shall differ at each point by a constant difference (in this Order termed "the standard pressure") to be fixed as hereinafter specified: Provided that the undertakers shall be deemed to have complied with the requirements of this sub-section so long as the difference in potential does not at any point vary more than five per cent. from the corresponding standard pressure, unless changes in potential recur so frequently as to cause unsteadiness in the supply.

Limits of standard pressure.

(*d*) The standard pressure may be different for different points of any main and with the approval of the local authority for different hours during the period of supply but it shall in all cases be within the limits following:

In the case of continuous currents it shall not be less than thirty volts or more than two hundred volts, and

In the case of alternating currents it shall not be less than fifty volts or more than one hundred volts, the difference of potential in the case of alternating currents being taken as equal to the constant difference of potential which would in the case of continuous currents produce the same mean effect.

Provided that such limits may from time to time be varied by the Board of Trade either generally or in respect of individual cases.

Fixing of standard pressure.

(*e.*) The "standard pressure" shall be fixed by the undertakers for every main, and notice of the amount of such standard pressure shall be given to the local authority before the undertakers commence to supply electricity to consumers through such main, and shall not be altered except by permission of the local authority, and upon such terms and conditions as the local authority may impose, and after public notice has been given during a period of one month in such manner as the local authority may require of the intention of the undertakers to apply for permission to alter the same.

Number of alternations in alternating currents.

(*f.*) The number of alternations per minute of alternating currents shall not during the hours of supply be less than six hundred, or such other number as may from time to time be fixed by the undertakers and sanctioned by the local authority.

Supply to be given at two poles on consumer's premises.

(*g.*) The supply of electricity upon any premises shall (except by agreement) be given at two poles situated thereon at a safe and convenient distance from one another in connection respectively with the positive and negative mains, and the undertakers shall be responsible for the maintenance of such poles and any other lines, fittings, and apparatus belonging to the undertakers, or under their control upon such premises in a fit and proper condition for supplying electricity, but the undertakers shall not be in any way responsible for any defects in the construction of any electric lines or fittings within such premises, whether for the utilisation of the electricity supplied or otherwise where such electric lines or fittings have not been supplied by them, nor for any neglect in the maintenance of any such electric lines or fittings where they do not belong to the undertakers, or are not under their control.

Pressure at poles on consumer's premises.

(*h.*) The resistance of the service lines by which the supply is given to any consumer shall not, except by agreement, be greater than would cause the difference of potential at the positive and negative poles in any consumer's premises to be less than the corresponding difference of potential at the point of junction of the mains and the service lines by which he is supplied by more than two and a half per centum of the corresponding standard pressure when the maximum current with which he is entitled to be supplied by the undertakers under this Order is passing through such service lines, or such other percentage as may from time to time be approved of by the Board of Trade, either generally or in respect of individual cases.

Testing (1). Secs. 30–37.

30. The local authority, so long as they are not themselves the undertakers for the purposes of this Order, shall from time to time appoint, or appoint and keep appointed, one or more competent and impartial persons to be electric inspectors for the purpose of inspecting electric lines and works, and of certifying meters under this Order. Appointment of electric inspectors by local authority.

31. If no electric inspector is appointed by the local authority, or if the inspection of electric lines and works is imperfectly attended to by the local authority, or if the local authority themselves become the undertakers for the purposes of this Order, a court of summary jurisdiction, on the application of any person supplied with electricity by the undertakers within the area of supply or of the undertakers, may from time to time appoint or may appoint and keep appointed one or more competent and impartial persons to be electric inspectors for the purposes aforesaid. Appointment of electric inspectors by a court of summary jurisdiction in certain cases.

32. The local authority shall pay to every electric inspector appointed under this Order such reasonable remuneration (if any) as may from time to time be determined by the authority by whom he is appointed, and such remuneration may be in addition to or in substitution for any fees which are directed to be paid to electric inspectors for services rendered by them under this Order, as may be settled by the authority by whom such remuneration is determined: Provided that where any such remuneration is settled to be in substitution for such fees as aforesaid, such fees shall, in lieu of being paid to such electric inspector for his own use, be due and paid to him on behalf and for the use of the local authority, and shall be carried by them to the credit of the local rate. Remuneration of electric inspectors.

33. Every electric inspector, if and when required to do so by the authority by whom he is appointed, shall from time to time test for insulation and conductivity any portion of any main of the undertakers within the area of supply through which electricity is supplied by them, or through which they have given notice to the local authority, as by this Order provided, that they intend to commence supplying electricity: Provided that such testings shall not be made in regard to any particular portion of a main oftener than once in any three months, unless in pursuance of a special Order in that behalf made by the Board of Trade. Testing of mains.

34. Every electric inspector, if and when required to do so by any person supplied with electricity by the undertakers, shall from time to time test the insulation and conductivity of the service lines by which such electricity is supplied, and the efficiency of any joints in such service lines, and make such other tests in relation to such service lines as may from time to time be approved of by the Board of Trade. Testing service lines.

35. Notice shall be given to the undertakers before the commencement of any testing by an electric inspector, and such testing shall be carried out at such suitable hours as, in the opinion of such inspector, will least interfere with the supply of electricity by the undertakers, and in such manner as such inspector may think expedient, but except under the provisions of a special Order in that behalf made by the Board of Trade, he shall not be entitled to have access to or to interfere with the mains of the undertakers at any points other than those at which the undertakers have reserved for themselves access to the said mains: Provided that the undertakers shall not be held responsible for any interruption in the supply of electricity which may be occasioned by or required by such inspector for the purpose of any such testing as aforesaid. Mode of testing.

36. Every electric inspector shall, on the day immediately following that on which any testing has been completed by him under this Order, make and deliver a report of the results of his testing to the authority or person by whom he was required to make such testing, and to the undertakers, and such report shall be receivable in evidence. Report of results of testing.

37. Where the report of any electric inspector shows as the result of any testing that the undertakers were in default, the expenses of such testing, including such reasonable fees to the electric inspector as may from time to time be prescribed in that behalf by the local authority, with the approval of the Board of Trade, shall Expenses of testing.

(1) Standard clauses.

Secs. 37–44.

be paid by the undertakers, but if such report shows that the undertakers were not in default, such expenses shall be paid in case of mains where the electric inspector is appointed by any local authority by such local authority, and where such electric inspector was appointed by a court of summary jurisdiction, then by the local authority, or such company, or person as the court may direct; and in case of service lines by the person requiring the electric inspector to make such testing.

Provided, that if any authority, company, or person is dissatisfied with any report of any electric inspector under the last preceding sections, they may appeal to the Board of Trade against such report, and thereupon the Board of Trade shall inquire into and decide upon the matter of any such appeal, and their decision shall be final and binding on all parties.

Local authority to establish testing places and keep instruments.

38. The local authority may, at such places within a reasonable distance from any distributing main as they think fit, establish at their own cost such reasonable number of testing stations as they shall deem to be sufficient for testing the supply of electricity by the undertakers through such main, and may place thereat proper and suitable instruments, of a pattern to be approved by the Board of Trade, for the purpose of testing such supply, and they may require the undertakers to connect such stations by means of proper and sufficient service lines with such main at the expense of the undertakers, and to supply electricity thereto for the purpose of such testing free of charge.

If any dispute arises between the local authority and the undertakers as to whether the number of such testing stations and the distance from the main at which they are established is reasonable or excessive, or as to the performance by the undertakers of their duties under this section, such dispute shall be determined by arbitration.

Readings of instruments to be taken.

39. The local authority shall keep all instruments used by them for the purposes of testing any supply of electricity by the undertakers in efficient working order, and any electric inspector appointed under this order may from time to time examine and record the readings of such instruments at such times and in such manner as he may be directed by the authority by whom he is appointed, and any readings so recorded shall be receivable in evidence.

Undertakers may test instruments of local authority.

40. The undertakers shall have the right to have access at all reasonable times to such instruments for the sake of testing the same and ascertaining if the same are in order, and may require the local authority forthwith to have the same put in order in case they are not so.

Undertakers to keep instruments.

41. The undertakers shall also set up and keep in efficient working order upon all premises from which they supply electricity by any distributing mains or electric lines suitable and proper instruments of such pattern and construction as may be from time to time approved of or prescribed by the Board of Trade for measuring thereat the difference of potential between any corresponding points of such mains and electric lines and between such mains and electric lines and the earth, and the current passing along such mains and electric lines, and shall record and keep recorded the readings of these instruments taken at intervals of not more than one hour during the time that electricity is being supplied thereto from such premises, and any readings so recorded shall be receivable in evidence.

Electric inspector may test undertakers' instruments.

42. Any electric inspector appointed under this order shall have the right to have access at all reasonable hours to the instruments mentioned in the last preceding section for the purpose of testing the same and ascertaining if the same are in order, and in case the same are not in order he may require the undertakers forthwith to have the same put in order.

Representation of undertakers at testings.

43. The undertakers may, if they think fit, on each occasion of the testing of any main or service line, or the testing or inspection of any instruments of the undertakers by the electric inspector, be represented by some officer or other agent, but such officer or agent shall not interfere in the testing or inspection.

Undertakers to give facilities for testing.

44. The undertakers shall afford all facilities for the proper execution of this order with respect to testing, and shall comply with all the requirements of this order in that behalf; and in case the undertakers make default in complying with any of the provisions of this section they shall be liable to a penalty not exceeding five pounds, and in the case of a continuing offence to a further penalty not ex-

ceeding one pound for every day after the first day during which such offence continues.

Secs. 44–46.

Supply (1).

Undertakers to furnish sufficient supply of electricity to owners and occupiers within the area of supply.

45. The undertakers shall, upon being required so to do by the owner or occupier of any premises situate within twenty-five yards from any distributing main of the undertakers, give and continue to give a supply of electricity for such premises subject to the provisions of this order, and they shall furnish and lay any electric lines that may be necessary for the purpose of supplying the maximum current with which any such owner or occupier may be entitled to be supplied under this order, subject to the conditions following; (that is to say,)

The cost of so much of any electric line for the supply of electricity to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such electric line as may be laid for a greater distance than thirty feet from any distributing main of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of electricity shall—

Serve a notice upon the undertakers at their office, specifying the premises in respect of which such supply is required and the maximum current required to be supplied, and the day (not being an earlier day than a reasonable time after the date of the service of such notice) upon which such supply is required to commence:

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of electricity for a period of at least two years, of such an amount that the rent payable for the same, at the rate of charge for the time being charged by the undertakers for a supply of electricity to ordinary consumers within the area of supply, shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertakers in providing any electric line to be provided by them for the purpose of such supply, and give to the undertakers (if required by them so to do) security for the payment to them of all moneys which may become due to them by such owner in respect of any electric lines to be furnished by the undertakers, and in respect of electricity to be supplied by them.

Provided always, that the undertakers may, after they have given a supply of electricity for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid or is insufficient; and in case any such owner or occupier fail to comply with the terms of such notice, the undertakers may, if they think fit, discontinue to supply electricity for such premises as long as such failure continues.

Provided also, that if the owner or occupier of any such premises as aforesaid uses any form of lamp or burner, or uses the electricity supplied to him by the undertakers for any purposes or deals with it in any manner so as to unduly or improperly interfere with the supply of electricity to any other authority, company, or person by the undertakers, the undertakers may, if they think fit, discontinue to supply electricity to such premises so long as such user continues.

Maximum current.

46. The maximum current with which any such consumer, as in the last section mentioned, shall be entitled to be supplied shall be of such amount as he may from time to time require to be supplied with, not exceeding what may be reasonably anticipated as the maximum consumption on his premises: Provided that where any consumer has required the undertakers to supply him with a maximum current of any specified amount, he shall not be entitled to alter that maximum except upon one month's notice to the undertakers, and any expenses incurred by the undertakers in respect of the service lines, by which electricity is supplied

(1) Standard clauses.

Secs. 46–51.

to the premises of such consumer, or any electric lines, fittings, or apparatus of the undertakers upon such premises, consequent upon such alterations, shall be paid by him to the undertakers, and may be recovered summarily as a civil debt.

If any difference arises between any such owner or occupier and the undertakers as to what may be reasonably anticipated as the consumption on his premises such difference shall be determined by arbitration.

Supply of electricity to public lamps.

47. The undertakers shall supply electricity to any public lamps within the distance of fifty yards from any of the distributing mains of the undertakers in such quantities as the local authority may from time to time require to be supplied.

Penalty for failure to supply.

48. Whenever the undertakers make default in giving a supply of electricity at such pressure and during such hours as are by this Order required to any owner or occupier of premises to whom they may be and are required to supply electricity under this Order, they shall be liable to a penalty not exceeding forty shillings in respect of every such default for each day upon which any such default occurs.

Whenever the undertakers make default in supplying electricity at such pressure and during such hours as are by this Order required to all or any of the public lamps to which they may be and are required to supply electricity under this Order, they shall be liable to a penalty not exceeding forty shillings in respect of every such default for each such lamp, and for each day upon which any such default occurs.

Provided that the penalties to be inflicted on the undertakers under this section shall in no case exceed in the aggregate the sum of one hundred pounds in respect of any defaults in supplying private consumers, and one hundred pounds in respect of any defaults in supplying public lamps for any one day, and provided also that in no case shall any penalty be inflicted in respect of any default, if the Court having cognizance of the case are of opinion that such default was caused by inevitable accident, or by force majeure, or was of so slight or unimportant a character as not materially to affect the value of the supply.

Price (1).

Methods of charging.

49. The undertakers may charge for electricity supplied by them from any distributing main to any ordinary consumer (otherwise than by agreement):—

(1.) By the quantity of energy contained in such supply; or

(2.) By the actual quantity of electricity so supplied; or

unless the Board of Trade from time to time otherwise direct,

(3.) By the number of hours during which the supply of electricity is actually used by such consumer, and the maximum current with which he is for the time being entitled to be supplied:

Provided that before commencing to supply electricity through any distributing main for the purposes of general supply, the undertakers shall give notice to the local authority by what method they propose to charge for electricity supplied through such main; and, where the undertakers have given any such notice, they shall not be entitled to change such method of charging except after one month's notice of such change has been given by them to the local authority and to every consumer of electricity who is supplied by them from such main.

Maximum prices.

50. The prices to be charged by the undertakers for electricity supplied by them shall not exceed those stated in that behalf in Schedule C. in the first, second, and third sections thereof respectively.

Other charges by agreement.

51. Subject to the provisions of this Order, and of the principal Act, and to the right of the consumer to require that he shall be charged according to some one or other of the methods above-mentioned in cases where he is entitled to require a supply, the undertakers may make any agreement with a consumer as to the price to be charged for electricity, and the mode in which such charges are to be ascertained and may charge accordingly.

(1) Standard clauses.

Price to public lamps.

52. The price to be charged by the undertakers and to be paid to them for all electricity supplied to the public lamps and the mode in which such charges shall be ascertained, shall be settled by agreement between the local authority and the undertakers, and in case of difference, by arbitration, regard being had to the circumstances of the case and the distributing or other mains (if any) which may have to be laid for the purpose and the prices charged to ordinary consumers in the district.

Meters.

Standard meters to be used except by agreement

53. The energy contained in any supply of electricity by the undertakers to any ordinary consumer under this Order, or the quantity of electricity so supplied, or the duration of such supply (according to the method by which the undertakers elect to charge), in this Order referred to as "the value of the supply," shall, except as otherwise agreed between such consumer and the undertakers, be ascertained by means of an appropriate meter duly certified under the provisions of this Order.

Meter to be certified.

54. A meter shall be considered to be duly certified under the provisions of this Order if it be certified by an electric inspector appointed under this Order to be of some construction and pattern and to have been fixed and to have been connected with the service lines in some manner approved of by the Board of Trade, and to be a correct meter; and every such meter is in this Order referred to as a "certified meter": Provided that, where any alteration is made in any certified meter, or where any such meter is unfixed or disconnected from the service lines, such meter shall cease to be a certified meter unless and until it be again certified as a certified meter under the provisions of this Order.

Fees for certifying meters.

55. Every electric inspector who may be required by the undertakers or by any consumer to examine any meter for the purpose of certifying the same as a certified meter under the provisions of this Order shall be entitled to demand from the undertakers or consumer so requiring him and to be paid such fees as may from time to time be determined in that behalf by the local authority with the approval of the Board of Trade, before commencing such examination, and every electric inspector shall, upon being required so to do by the undertakers or any such consumer as aforesaid, examine any meter situate within the district for which he is appointed if such fees are offered to him as aforesaid, and shall certify the same as a certified meter if he considers it entitled to be so certified.

Undertakers to supply meters if required to do so.

56. Where the value of the supply of electricity to any consumer by the undertakers is under this Order required to be ascertained by means of an appropriate meter, the undertakers shall, if required so to do by such consumer, supply him with an appropriate meter, and shall, if required so to do, fix the same upon the premises of the consumer and connect the service lines therewith, and procure such meter to be duly certified under the provisions of this Order, and for such purposes may authorise and empower any officer or person and any electric inspector to enter upon such premises and execute all necessary works and do all necessary acts; provided that previously to supplying any such meter the undertakers may require such consumer to pay to them a reasonable sum in respect of the price of such meter, or to give security therefore if he desires to purchase the same, or to enter into an agreement for the hire of such meter as hereinafter provided if he desires to hire such meter, and also to pay to them a reasonable sum in respect of the expenses of fixing such meter and connecting it with the service lines and procuring the same to be certified under this Order; if any difference arises between the undertakers and any consumer under this section such difference shall be determined by arbitration.

Meters not to be connected or disconnected without notice.

57. No consumer shall connect any meter used under this order for ascertaining the value of any supply of electricity to him with any electric line through which electricity is supplied by the undertakers, or disconnect any such meter from any such electric line unless he has given to the undertakers not less than forty-eight hours' notice in writing of his intention so to do, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings.

Secs. 58–63.

Consumer to keep his meter in proper order.

58. Every consumer of electricity supplied by the undertakers shall at all times, at his own expense, keep all meters belonging to him, whereby the value of any supply of electricity to him by the undertakers is under this order to be ascertained, in proper order for correctly registering such value, and in default of his so doing the undertakers may cease to supply electricity through such meter.

The undertakers shall have access to and be at liberty to take off, remove, test, inspect and replace any such meter at all reasonable times; provided that all reasonable expenses of and incident to any such taking off, removing, testing, inspecting, and replacing, and the procuring such meter to be again duly certified where such re-certifying is thereby rendered necessary shall, if the meter be found to be not in proper order, be paid by the consumer, but if the same be in proper order, all expenses connected therewith shall be paid by the undertakers.

Power to the undertakers to let meters.

59. The undertakers may let for hire any meter for ascertaining the value of the supply of electricity by them to any consumer, and any fittings thereto, for such remuneration in money, and on such terms with respect to the repair of such meter and fittings, and for securing the safety and return to the undertakers of such meter, as may be agreed upon between the hirer and the undertakers, and such remuneration shall be recoverable by the undertakers summarily as a civil debt.

Undertakers to keep meter let for hire in repair.

60. The undertakers shall at all times, at their own expense, keep all meters let for hire by them to any consumer, whereby the value of the supply of electricity by them to such consumer is ascertained, in proper order for correctly registering such value, and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times: Provided that the expenses of procuring any such meter to be again duly certified where such re-certifying is thereby rendered necessary shall be paid by the undertakers.

Differences as to correctness of meter to be settled by inspector.

61. If any difference arises between any consumer and the undertakers as to whether any meter whereby the value of any supply of electricity to such consumer by the undertakers is ascertained (whether belonging to such consumer or the undertakers) is or is not in proper order for correctly registering such value, or as to whether such value has been correctly registered in any case by any meter, such difference shall be determined upon the application of either party by an electric inspector, or where the local authority are the consumers, by an inspector to be appointed by the Board of Trade, who shall also order by which of the parties the costs of the proceedings before him shall be paid, and the decision of such inspector shall be final and binding on all parties. Subject as aforesaid, the register of the meter shall be conclusive evidence in the absence of fraud of the value of any supply of electricity by the undertakers to any consumer.

Undertakers to pay expenses of providing new meters where method of charge altered.

62. Where any consumer who is supplied with electricity by the undertakers from any distributing main is provided with a certified meter for the purpose of ascertaining the value of the supply, and the undertakers change the method of charging for electricity supplied by them from such main the undertakers shall pay to such consumer the reasonable expenses to which he may be put in providing a new meter for the purpose of ascertaining the value of the supply of electricity to him according to such new method of charging, and such expenses may be recovered by the consumer from the undertakers summarily as civil debt.

Undertakers may place meters to measure supply or to check measurement thereof.

63. In addition to any meter which may be placed upon the premises of any consumer to ascertain the value of the supply of electricity to him as between himself and the undertakers, the undertakers may from time to time place upon his premises such meter or other apparatus as they may desire for the purpose of ascertaining or regulating either the amount of electricity or energy supplied to such consumer, or the number of hours during which such supply is given, or the maximum amount of such supply, or any other quantity or time connected therewith: Provided that such meter shall be of some construction and pattern and shall be fixed and connected with the service lines in some manner approved of by the Board of Trade, and shall be supplied and maintained entirely at the cost of the undertakers, and shall not, except by agreement, be placed otherwise than

between the mains of the undertakers and the poles on the consumer's premises at which the supply is given.

Secs. 63, 64.

Regulations as to Safety (1).

64. The following regulations shall be observed in relation to the supply of electricity under this order:—

Regulations to be observed by undertakers.

(*a.*) All mains and service lines, so far as they lie in or under streets and public places (otherwise than in distributing boxes or stations), shall be of a pattern to be approved of by the Board of Trade, and shall be covered with thoroughly waterproof covering and be contained in pipes or cases of sufficient strength to protect them from injury, and due precautions shall be taken to prevent any insulating material which may be used being rendered plastic or being otherwise injured by the action of external heat.

(*b.*) All mains or service lines shall be well and sufficiently insulated with some material affording an insulation of a durable character, to be approved of by the Board of Trade, and all parts of service lines shall be so secured that they shall not be liable to be brought into contact with metallic masses upon accidental abrasion of the insulation.

(*c.*) No conductor in any part of any circuit shall be connected with earth unless such connection is sanctioned by the Board of Trade by any regulations to be hereafter made under the provisions of the principal Act.

(*d.*) The current through any conductor used as a service line shall not exceed one thousand ampères, if such current exceeds ten ampères, or two thousand ampères, if such current is less than ten ampères, per square inch of section of a pure copper wire of a conductivity equal to that of such conductor; provided that when the insulation employed is such that it would become plastic at a temperature of 120° Fahrenheit, only three fourths of the above-mentioned currents shall be allowed.

(*e.*) The supply of electricity to any premises shall be capable of being turned off at some point outside such premises.

(*f.*) In each conductor of each service line shall be inserted a safety fuse or other safety connection of a pattern to be approved by the Board of Trade. Such fuse or connection shall be situated in a distributing box or at some other point in the service line which is easily accessible, and shall be of such a nature as to cut off the supply when the current through such conductor exceeds by more than fifty per centum (or such other smaller proportion as the undertakers may think fit) the maximum current which such service line is intended to supply.

(*g.*) All service lines and positive and negative poles of service lines upon the premises of any consumer shall be at a distance of not less than three inches from one another respectively, and the terminals and any joint which may be made in any portion of any service lines which may be upon the premises of any consumer between the point at which they enter upon the said premises and the said poles shall be of some construction and pattern to be approved of by the Board of Trade; and notice in writing of the position of every such joint as aforesaid shall be given to every such consumer by the undertakers before commencing to supply electricity through such service lines.

(*h.*) Where the maximum current given to any consumer by any service lines exceeds fifty ampères, the supply shall be divided and given at more than one pair of poles, so that the maximum current at each pair of poles shall not exceed fifty ampères except in such cases and under such conditions as may be approved of by the Board of Trade.

(*i.*) Where the difference of potential between any point of any main or electric

(1) Standard clauses. These will no doubt be varied somewhat when more experience is gained. At present they are not likely to be changed, except perhaps as to the limits of pressure.

Sec. 64.

line used by the undertakers and the earth, or between such point and any other point upon the same circuit exceeds two hundred volts, such precaution shall be taken by the undertakers, as may from time to time be prescribed by the Board of Trade by any regulations to be made by them under the provisions of the principal Act, to prevent such main or electric line becoming electrically connected with or leaking into any main or electric line through which electricity passes at a different potential.

(*j.*) Where the difference of potential between any point of any charging main and the earth or between such point and any other point upon the same circuit exceeds two hundred volts, all distributing mains connected therewith shall be fitted with such appliances and apparatus of such pattern and construction as may be from time to time prescribed or approved of by the Board of Trade for the purpose of ensuring that such mains shall be effectively disconnected and kept disconnected from such batteries during the hours of charging.

(*k.*) No portion of any electric line which may be placed by the undertakers above ground, and which is not enclosed within any distributing box or building, shall be at a potential differing from that of the earth by more than two hundred volts.

(*l.*) Where any portions of any electric lines belonging to the undertakers are exposed in such a position as to be liable to be struck by lightning, they shall be efficiently protected by lightning dischargers of such pattern and construction as may be from time to time prescribed or approved by the Board of Trade.

(*m.*) The difference of potential at corresponding points of the positive and negative conductors used as distributing mains or service lines shall not at any time exceed two hundred volts in the case of continuous currents and one hundred volts in the case of alternating currents (the difference of potential in the case of alternating currents being taken as equal to the constant difference of potential which would in the case of continuous currents produce the same mean effect), and no portion of any such conductor shall be at a potential differing from that of the earth by more than such quantity.

(*n.*) The difference of potential at any two points of a charging main shall not exceed four thousand volts, and no portion of any such main shall be at a potential differing from that of the earth by more than such quantity.

(*o.*) The Board of Trade may at any time direct an inquiry to be made into the condition of any mains, electric lines, or works of the undertakers if they consider it expedient to do so in the interest of the public safety, and for such purpose they may order any such mains, electric lines, or works to be tested in such manner as they may think expedient, and may require the undertakers to remedy or repair any defects therein. If the undertakers make default in remedying or repairing any such defects as aforesaid upon being required to do so as above mentioned, within the time prescribed in that behalf by the Board of Trade, they shall be liable to a penalty not exceeding one hundred pounds for every day during which such default continues.

Provided always, that if the undertakers at any time desire to supply electricity by agreement at a high tension for the purpose of arc lighting or for any other purpose, the Board of Trade, if they think fit, may relieve the undertakers from all or any of the obligations by this section imposed upon them, and may substitute such other regulations to be observed by the undertakers in relation to such supply as they may think expedient; and all regulations so substituted shall be observed by the undertakers, and shall, for all purposes of enforcement or otherwise be deemed to have been inserted in this section in lieu of the regulations for which the same are substituted.

Notices, &c. (1).

Secs. 65–68.

Notices, &c., may be printed or written.

65. Notices, orders, and other documents under this Order may be in writing or in print, or partly in writing and partly in print; and where any notice, order, or document requires authentication by the local authority, the signature thereof by the clerk or surveyor to the local authority shall be sufficient authentication.

Service of notices, &c.

66. Any notice, order, or document required or authorised to be served upon any body or person, under this Order or the principal Act, may be served by the same being addressed to such body or person and being left at or transmitted through the post to the following addresses respectively:—

(*a.*) In the case of the Board of Trade, the office of the Board of Trade;

(*b.*) In the case of the Postmaster-General, the General Post Office;

(*c.*) In the case of the local authority, the office of the local authority;

(*d.*) In the case of the justices of the peace for any county, the office of the clerk of the peace for the said county;

(*e.*) In the case of the undertakers or any other company having a registered office, the registered office of the undertakers or such company;

(*f.*) In the case of a company having an office or offices, but no registered office, any such office;

(*g.*) In the case of any other person, the usual or last known place of abode of such person.

Where any notice is served by post it shall be deemed to have been served at the time when the letter containing the notice would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

A notice, order, or document by this Order required or authorised to be served on the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming them), without further name or description.

A notice, order, or document by this Order required or authorised to be served on the owner or occupier of premises may be served by delivering the same, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by fixing the notice on some conspicuous part of the premises.

Revocation of Order (1).

Revocation of Order where undertakers are insolvent.

67. If at any time after the commencement of this Order the local authority make a representation to the Board of Trade that the undertakers have made any default in executing works or supplying electricity in accordance with the terms of this Order, and that such default is in consequence of the insolvency of the undertakers, and that by reason of such insolvency the undertakers are unable fully and efficiently to discharge the duties and obligations imposed upon them by this Order, the Board of Trade shall inquire into the truth of such representation and if upon such inquiry they are satisfied of the truth of such representation they shall, upon the application of the local authority, revoke the Order as to the whole or (with the consent of the undertakers) as to any part of the area affected thereby.

Provisions where Order revoked.

68. If the Board of Trade at any time revoke this Order as to the whole or any part of the area affected thereby under any of the provisions of this Order, the following provisions shall have effect:—

(*a.*) The Board of Trade shall serve a notice of such revocation upon the undertakers and upon the local authority, and shall in such notice fix a date at which such revocation shall take effect, and from and after such date all the powers of the undertakers for the supply of electricity within such area, or part thereof as aforesaid, shall absolutely cease and determine;

(1) Standard Clauses.

Sec. 68.

(*b.*) Within one month after the service of such notice by the Board of Trade upon the local authority, the local authority, if they think fit, may by notice in writing require the undertakers to sell, and thereupon the undertakers shall sell to them the undertaking, or such part of it as is within such area or part thereof as aforesaid, upon terms of paying the then value of all lands, buildings, works, materials, and plant of the undertakers, suitable to and used by them for the purposes of the undertaking within such area or part thereof, such value being estimated in manner directed by the Electric Lighting Act, 1882, in the case of purchases effected by the local authority under section twenty-seven of that Act;

(*c.*) Where no purchase is effected by the local authority under the provisions of the last sub-section, and any local authority, company, or person is willing to purchase the undertaking, or such part of it as aforesaid, the Board of Trade, if they think fit, may, with the consent of the local authority and the undertakers or without the consent of the undertakers, in case the price is not less than that for which the local authority might have purchased the same under this section as aforesaid, direct that the undertaking, or such part thereof as aforesaid, should be transferred to such company or person, and thereupon on the payment of the price of the same, the undertaking or such part thereof as aforesaid shall be so transferred;

(*d.*) Where any purchase is effected or any transfer is directed under the preceding provisions of this section the undertaking or part thereof so purchased or transferred shall vest in the purchasers or transferees thereof freed from any debts, mortgages, or similar obligations of the undertakers or attaching to the undertaking, and the revocation of this Order as to the whole of the area affected thereby or such part thereof as aforesaid, shall extend only to the revocation of the rights, powers, authorities, duties, and obligations of the undertakers from whom the undertaking or such part thereof as aforesaid is purchased or transferred, in relation to the supply of electricity within such area or part thereof, and save as aforesaid this Order shall remain in full force within such area or part thereof in favour of the local authority, company, or person, by or to whom such undertaking or part thereof is purchased or transferred as aforesaid;

(*e.*) Where no purchase has been effected and no transfer has been directed under the preceding provisions of this section, the local authority, and any persons who may be liable to repair any street or part of a street in which any works of the undertakers may have been placed, may forthwith remove such works, with all reasonable care, and the undertakers shall pay to the local authority or other such persons as aforesaid such reasonable costs of such removal as may be specified in a notice to be served on the undertakers by such local authority or other persons, or, if so required by the undertakers, within one week after the service of such notice upon them, as may be settled by arbitration;

If the undertakers fail to pay such reasonable costs as aforesaid within one month after the service upon them of such notice or the delivery of the award of the arbitrator, as the case may be, the local authority or other such persons as aforesaid may, without any previous notice to the undertakers (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of any such works as aforesaid either by public auction or private sale, and for such sum or sums and to such person or persons as they may think fit; and may, out of the proceeds of such sale, pay and reimburse themselves the amount of the costs so specified or settled as aforesaid, and of the costs of sale, and the balance (if any) of the proceeds of the sale shall be paid over by them to the undertakers.

(*f.*) In case the local authority, or any company or person may be entitled to compensation for any damage sustained by them, by reason or in consequence of the execution of any works within such area, or part thereof,

as aforesaid, or the exercise of any powers by this Order granted to the undertakers, or for any expenses to which such local authority, company, or person may have been put in removing any works of the undertakers, within such area, or part thereof, under the provisions of this Order, such compensation shall be a first charge on any money that may have been deposited or secured by the undertakers, under the provisions of this Order in respect of such area or part thereof, and which may not have been repaid or released to the undertakers, and such money shall be applied rateably in satisfying such claims, and in every such case the amount of compensation to be paid in respect of the various claims, and the persons to whom it is to be paid, shall be determined by an arbitrator to be appointed by the Board of Trade, whose decision shall be final and binding on all parties.

General (1).

Nature and amount of security.

69. Where any consumer is required under this Order to give security to the undertakers, such security may be by way of deposit or otherwise, and of such amount as he and the undertakers agree on, or as, in default of agreement, may be determined on the application of either party by a court of summary jurisdiction, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the said Court shall be final and binding on all parties: Provided that where any such security is given by way of deposit the undertakers shall pay interest at the rate of five pounds per centum per annum on every sum of ten shillings so deposited for every six months during which the same remains in their hands.

Proceedings where approval of Board of Trade is required.

70. Where under the provisions of this Order the approval of the Board of Trade is required to be given in any case such approval shall be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade, and all costs and expenses of or incident to any application for such approval, including the costs of the tests (if any) which may be required to be made by the Board of Trade for the purpose of determining whether such approval should be given, shall be borne and paid by the applicant or applicants for such approval; provided always that where any approval is given by the Board of Trade to any plan, pattern, or specification, they may require such copies of the same as they may think fit to be prepared and deposited at their office at the expense of the said applicant or applicants, and may from time to time, if they think fit, revoke any approval so given or permit such approval to be continued subject to such modifications as they may think necessary.

Notice of approval of Board of Trade, &c., to be given by advertisement.

71. Where the Board of Trade, upon the application of the undertakers, give any approval or grant any extension of any time limited for the performance of any duties by the undertakers under this Order, or where the Board of Trade, upon the application of the local authority, revoke this Order as to the whole or any part of the area affected thereby, notice that such approval has been given, or such extension of time granted, or such revocation made, shall be published by public advertisement once at least in each of two successive weeks in some one and the same local newspaper by the body by whom such application was made as aforesaid.

Notice of applications for extension of time to be given to local authority.

72. Where any application is made to the Board of Trade to extend any time limited for the performance of any duties by the undertakers under this Order, notice of such application shall be served on the local authority by the undertakers, and an opportunity shall be given to the local authority to make representations or objections with reference thereto.

Recovery of penalties.

73. All penalties under this Order, the recovery of which is not otherwise specially provided for, may be recovered in a summary manner before a court of summary jurisdiction.

Undertakers to be responsible for all damages.

74. The undertakers shall be answerable for all accidents, damages, and injuries happening through the act or default of the undertakers, or of any person in their employment by reason or in consequence of any of the undertakers works, and shall save harmless all authorities, bodies and persons by whom any street is repair-

(1) Standard Clauses.

Secs. 74–81.

able, and all other authorities, companies, and bodies collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.

As to mortgages.

75. Nothing in this Order shall prevent the undertakers borrowing money on the security of mortgages of the undertaking, or shall make the consent or approval of the Board of Trade necessary to the validity or effect of any such mortgage: Provided that, every mortgage of the undertaking shall be deemed to comprise all purchase money which may be paid to the undertakers in the event of any compulsory sale or transfer of the undertaking or any part thereof under section twenty-seven of the Electric Lighting Act, 1882, or under this Order, and that any mortgage granted by the undertakers shall not be a charge upon the undertaking or any part thereof in the event of the undertaking or such part being purchased or transferred as aforesaid, and that every mortgage deed granted by the undertakers shall be endorsed with notice to that effect.

Saving rights of the Crown in the foreshore.

76. Nothing in this Order shall authorise the undertakers to take, use, or in any manner interfere with any portion of the shore or bed of the sea, or of any river, channel, creek, bay, or estuary, or any right in respect thereof, belonging to the Queen's most Excellent Majesty, in right of Her crown, and under the management of the Board of Trade, without the previous consent in writing of the Board of Trade on behalf of Her Majesty (which consent the Board of Trade may give); neither shall anything in this Order contained extend to take away, prejudice, diminish, or alter any of the estates, rights, privileges, powers, or authorities vested in, or enjoyed or exercisable by the Queen's Majesty, Her heirs or successors.

Works not to be constructed on shore of navigable waters without consent of Board of Trade.

77. The undertakers shall not construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and re-flows, any work without the previous consent of the Board of Trade, to be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade, and then only according to such plan and under such restrictions and regulations as the Board of Trade may approve of, such approval being signified as last aforesaid; and where any such work may have been constructed, the undertakers shall not at any time alter or extend the same without obtaining previously to making any such alteration or extension the like consents or approvals. If any such work be commenced or completed contrary to the provisions of this Order the Board of Trade may abate and remove the same, and restore the site thereof to its former condition at the cost and charge of the undertakers; and the amount of such cost and charge may be recovered by the Board of Trade summarily as a civil debt.

Saving clause for Postmaster-General.

78. Nothing in this Order shall affect any right or remedy of the Postmaster-General under the Electric Lighting Act, 1882, or the Telegraph Acts, 1863 to 1878, and all provisions contained in this Order in favour of the Postmaster-General shall be construed to be in addition to and not in modification of the provisions of those Acts.

Saving for Conservators of River Thames.

79. Nothing in this Order shall authorise or empower the undertakers to embank or encroach upon or break up or interfere with any part of the soil or bed of the River Thames or the shore thereof, so far as the same may be under the jurisdiction of the Conservators of the River Thames, without the consent of the said Conservators.

Undertakers not exempted from proceedings for nuisance.

80. Nothing in this Order shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them.

Provision as to general Acts.

81. Nothing in this Order shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of or price to be charged for electricity which may be passed in this or any future session of Parliament.

SCHEDULES.

SCHEDULE A.

The area included in this schedule is (1). The houses, buildings, and premises on both sides the said streets being included within this area. .

The streets within the aforesaid area along which the undertakers are to lay distributing mains within two years from the commencement of this Order are such portions of the following streets and parts of streets as lie within the aforesaid area:—(2)

SCHEDULE B.

So much of the parish of as the same is constituted at the date of the commencement of this Order, as is not included in the area described in Schedule A.

SCHEDULE C.

The term "unit" as used in this schedule shall be deemed to mean the energy contained in a current of 1,000 ampères flowing under an electro-motive force of one volt during one hour.

Section 1.

Where the undertakers charge any consumer by the quantity of energy contained in the supply given to him, they shall be entitled to charge him at the following rates per quarter:—For any quantity up to 100 units, three pounds ten shillings; for each unit over 100 units, sevenpence per unit.

Section 2.

Where the undertakers charge any consumer by the actual quantity of electricity supplied to him, they shall be entitled to charge him according to the rates set forth in section 1 of this schedule, the quantity of energy contained in the supply given to him being taken to be the product of the actual quantity of electricity supplied to him and the standard pressure at the point of junction of the mains and the service lines by which he is supplied.

Section 3.

Where the undertakers charge any consumer by the number of hours during which he actually uses his supply, they shall be entitled to charge him at the rates specified in section 2 of this schedule, the quantity of electricity supplied to him being calculated on the supposition that the consumer uses the maximum current specified by him under the provisions of this Order during all the hours that he has used the supply.

SCHEDULE D.

Railways and Tramways which may be broken up by the undertakers in pursuance of the special powers granted by this Order:—(3)

(1) Describe area. (2) Specify streets. (3) Specify railways and tramways.

CORPORATION PROVISIONAL ORDER[1].

ELECTRIC LIGHTING.

Provisional Order authorising the Mayor, Aldermen, and Burgesses of the City of to erect and maintain Electric Lines and Works and to supply Electricity, within the City and County of .

Preliminary.

Secs. 1, 2.

Short title.

1. This Order may be cited as "The Electric Lighting Order, 1883."

Interpretation.

2. This Order is to be read and construed subject in all respects to the provisions of the Electric Lighting Act, 1882, and of any other Act or parts of Acts

[1] It will be observed that in all the structural parts this order is substantially the same as the order in the case of companies (see p. 507); but that in such clauses as relate to the providing capital or lands for the undertaking the peculiarities of the position of a corporation render it necessary that there should be a considerable distinction made between it and a company order. (See section 9, and the excision of the group of clauses headed "capital" in the company order). The works clauses are of course modified by omitting reference to the local authority, since they are now the undertakers, and need not give notice to themselves of what they are about to do. The same omission occurs in the group of clauses which relate to the exercise of the powers of the undertakers as to breaking up railways, &c., streets being of course omitted in this case, since the local authority themselves have jurisdiction over the streets. In the group of clauses headed "compulsory works," all provisions for requisition by the local authority are omitted, but otherwise the clauses are substantially the same as in the company order. The clauses as to maps are the same with slight variations, as, for example, the substitution of the Board of Trade for the local authority in certain minor points. The regulations as to supply on the parallel system are the same. In the testing clauses the electric inspectors are to be appointed by a court of summary jurisdiction, and not by the local authority, who are, however, to pay them. The testing places, which are to be established by the local authorities, are also to be fixed by a court of summary jurisdiction. The clauses as to supply are substantially the same as those in the company order, with the exception that reference to the public lamps is omitted. The clauses as to price and meters are substantially the same. Clause 58, relating to the application of revenue, is of course new, as no such clause could be necessary in the case of companies. The clause is something in the nature of a common form clause, which is put in in all cases where corporations work industrial undertakings. The regulations as to safety are the same in both orders, as also are those which provide for notices. The place of the elaborate clauses in the company order, which provide for the revocation of the order, is taken by the single clause 67, as there is no reason to provide against the contingency of bankruptcy in the case of a corporation. The general clauses are substantially the same in both orders. The object and effect of these alterations, taken as a whole, is to put the local authority precisely in the position of a private company undertaking the Provisional Order, so far as regards the public. It is only in matters which relate to the provision of the funds and the disposal of the revenue arising from the undertaking that there is any important difference.

incorporated therewith, which said Act and Acts and parts of Acts are in this order collectively referred to as "the principal Act;" and the several words, terms, and expressions to which by the Electric Lighting Act, 1882, meanings are assigned shall have in this Order the same respective meanings, provided that in this Order—

The expression "main" shall mean any continuous metallic conductor which may be laid down by the undertakers in any street or public place, and through which electricity may be supplied, or intended to be supplied by the undertakers for the purposes of general supply or for charging storage batteries used for the purposes of general supply.

The expression "service line" shall mean any continuous metallic conductor through which electricity may be supplied, or intended to be supplied by the undertakers to any particular consumer on the parallel system, either from any main or directly from the premises of the undertakers:

The expression "charging main" shall mean a main which for the time being is being used solely for the purpose of charging storage batteries:

The expression "distributing main" shall mean the portion of any main which is used for the purpose of giving origin to service lines for the purpose of general supply:

The expression "general supply" shall mean the supply of electricity to ordinary consumers, and unless otherwise specially approved of by the Board of Trade either generally or in respect of individual cases, to the public lamps, but shall not include the supply of electricity to any one or more particular consumers under special agreement:

The expresson "area of supply" shall mean the area within which the undertakers are for the time being authorised to supply electricity under the provisions of this Order:

The expression "occupier" shall include, in the case of any church or place of public worship, "the officiating minister thereof," and in the case of any hall or public building, "the authority having the control thereof:"

The expressions "Schedule A.," "Schedule B.," "Schedule C.," and "Schedule D." shall mean the Schedules A. B. C. and D. to this Order annexed respectively.

Commencement of Order.

3. This Order shall come into force and have effect upon the day when the Act confirming this Order is passed, which date is in this Order referred to as "the commencement of this Order."

Description of the Undertakers.

Description of undertakers.

4. The undertakers for the purpose of this Order are the mayor, aldermen, and burgesses of the city of acting by the council as the urban sanitary authority for the district of the city and county of .

Area of Supply.

Area of supply.

5. The area within which the undertakers are authorised to supply electricity under this Order shall be the whole of the area included in Schedule A. (which said area is more particularly delineated upon the map deposited at the Board of Trade by the undertakers together with this Order, and thereon coloured yellow) together with so much of the area included in Schedule B. (which said area is more particularly delineated upon the map above-mentioned and thereon coloured or edged round with blue) as may hereafter be added to the area of supply in accordance with the provisions of this Order.

Extension of area of supply.

6. At any time after the commencement of this Order the undertakers may, by special resolutions, direct that any part or parts of the area included in Schedule B. and not removed from the operation of this Order as hereinafter-mentioned shall be added to the area of supply, but no such special resolution shall have any force or effect unless and until it is confirmed by a subsequent special resolution to be passed by the undertakers at a meeting held at an interval of not less than one month after the passing of the first of such special resolutions, nor unless notice of

Secs. 6—8.

the meetings at which such resolutions are passed respectively, and that such resolutions would be proposed thereat, has been given in the manner in which notices of meetings of the undertakers are usually given.

The Board of Trade may from time to time require the undertakers to give such public notice of the passing of any such special resolution as aforesaid as they may think expedient.

If at any time after the passing of any such special resolution as first above-mentioned, and before the passing of the confirming resolution, a representation is made to the Board of Trade by one-fourth of the ratepayers within the part or parts directed to be added, or one-fourth of the ratepayers within any part of the area included in Schedule B. which may not for the time being be included in the area of supply, and which may be comprised within a radius of two hundred and fifty yards that the additions to the area of supply thereby directed have not been reasonably or fairly selected, having regard to the future development of electric lighting in the district, the Board of Trade may inquire into the matter of such representation, and if upon such inquiry they are satisfied of the truth of such representation, they may direct that such resolution shall be cancelled, and that such additions or some of them shall not be made except upon the terms that some other part or parts of the area included in Schedule B. should also be added to the area of supply; but, save as aforesaid, where any such special resolution has been duly passed and confirmed, the additions to the area of supply thereby directed shall be made and the area of supply shall be extended accordingly.

Removal of certain parts of area included in Schedule B. from operation of Order.

7. If at any time after the expiration of a period of two years after the commencement of this Order one-fourth of the ratepayers within any part of the area included in Schedule B. which may not for the time being be included in the area of supply, and which may be comprised within a radius of two hundred and fifty yards, should be desirous that such part should be added to the area of supply, they may serve a notice upon the undertakers requiring them to direct that such part as particularly specified in such notice shall be added to the area of supply; and if the undertakers for the period of six months after the service of such notice upon them as aforesaid refuse or neglect to direct that such part or parts shall be added to the area of supply in compliance with the terms of such notice, the Board of Trade, upon being satisfied that such notice has been duly served, and that such refusal or neglect has without any good reason continued for the period aforesaid, may direct that such part, or any portion thereof, be removed from the operation of this order, either absolutely or conditionally or subject to the contingency of a license or Provisional Order being obtained by some other local authority, or by some company or person, authorising them to supply electricity within such part or portion thereof: and where any such part or portion thereof may have been removed from the operation of this Order under the provisions of this section, the powers of the undertakers to direct by special resolution that such part or portion thereof, as the case may be, shall be added to the area of supply shall absolutely cease and determine from and after the date when such removal is directed to take place.

Nature and Mode of Supply.

Description of systems of supply.

8. Subject to the provisions of this Order and of the principal Act, the undertakers may supply electricity within the area of supply for all public and private purposes as defined by the said Act.

Such electricity may be supplied by means of any one or more of the following systems:—

(*a.*) The "parallel system," that is to say, the system under which the electricity used by each consumer is drawn off from a double series of mains (in this order referred to as the "positive and negative mains") in connection respectively with the positive and negative poles of the immediate source of supply by means of service lines forming a series of parallel circuits.

(*b.*) The "series system," that is to say, a system under which the whole current is utilised at various points situated successively in the same

circuit, and is not divided up for the purpose of utilization into different parallel circuits which supply different consumers.

(*c.*) Any other system which may be approved of by the Board of Trade either for general or special use.

Provided that under no such system shall the undertakers permit any part of any circuit to be connected with earth, except so far as may be necessary for carrying out the provisions of this Order as regards the regulations for safety and as regards testing, unless such connection is hereafter approved of by the Board of Trade with the concurrence of the Postmaster-General, either for general use or for individual cases, and then subject only to such regulations as the Board of Trade may from time to time impose.

Lands.

Purchase and use of lands.

9. Subject to the provisions of this Order and the principal Act, the undertakers may from time to time by agreement, purchase, or take on lease, any lands for the purposes of this order, and may use such lands and any other lands which may for the time being belong to, or be vested in, or leased by them, and may not be dedicated to the public as a park or recreation ground, or be appropriated as a cemetery, for the purposes aforesaid, and may from time to time dispose of any lands acquired by them under the provisions of this section which may not for the time be required for the purposes of this order: Provided that the amount of land so used by them shall not at any one time exceed in the whole ten acres, except with the consent of the Board of Trade.

Works.

Powers for execution of works.

10. Subject to the provisions of this Order and the principal Act, the undertakers may from time to time exercise all or any of the powers conferred on them by this Order and the principal Act, and may break up and otherwise interfere with so much of the several streets, railways, and tramways specified in Schedule D. in this Order as may for the time being be included within the area of supply, so far as the same may be or be upon any land dedicated to public use, and they may from time to time construct distributing boxes in any street for the purpose of supplying electricity.

Every such distributing box shall be for the exclusive use of the undertakers and under their sole control, except so far as the Board of Trade may otherwise order, and shall be used by the undertakers only for the purpose of leading off service lines and other distributing conductors, or for examining, testing, regulating, measuring, directing, or controlling the supply of electricity, or for examining or testing the conditions of the mains or other portions of the electric lines or works, or for other like purposes connected with the undertaking, and the undertakers may place therein meters, switches, and any other suitable and proper apparatus for any of the above purposes, and may maintain and use the same.

Notice of works, with plan, to be served on the Postmaster-General.

11. Where the exercise of any of the powers of the undertakers in relation to the execution of any works (including the construction of distributing boxes) will involve the placing of any works in, over, along, or across any street or public bridge, the following provisions shall have effect:—

(*a.*) One month before commencing the execution of such works (not being the repairs, renewals, or amendments of existing works of which the character and position are not altered), the undertakers shall serve a notice upon the Postmaster-General, describing the proposed works, together with a plan of the works showing the mode and position in which such works are intended to be executed and placed, and shall upon being required to do so by the Postmaster-General, from time to time give him any such further information in relation thereto as he or they may desire.

(*b.*) The Postmaster-General may in his discretion approve of any such works or plan, with or without any amendment or alterations, or disapprove the same, and may give notice of such approval or disapproval to the undertakers.

Secs. 11, 12.

(*c.*) Where the Postmaster-General disapproves of any such works or plan, the undertakers may appeal to the Board of Trade against such disapproval, and the Board of Trade may inquire into the matter and may allow or disallow such appeal, and approve any such works or plan, with or without any amendments or alterations, or disapprove the same.

(*d.*) If the Postmaster-General fail to give any such notice of approval or disapproval to the undertakers within three weeks after the service of the notice upon him, he shall be deemed to have approved of such works or plan.

(*e.*) Notwithstanding anything in this Order or the principal Act, the undertakers shall not be entitled to execute any such works as above specified, except so far as the same may be of a description and in accordance with a plan which has been approved or is to be deemed to have been approved by the Postmaster-General or by the Board of Trade as above mentioned under this Order; but where any such works and such plan are so approved or to be deemed to be approved; the undertakers may cause such works to be executed in accordance with such plan, subject in all respects to the provisions of this Order and of the principal Act.

(*f.*) If the undertakers make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of this Order or the principal Act) make full compensation to the Postmaster-General for any loss or damage which he may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues; provided that the undertakers shall not be subject to any such penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency or otherwise excusable, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

As to streets not repairable by the local authority, railways, &c.

12. Where the exercise of the powers of the undertakers in relation to the execution of any works will involve the placing of any works in, over, along, or across any street or part of a street not repairable by the local authority, or over or under any railway, tramway, or canal, the following provisions shall have effect, unless otherwise agreed between the parties interested:—

(*a.*) One month before commencing the execution of any such works (not being the repairs, renewals, or amendments of existing works of which the character and position are not altered) the undertakers shall, in addition to any other notices which they may be required to give under this Order or the principal Act, serve a notice upon the authority, company, or persons liable to repair such streets or parts of streets, or the authority, company, or persons for the time being entitled to work such railway or tramway or the owners of such canal as the case may be (in this section referred to as the "owners"), describing the proposed works, and stating the amount of compensation proposed to be made in respect thereof, and the manner in which such compensation is proposed to be paid or secured, together with a plan of the works showing the mode and position in which such works are intended to be executed and placed, and shall, upon being required to do so by any such persons as aforesaid from time to time give them any such further information in relation thereto as they may desire.

(*b.*) Every such notice shall contain a reference to this section, and direct the attention of the owners to whom it is given to the provisions thereof.

(*c.*) Within three weeks after the service of any such notice and plan upon any owners, such owners may, if they think fit, serve a requisition upon the undertakers requiring that any question in relation to such works and any other question arising upon such notice or plan as aforesaid shall be

settled by arbitration; and thereupon such question shall be settled by arbitration accordingly. Secs. 12, 13.

(*d.*) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of such street, railway, tramway, or canal, and may, if he thinks fit, require the undertakers to execute any temporary or other works so as to avoid interference with any traffic so far as may be possible.

(*e.*) Where no such requisition as in this section mentioned is served upon the undertakers, or where, after any such requisition has been served upon them, any question required to be settled by arbitration has been so settled, the undertakers, upon paying or securing any compensation which they may be required to pay or secure in the manner proposed by them or settled by arbitration as aforesaid, may cause the works specified in such notice and plan as aforesaid to be executed, and may from time to time repair, renew, and amend the same (provided that their character and position are not altered), but subject in all respects to the provisions of this Order and the principal Act, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been settled by arbitration as hereinbefore mentioned, or as may be agreed upon between the parties.

(*f.*) If the undertakers make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of this Order or the principal Act) make full compensation to the owners affected thereby, for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues; provided that the undertakers shall not be subject to any such penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency or otherwise excusable, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

13. The undertakers may from time to time alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers under the principal Act or this Order; and any local or other public authority, company, or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such local authority, company, or person in relation to such street or place, subject to the following provisions, unless otherwise agreed between the parties interested:— **As to alteration of pipes, wires, &c., under streets.**

(*a.*) One month before commencing any such alteration the undertakers, or such local or other public authority, company, or person (as the case may be), in this section referred to as "the operators," shall serve a notice upon the authority, company, or persons for the time being entitled to such pipes, wires, electric lines, or works (as the case may be), in this section referred to as "the owners," describing the proposed alteration, and stating the amount of compensation proposed to be made in respect thereof, and the manner in which such compensation is proposed to be paid or secured, together with a plan showing the manner in which it is intended that such alterations shall be made, and shall, upon being required to do so by any such owners, from time to time give them any such information in relation thereto as they may desire.

(*b.*) Within three weeks after the service of any such notice and plan upon any owners, such owners may, if they think fit, serve a requisition upon the operators requiring that any question in relation to such works and any other question arising upon such notice or plan as aforesaid shall be

Sec. 13.

settled by arbitration; and thereupon such question shall be settled by arbitration accordingly.

(*c.*) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of such pipes, wires, electric lines, or works, and may, if he thinks fit, require the operators to execute any temporary or other works so as to avoid interference with any purpose for which such pipe, wire, electric line, or work is used so far as may be possible.

(*d.*) Where no such requisition as in this section mentioned is served upon the operators, the owners shall be held to have agreed to the notice or plan served on them as aforesaid, and in such case, or where, after any such requisition has been served upon them, any question required to be settled by arbitration has been so settled, the operators, upon paying or securing any compensation which they may be required to pay or secure in the manner proposed by them or settled by arbitration as aforesaid, may cause the alterations specified in such notice and plan as aforesaid to be made, but subject in all respects to the provisions of this Order and the principal Act, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been settled by arbitration as hereinbefore mentioned, or as may be agreed upon between the parties.

(*e.*) At any time before any operators are entitled to commence any such alterations as aforesaid the owners may serve a statement upon them, stating that they desire to execute such alteration themselves, and where any such statement has been served upon the operators they shall not be entitled to proceed themselves to execute such alterations except where they have notified to such owners that they require them to execute such alterations, and such owners have refused or neglected to comply with such notification as hereinafter provided.

(*f.*) Where any such statement as last aforesaid has been served upon the operators, they shall not more than forty-eight hours and not less than twenty-four hours before the execution of such alterations is required to commence, serve a notification upon the owners stating the time when such alterations are required to be commenced, and the manner in which such alterations are required to be made.

(*g.*) Upon receipt of any such notification as last aforesaid, the owners may proceed to execute such alterations as required by the operators, subject to the like restrictions and conditions as the operators would themselves be subject to in executing such alterations so far as the same may be applicable.

(*h.*) If the owners decline, or for twenty-four hours after the time when any such alterations are required to be commenced, neglect to comply with such notification, the operators may themselves proceed to execute such alterations in like manner as they might have done if no such statement as aforesaid had been served upon them.

(*i.*) All expenses properly incurred by any owners in complying with any notification of any operators under the last preceding subsections shall be repaid to them by such operators, and may be recovered summarily before any court of summary jurisdiction who shall have power to determine the amount thereof.

(*j.*) If the operators make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of this Order or the principal Act) make full compensation to the owners affected thereby for any loss, damage, or penalty which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues; provided that the operators shall not be subject to any such

penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency or otherwise excusable, and that the operators complied with the requirements of this section so far as was reasonable under the circumstances.

Laying of electric lines, pipes, &c., near those of gas or water company or of undertakers.

14. Whenever the undertakers require to dig or sink any trench for laying down any new electric lines (other than service lines) or other works near to which any pipe belonging to any gas or water company, or any branch or service pipe for the supply of gas or water has been lawfully placed, or where any gas or water company require to dig or sink any trench for laying down any new mains or pipes other than service pipes or other apparatus near to which any electric lines or works of the undertakers have been lawfully placed, the undertakers, or such gas or water company (as the case may be) in this section referred to as "the operators," shall, unless otherwise agreed between the parties interested, give to such gas or water company or to the undertakers (as the case may be), in this section referred to as "the owners," not more than forty-eight hours and not less than twenty-four hour's notice before commencing to dig or sink such trench as aforesaid, and such owners shall be entitled by their officer to superintend the digging or sinking of such trench, and the operators shall conform with such reasonable requirements as may from time to time be made by the owners or such officer for the protection of every such pipe, electric line, or work, and for securing the same from injury, and they shall also repair any damage that may be done to any such pipe, electric line, or work.

If the operators make default in complying with any of the requirements or restrictions of this section, they shall make full compensation to the owners of any pipe, electric line, or work affected thereby for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues: Provided that the operators shall not be subject to any such penalty if the Court having cognizance of the case are of opinion that the case was one of emergency or otherwise excusable, and that the operators complied with the requirements and restrictions of this section so far as was reasonable under the circumstances, or that the default in question was due to the fact that the operators were ignorant of the position of the pipe, electric line, or work affected thereby, and that such ignorance was not owing to any negligence on the part of the operators.

For the purposes of this section the expression "gas or water company" shall include any local authority or other body supplying gas or water.

For protection of telephone companies, &c.

15. Seven days before commencing to lay down any electric line, or to supply electricity through any electric line in any manner whereby the work of telegraphic or telephonic communication through any wires or lines lawfully laid down or placed in any position may be injuriously affected, the undertakers shall, unless otherwise agreed between the parties interested, give to the persons for the time being entitled to such wires or lines notice in writing specifying the course, nature, and gauge of such electric lines, and the amount and nature of the current intended to be sent along the same, and the extent to and manner in which, if at all, earth returns are proposed to be used; and the undertakers shall conform with such reasonable requirements as may from time to time be made by such persons as aforesaid for the purpose of preventing the communication through such wires or lines from being injuriously affected as aforesaid.

If any difference arises between any such persons and the undertakers with respect to the reasonableness of any requirements so made, such difference shall be determined by arbitration.

Provided that nothing in this section shall apply to repairs or renewals of existing electric lines so long as the character and position thereof is not altered, nor to the laying of connexions with mains where the direction of the electric lines so laid down crosses the direction of the said telegraphic or telephonic wires or lines at right angles at the point of shortest distance, and such directions continue the same for a distance of six feet on each side of such point.

If the undertakers make default in complying with any of the requirements or

Secs. 15–17.

restrictions of this section, they shall make full compensation to the persons entitled to any such wire or line as aforesaid for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding five pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding forty shillings for every day after the first day during which such default continues: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the Court having cognizance of the case are of opinion that the case was one of emergency or otherwise excusable, and that the undertakers complied with the requirements and restrictions of this section so far as was reasonable under the circumstances, or that the default in question was due to the fact that the undertakers were ignorant of the position of the wires or lines affected thereby, and that such ignorance was not owing to any negligence on the part of the undertakers.

Exercise of Powers of Undertakers as to breaking up Railways, &c., by Owners.

Railway company, &c., may give notice of desire to break up railways, &c., on behalf of undertakers.

16. The authority, company, or persons for the time being entitled to work any railway or tramway which the undertakers may be empowered to break up for the purposes of this Order if they think fit may from time to time give a notice to the undertakers stating that they desire to exercise or discharge all or any part of any of the powers or duties of the undertakers as therein specified in relation to the breaking up, filling in, reinstating, or making good any such railway or tramway.

Every such notice shall be served upon the undertakers, and may from time to time be amended or revoked by another notice similarly served.

Proceedings where railway company, &c., give such notice.

17. Where the authority, company, or persons for the time being entitled to work any railway or tramway (in this section referred to as "the givers of the notice") have given notice that they desire to exercise or discharge any specified powers and duties of the undertakers as in the last section mentioned, then so long as such notice remains in force, the following provisions shall have effect:—

(*a.*) The undertakers shall not be entitled to proceed themselves to exercise or discharge any such specified powers or duties as aforesaid, except where they have required the givers of the notice to exercise or discharge such powers or duties, and the givers of the notice have refused or neglected to comply with such requisition, as hereinafter provided, or in cases of emergency.

(*b.*) In addition to any other notices which they may be required to give under the provisions of this Order or the principal Act, the undertakers shall, not more than forty-eight hours and not less than twenty-four hours before the exercise or discharge of any such powers or duties so specified as aforesaid is required to commence, serve a requisition upon the givers of the notice stating the time when such exercise or discharge is required to be commenced and the manner in which any such powers or duties are required to be exercised or discharged.

(*c.*) Upon receipt of any such requisition as last aforesaid, the givers of the notice may proceed to exercise or discharge any such powers or duties as required by the undertakers subject to the like restrictions and conditions as the undertakers would themselves be subject to in such exercise or discharge so far as the same may be applicable.

(*d.*) If the givers of the notice decline, or for twenty-four hours after the time when any such exercise or discharge of any powers or duties is by any requisition required to be commenced, neglect to comply with such requisition, the undertakers may themselves proceed to exercise or discharge the powers or duties therein specified in like manner as they might have done if such notice as aforesaid had not been given to them by the givers of the notice.

(*e.*) In any case of emergency the undertakers may themselves proceed to at once exercise or discharge so much of any such specified powers or duties as aforesaid as may be necessary for the actual remedying of any defect from which the emergency arises without serving any requisition on the givers of the notice.

(*f.*) If the undertakers exercise or discharge any such specified powers or duties as aforesaid otherwise than in accordance with the provisions of this section, they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence, to a further penalty not exceeding five pounds for every day after the first day during which such offence continues.

(*g.*) All expenses properly incurred by the givers of the notice in complying with any requisition of the undertakers under this section shall be repaid to them by the undertakers, and may be recovered summarily before any court of summary jurisdiction, who shall have power to determine the amount thereof.

Provided that nothing in this or the last preceding section shall in any way affect the rights of the undertakers to exercise or discharge any powers or duties conferred or imposed upon them by this Order or the principal Act, in relation to the execution of any works beyond the actual breaking up, filling in, reinstating, or making good any such railway or tramway, as in the last section mentioned.

Compulsory Works.

Mains, &c., to be laid down in certain streets specified in Schedule A. within two years.

18. The undertakers shall, within a period of two years after the commencement of this Order, lay down suitable and sufficient distributing mains for the purposes of general supply upon the parallel system, in every street and part of a street specified in that behalf in Schedule A. to this order, and shall thereafter maintain the same.

Mains, &c., to be laid down in remainder of area in Schedule A. on requisition.

19. In addition to the mains specified in the last section, the undertakers shall, at any time after the expiration of the period of two years after the commencement of this Order, lay down and maintain suitable and sufficient distributing mains for the purposes of general supply upon the parallel system in every other street or part of a street (where part only of a street is included within the area of supply) within the area included in Schedule A. upon being required to do so in manner by this Order provided.

All such mains as in this section above mentioned shall be laid down by the undertakers within six months after any requisition in that behalf which may be served upon them in accordance with the provisons of this Order has become binding on them, or such further time as may in any case be approved of by the Board of Trade.

If undertakers fail to lay down mains, &c., Order may be revoked.

20. If the undertakers make default in laying down any mains in accordance with the provisions of the last preceding sections, within the periods prescribed in that behalf respectively, the Board of Trade may revoke this Order as to the whole or (with the consent of the undertakers) any part of the area affected thereby, or, if the undertakers so desire, may suffer the same to remain in force as to such area or part thereof, subject to such conditions, as they may think fit to impose, and any conditions so imposed shall be binding on and observed by the undertakers, and shall be of the like force and effect in every respect as though they were contained in this Order; but the undertakers shall not be liable to any proceeding, civil or criminal, in respect of any such default as aforesaid beyond the exercise of the powers by this section conferred upon the Board of Trade.

Mains, &c., to be laid down in area included in Schedule B. on requisition.

21. At any time after the date when any addition to the area of supply of any part of the area included in Schedule B. is directed to take effect the undertakers shall cause suitable and sufficient distributing mains, for the purposes of general supply upon the parallel system to be laid down in every street or part of a street (where part only of a street is included within the area of supply) within the part so added to the area of supply, upon being required to do so in manner by this Order provided.

All such mains as in this section above mentioned shall be laid down by the undertakers within six months after any requisition in that behalf which may be served upon them in accordance with the provisions of this Order has become binding upon them, or such further time as may in any case be approved of by the Board of Trade.

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If the undertakers make default in laying down any distributing mains in accordance with the provisions of this section, the Board of Trade may revoke this Order as to the whole or (with the consent of the undertakers) any part of such addition to the area of supply, or, if the undertakers so desire, may suffer the same to remain in force as to such addition or part thereof, subject to such conditions as they may think fit to impose, and any conditions so imposed shall be binding on and observed by the undertakers, and shall be of the like force and effect in every respect as though they were contained in this Order; but the undertakers shall not be liable to any proceeding, civil or criminal, in respect of any such default as aforesaid beyond the exercise of the powers by this section conferred upon the Board of Trade.

Manner in which requisition is to be made.

22. Any requisition requiring the undertakers to lay down distributing mains for the purposes of general supply in any street or part of a street under the last preceding sections may be made by the owners or occupiers of not less than one-fourth of the premises along such street or part of a street.

Every such requisition shall be signed by the owners and occupiers making such requisition, and shall be served upon the undertakers.

Forms of requisitions shall be kept by the undertakers at their office, and a copy shall be supplied to any owner or occupier of premises within the district on applying for the same at the price of one shilling a copy, and any requisition so supplied shall be deemed valid in point of form.

Provisions on requisition by owners or occupiers.

23. Where any such requisition is made by any such owners or occupiers as aforesaid, the undertakers (if they think fit) may, within fourteen days after the service of the requisition upon them, serve a notice on all the persons by whom such requisition is signed, stating that they decline to be bound by such requisition unless such persons or some of them will bind themselves to take a supply of electricity for three years, of such amount in the aggregate (to be specified by the undertakers in such notice) as will at the rates of charge for the time being charged by the undertakers for a supply of electricity from distributing mains to ordinary consumers within the area of supply produce an annual sum (to be specified by the undertakers in such notice) amounting to not less than twenty per centum upon the expense of providing and laying down the required distributing mains and any other mains which may be necessary for the purpose of connecting such distributing mains with the nearest available source of supply, and thereupon such requisition shall not be binding on the undertakers unless within fourteen days after the service of such notice on all the persons signing such requisition has been effected, or in case of difference, the delivery of the arbitrator's award, there be tendered to the undertakers an agreement severally executed by such persons or some of them, binding them to take for a period of three years at the least such specified amounts of electricity respectively as will in the aggregate at the rates of charge above specified, produce an annual sum amounting to not less than twenty per centum upon the expense of providing and laying down such distributing mains and other mains as above-mentioned, nor unless sufficient security for the payment to the undertakers of all moneys which may become due to them from such persons under such agreement is offered to the undertakers (if required by them by such notice as aforesaid) within the period limited for the tender of the agreement as aforesaid.

If any difference arises between the undertakers and any persons signing any such requisition as to the reasonableness of the amounts specified by the undertakers in their notice, or as to the sufficiency of any security offered to them under this section, such difference shall be determined by arbitration.

Maps.

Map of area of supply to be made.

24. The undertakers shall forthwith, after commencing to supply electricity under this Order, cause a map to be made of the area of supply on such a scale as may from time to time be prescibed by the Board of Trade, and shall cause to be marked thereon the line of all their then existing mains, service lines, and other underground works and distributing boxes, and shall once in every year correct such map and make such additions thereto as will show the line of all their

then existing mains, service lines, and other underground works and distributing boxes. Secs. 24–27.

25. Every map so made for the undertakers, or a copy thereof, with the date expressed thereon of the last time when it was so corrected shall be kept by the undertakers at their office and shall at all reasonable times be open to the inspection of all applicants, and such applicants may take copies of the same or any part thereof, and a copy of every such map shall within one month after such map is made be served by the undertakers upon the Board of Trade, and upon the Postmaster-General. Deposit and inspection of maps.

The local authority may demand and take from every such applicant as aforesaid such fee not exceeding one shilling for each inspection of such map or copy, and such further fee not exceeding one shilling for each copy of the same, or any part thereof, taken by such applicant as they may from time to time prescribe.

26. If the undertakers fail to comply with any of the requirements of the last preceding sections of this Order with respect to maps, they shall for every such offence be liable to a penalty not exceeding ten pounds, and to a further penalty not exceeding two pounds for every day after the first day during which such offence continues. Penalty on undertakers in respect of maps.

Regulations as to Supply on the Parallel System.

27. The following provisions shall apply to the supply of electricity by the undertakers upon the parallel system:— Provisions as to parallel system.

(*a.*) From and after the time when the undertakers commence to supply electricity through any distributing main, they shall maintain in such main a current of electricity sufficient for the use of all the consumers for the time being entitled to be supplied from such main; and such supply shall, except so far as may be otherwise from time to time approved by the Board of Trade, be constantly maintained at such pressure as may be fixed under the provisions of this Order. Undertakers to provide constant supply.

(*b.*) During the whole of the period when a supply of electricity is required to be maintained by the undertakers in the distributing mains under this Order (in this Order termed "the hours of supply") the potential at corresponding points of the positive and negative distributing mains shall differ at each point by a constant difference (in this Order termed "the standard pressure") to be fixed as hereinafter specified: Provided that the undertakers shall be deemed to have complied with the requirements of this sub-section so long as the difference in potential does not at any point vary more than five per cent from the corresponding standard pressure, unless changes in potential recur so frequently as to cause unsteadiness in the supply. Pressure in mains during supply.

(*c.*) The standard pressure may be different for different points of any main and for different hours during the period of supply, but it shall in all cases be within the limits following:— Limits of standard pressure.

In the case of continuous currents it shall not be less than thirty volts or more than two hundred volts, and

In the case of alternating currents it shall not be less than fifty volts, or more than one hundred volts, the difference of potential in the case of alternating currents being taken as equal to the constant difference of potential which would in the case of continuous currents produce the same mean effect.

Provided that such limits may from time to time be varied by the Board of Trade either generally or in respect of individual cases.

(*d.*) The "standard pressure" shall be fixed by the undertakers for every main, and shall not be altered except after notice to the Board of Trade and upon such terms and conditions as the Board of Trade may impose, and after public notice has been given during a period of one month in such manner as the Board of Trade may require of the intention of the undertakers to alter the same. Fixing of standard pressure.

(*e.*) The number of alternations per minute of alternating currents shall not Number of

Secs. 27–32.

alternations in alternating currents.

during the hours of supply be less than six hundred, or such other number as may from time to time be fixed by the undertakers with the approval of the Board of Trade.

Supply to be given at two poles on consumer's premises.

(*f.*) The supply of electricity upon any premises shall (except by agreement) be given at two poles situated thereon at a safe and convenient distance from one another in connection respectively with the positive and negative mains, and the undertakers shall be responsible for the maintenance of such poles and any other lines, fittings, and apparatus belonging to the undertakers, or under their control upon such premises in a fit and proper condition for supplying electricity, but the undertakers shall not be in any way responsible for any defects in the construction of any electric lines or fittings within such premises, whether for the utilisation of the electricity supplied or otherwise where such electric lines or fittings have not been supplied by them, nor for any neglect in the maintenance of any such electric lines or fittings where they do not belong to the undertakers or are not under their control.

Pressure at poles on consumer's premises.

(*g.*) The resistance of the service lines by which the supply is given to any consumer shall not, except by agreement, be greater than would cause the difference of potential at the positive and negative poles in any consumer's premises to be less than the corresponding difference of potential at the point of junction of the mains and the service lines by which he is supplied by more than two and a half per centum of the corresponding standard pressure when the maximum current with which he is entitled to be supplied by the undertakers under this Order is passing through such service lines, or such other per-centage as may from time to time be approved of by the Board of Trade either generally or in respect of individual cases.

Testing.

Appointment of electric inspectors by a court of summary jurisdiction.

28. A court of summary jurisdiction, on the application of any person supplied with electricity by the undertakers within the area of supply, or of the undertakers, shall from time to time appoint or shall appoint and keep appointed one or more competent persons to be electric inspectors for the purpose of inspecting electric lines and works, and of certifying meters under this Order.

Remuneration of electric inspectors.

29. The local authority shall pay to every electric inspector appointed under this Order such reasonable remuneration (if any) as may from time to time be determined by the court by whom he is appointed, and such remuneration may be in addition to or substitution for any fees which are directed to be paid to electric inspectors for services rendered by them under this Order, as may be settled by the court by whom such remuneration is determined: Provided that where any such remuneration is settled to be in substitution for such fees as aforesaid, such fees shall, in lieu of being paid to such electric inspector for his own use, be due and paid to him on behalf and for the use of the local authority, and shall be carried by them to the credit of the local rate.

Testing of mains.

30. Every electric inspector, if and when required to do so by any court of summary jurisdiction, shall from time to time test for insulation and conductivity any portion of any main of the undertakers within the area of supply through which electricity is supplied by them: Provided that such testings shall not be made in regard to any particular portion of a main oftener than once in any three months, unless in pursuance of a special order in that behalf made by the Board of Trade.

Testing of service lines.

31. Every electric inspector, if and when required to do so by any person supplied with electricity by the undertakers, shall from time to time test the insulation and conductivity of the service lines by which such electricity is supplied, and the efficiency of any joints in such service lines and make such other tests in relation to such service lines as may from time to time be approved of by the Board of Trade.

Mode of testing.

32. Notice shall be given to the undertakers before the commencement of any testing by an electric inspector, and such testing shall be carried out at such suit-

able hours as, in the opinion of such inspector, will least interfere with the supply of electricity by the undertakers, and in such manner as such inspector may think expedient, but except under the provisions of a special order in that behalf made by the Board of Trade, he shall not be entitled to have access to or to interfere with the mains of the undertakers at any points other than those at which the undertakers have reserved for themselves access to the said mains: Provided that the undertakers shall not be held responsible for any interruption in the supply of electricity which may be occasioned by or required by such inspector for the purpose of such testing as aforesaid.

Report of results of testing.

33. Every electric inspector shall, on the day immediately following that on which any testing has been completed by him under this Order, make and deliver a report of the results of his testing to the court or person by whom he was required to make such testing, and to the undertakers, and such report shall be receivable in evidence.

Expenses of testing.

34. Where the report of any electric inspector shows as the result of any testing that the undertakers were in default, the expenses of such testing, including such reasonable fees to the electric inspector as may from time to time be prescribed in that behalf by a court of summary jurisdiction, with the approval of the Board of Trade, shall be paid by the undertakers, but if such report shows that the undertakers were not in default, such expenses shall be paid by such company or person as the court may direct; and in case of service lines by the person requiring the electric inspector to make such testing.

Provided that if the undertakers, or any other authority, company, or person should be dissatisfied with any report of any electric inspector under the last preceding sections, they may appeal to the Board of Trade against such report, and thereupon the Board of Trade shall inquire into and decide upon the matter of such appeal, and their decision shall be final and binding on all parties.

Undertakers to establish testing places and keep instruments.

35. A court of summary jurisdiction may, upon the application of any ten consumers of electricity within the area of supply, direct the undertakers, at such places within a reasonable distance from any distributing main as such court think necessary, to establish at their own cost such reasonable number of testing stations as the court may deem to be sufficient for testing the supply of electricity by the undertakers through such main, and thereupon the undertakers shall establish such testing places, and shall place thereat such proper and suitable instruments, of a pattern to be approved by the Board of Trade, for the purpose of testing such supply as the court may direct, and they shall connect such stations by means of proper and sufficient service lines with such main at their own expense, and supply electricity thereto for the purpose of such testing free of charge.

If the undertakers are dissatisfied with any requirements of any court of summary jurisdiction under this section they may appeal to the Board of Trade against the same, and thereupon the Board of Trade shall inquire into and decide upon the matter of such appeal, and their decision shall be final and binding on all parties.

Readings of instruments to be taken.

36. The undertakers shall keep all instruments required to be placed by them for the purpose of testing any supply of electricity by the undertakers in efficient working order, and any electric inspector appointed under this Order may from time to time examine and record the readings of such instruments at such times and in such manner as he may be directed by the authority by whom he is appointed, and any readings so recorded shall be receivable in evidence.

Undertakers to keep instruments.

37. The undertakers shall also set up and keep in efficient working order upon all premises from which they supply electricity by any distributing mains or electric lines suitable and proper instruments of such pattern and construction as may be from time to time approved of or prescribed by the Board of Trade for measuring thereat the difference of potential between any corresponding points of such mains and electric lines and between such mains and electric lines and the earth, and the current passing along such mains and electric lines, and shall record and keep recorded the readings of these instruments taken at intervals of not more than one hour during the time that electricity is being supplied thereto from such premises, and any readings so recorded shall be receivable in evidence.

Electric

38. Any electric inspector appointed under this Order shall have the right to

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Inspector may test undertaker's instruments.

have access at all reasonable hours to the instruments mentioned in the last preceding section for the purpose of testing the same and ascertaining if the same are in order, and in case the same are not in order he may require the undertakers forthwith to have the same put in order.

Representation of undertakers at testings.

39. The undertakers may, if they think fit, on each occasion of the testing of any main or service line, or the testing or inspection of any instruments of the undertakers by the electric inspector, be represented by some officer or other agent, but such officer or agent shall not interfere in the testing or inspection.

Undertakers to give facilities for testing.

40. The undertakers shall afford all facilities for the proper execution of this Order with respect to testing, and shall comply with all the requirements of this Order in that behalf; and in case the undertakers make default in complying with any of the provisions of this section they shall be liable to a penalty not exceeding five pounds, and in the case of a continuing offence to a further penalty not exceeding one pound for every day after the first day during which such offence continues.

Supply.

Undertakers to furnish sufficient supply of electricity to owners and occupiers within the area of supply.

41. The undertakers shall, upon being required so to do by the owner or occupier of any premises situate within twenty-five yards from any distributing main of the undertakers, give and continue to give a supply of electricity for such premises, subject to the provisions of this Order, and they shall furnish and lay any electric lines that may be necessary for the purpose of supplying the maximum current with which any such owner or occupier may be entitled to be supplied under this Order, subject to the conditions following; (that is to say,)

The cost of so much of any electric line for the supply of electricity to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such electric line as may be laid for a greater distance than thirty feet from any distributing main of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of electricity shall—

Serve a notice upon the undertakers at their office, specifying the premises in respect of which such supply is required and the maximum current required to be supplied, and the day (not being an earlier day than a reasonable time after the date of the service of such notice) upon which such supply is required to commence:

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of electricity for a period of at least two years, of such an amount that the rent payable for the same, at the rate of charge for the time being charged by the undertakers for a supply of electricity to ordinary consumers within the area of supply, shall not be less than twenty pounds per centum per annum on the outlay incurred by the undertakers in providing any electric line to be provided by them for the purpose of such supply, and give to the undertakers (if required by them so to do) security for the payment to them of all moneys which may become due to them by such owner or occupier in respect of any electric lines to be furnished by the undertakers, and in respect of electricity to be supplied by them.

Provided always, that the undertakers may, after they have given a supply of electricity for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid or is insufficient; and in case any such owner or occupier fail to comply with the terms of such notice, the undertakers may, if they think fit, discontinue to supply electricity for such premises so long as such failure continues: Provided also, that if the owner or occupier of any such premises as aforesaid uses any form of lamp or burner, or uses the electricity supplied to him by the undertakers for any purposes, or deals with it in any manner so as to unduly or improperly inter-

fere with the supply of electricity to any other authority, company, or person by the undertakers, the undertakers may, if they think fit, discontinue to supply electricity to such premises so long as such user continues.

Maximum current.

42. The maximum current with which any such consumer, as in the last section mentioned, shall be entitled to be supplied shall be of such amount as he may from time to time require to be supplied with, not exceeding what may be reasonably anticipated as the maximum consumption on his premises: Provided that where any consumer has required the undertakers to supply him with a maximum current of any specified amount, he shall not be entitled to alter that maximum except upon one month's notice to the undertakers, and any expenses incurred by the undertakers in respect of the service lines by which electricity is supplied to the premises of such consumer, or any electric lines, fittings, or apparatus of the undertakers upon such premises, consequent upon such alteration, shall be paid by him to the undertakers, and may be recovered summarily as a civil debt.

If any difference arises between any such owner or occupier and the undertakers as to what may be reasonably anticipated as the consumption on his premises such difference shall be determined by arbitration.

Penalty for failure to supply.

43. Whenever the undertakers make default in giving a supply of electricity at such pressure and during such hours as are by this Order required to any owner or occupier of premises to whom they may be and are required to supply electricity under this Order, they shall be liable to a penalty not exceeding forty shillings in respect of every such default for each day upon which any such default occurs.

Provided that the penalties to be inflicted on the undertakers under this section shall in no case exceed in the aggregate the sum of one hundred pounds in respect of any defaults in supplying private consumers, for any one day; and provided also that in no case shall any penalty be inflicted in respect of any default if the court having cognizance of the case are of opinion that such default was caused by inevitable accident, or by force majeure or was otherwise excusable, or was of so slight or unimportant a character as not materially to affect the value of the supply.

Price.

Methods of charging.

44. The undertakers may charge for electricity supplied by them from any distributing main to any ordinary consumer (otherwise than by agreement)—

(1.) By the quantity of energy contained in such supply; or,

(2.) By the actual quantity of electricity so supplied; or

unless the Board of Trade from time to time otherwise direct,

(3.) By the number of hours during which the supply of electricity is actually used by such consumer, and the maximum current with which he is for the time being entitled to be supplied:

Provided that, before commencing to supply electricity through any distributing main for the purposes of general supply, the undertakers shall give notice to all consumers into whose premises service lines have been laid from such main by what method they propose to charge for electricity supplied through such main; and, where the undertakers have given any such notice, they shall not be entitled to change such method of charging except after one month's notice of such change has been given by them to every consumer of electricity who is supplied by them from such main.

Maximum prices.

45. The prices to be charged by the undertakers for electricity supplied by them shall not exceed those stated in that behalf in Schedule C. in the first, second, and third sections thereof respectively, or such other prices as may from time to time be substituted by the Board of Trade for the prices so stated, upon the application either of the undertakers or of any twenty consumers of electricity of the undertakers within the area of supply.

Other charges by agreement.

46. Subject to the provisions of this Order, and of the principal Act, and to the right of the consumer to require that he shall be charged according to some one or other of the methods above mentioned in cases where he is entitled to require a supply, the undertakers may make any agreement with a consumer as to the price to be charged for electricity, and the mode in which such charges are to be ascertained, and may charge accordingly.

Secs. 47–52. *Meters.*

Meters to be used except by agreement.

47. The energy contained in any supply of electricity by the undertakers to any ordinary consumer under this Order, or the quantity of electricity so supplied, or the duration of such supply (according to the method by which the undertakers elect to charge), in this Order referred to as "the value of the supply," shall, except as otherwise agreed between such consumer and the undertakers, be ascertained by means of an appropriate meter duly certified under the provisions of this Order.

Meter to be certified.

48. A meter shall be considered to be duly certified under the provisions of this Order if it be certified by an electric inspector appointed under this Order to be of some construction and pattern, and to have been fixed and to have been connected with the service lines in some manner approved of by the Board of Trade, and to be a correct meter; and every such meter is in this Order referred to as a "certified meter": Provided that, where any alteration is made in any certified meter, or where any such meter is unfixed or disconnected from the service lines, such meter shall cease to be a certified meter unless and until it be again certified as a certified meter under the provisions of this Order.

Fees for certifying meters.

49. Every electric inspector who may be required by the undertakers or by any consumer to examine any meter for the purpose of certifying the same as a certified meter under the provisions of this Order shall be entitled to demand from the undertakers or consumer so requiring him and to be paid such fees as may from time to time be determined in that behalf by a court of summary jurisdiction with the approval of the Board of Trade, before commencing such examination, and every electric inspector shall, upon being required so to do by the undertakers or any such consumer as aforesaid, examine any meter situate within the district for which he is appointed if such fees are offered to him as aforesaid, and shall certify the same as a certified meter if he considers it entitled to be so certified.

Undertakers to supply meters if required to do so.

50. Where the value of the supply of electricity to any consumer by the undertakers is under this Order required to be ascertained by means of an appropriate meter, the undertakers shall, if required so to do by such consumer, supply him with an appropriate meter, and shall, if required so to do, fix the same upon the premises of the consumer and connect the service lines therewith, and procure such meter to be duly certified under the provisions of this Order, and for such purposes may authorise and empower any officer or person and any electric inspector to enter upon such premises and execute all necessary works and do all necessary acts; provided that previously to supplying any such meter the undertakers may require such consumer to pay to them a reasonable sum in respect of the price of such meter, or to give security therefor if he desires to purchase the same, or to enter into an agreement for the hire of such meter as hereinafter provided if he desires to hire such meter, and also to pay to them a reasonable sum in respect of the expense of fixing such meter and connecting it with the service lines and procuring the same to be certified under this Order; if any difference arises between the undertakers and any consumer under this section such difference shall be determined by arbitration.

Meters not to be connected or disconnected without notice.

51. No consumer shall connect any meter used under this Order for ascertaining the value of any supply of electricity to him with any electric line through which electricity is supplied by the undertakers, or disconnect any such meter from any such electric line unless he has given to the undertakers not less than forty-eight hours notice in writing of his intention so to do, and if any person acts in contravention of this section he shall be liable for each offence to a penalty not exceeding forty shillings.

Consumer to keep his meter in proper order.

52. Every consumer of electricity supplied by the undertakers shall at all times, at his own expense, keep all meters belonging to him, whereby the value of any supply of electricity to him by the undertakers is under this Order to be ascertained, in proper order for correctly registering such value, and in default of his so doing the undertakers may cease to supply electricity through such meter.

The undertakers shall have access to and be at liberty to take off, remove, test, inspect, and replace any such meter at all reasonable times; provided that all reasonable expenses of and incident to any such taking off, removing, testing,

inspecting, and replacing, and the procuring such meter to be again duly certified where such re-certifying is thereby rendered necessary, shall, if the meter be found to be not in proper order, be paid by the consumer, but if the same be in proper order, all expenses connected therewith shall be paid by the undertakers.

Power to the undertakers to let meters.

53. The undertakers may let for hire any meter for ascertaining the value of the supply of electricity by them to any consumer, and any fittings thereto, for such remuneration in money, and on such terms with respect to the repair of such meter and fittings, and for securing the safety and return to the undertakers of such meter, as may be agreed upon between the hirer and the undertakers, and such remuneration shall be recoverable by the undertakers summarily as a civil debt.

Undertakers to keep meter let for hire in repair.

54. The undertakers shall at all times, at their own expense, keep all meters let for hire by them to any consumer, whereby the value of the supply of electricity by them to such consumer is ascertained, in proper order for correctly registering such value, and in default of their so doing the consumer shall not be liable to pay rent for the same during such time as such default continues. The undertakers shall, for the purposes aforesaid, have access to and be at liberty to remove, test, inspect, and replace any such meter at all reasonable times: Provided that the expenses of procuring any such meter to be again duly certified where such re-certifying is thereby rendered necessary shall be paid by the undertakers.

Differences as to correctness of meter to be settled by inspector.

55. If any difference arises between any consumer and the undertakers as to whether any meter whereby the value of any supply of electricity to such consumer by the undertakers is ascertained (whether belonging to such consumer or the undertakers) is or is not in proper order for correctly registering such value, or as to whether such value has been correctly registered in any case by any meter, such difference shall be determined upon the application of either party by an electric inspector, who shall also order by which of the parties the costs of the proceedings before him shall be paid, and the decision of such inspector shall be final and binding on all parties. Subject as aforesaid, the register of the meter shall be conclusive evidence in the absence of fraud of the value of any supply of electricity by the undertakers to any consumer.

Undertakers to pay expenses of providing new meters where method of charge altered.

56. Where any consumer who is supplied with electricity by the undertakers from any distributing main is provided with a certified meter for the purpose of ascertaining the value of the supply, and the undertakers change the method of charging for electricity supplied by them from such main, the undertakers shall pay to such consumer the reasonable expenses to which he may be put in providing a new meter for the purpose of ascertaining the value of the supply of electricity to him according to such new method of charging, and such expenses may be recovered by the consumer from the undertakers summarily as a civil debt.

Undertakers may place meters to measure supply or to check measurement thereof.

57. In addition to any meter which may be placed upon the premises of any consumer to ascertain the value of the supply of electricity to him as between himself and the undertakers, the undertakers may from time to time place upon his premises such meter or other apparatus as they may desire for the purpose of ascertaining or regulating either the amount of electricity or energy supplied to such consumer, or the number of hours during which such supply is given, or the maximum amount of such supply, or any other quantity or time connected therewith: Provided that such meter shall be of some construction and pattern and shall be fixed and connected with the service lines in some manner approved of by the Board of Trade, and shall be supplied and maintained entirely at the cost of the undertakers, and shall not, except by agreement, be placed otherwise than between the mains of the undertakers and the pole on the consumer's premises at which the supply is given.

Application of Revenue.

Application of moneys.

58. All moneys from time to time received by the undertakers in respect of the undertaking, except borrowed money, shall be applied by them as follows:—

(1.) In payment of the working and establishment expenses and costs of main-

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tenance of the undertaking, including all costs, expenses, penalties, and damages incurred or payable by the undertakers, consequent upon any proceedings by or against the undertakers, their officers or servants in relation to the undertaking.

(2.) In payment of the interest on any mortgages, stock, or other securities granted and issued by the undertakers in respect of money borrowed for electricity purposes.

(3.) In providing any instalments or sinking fund required to be provided in respect of moneys borrowed for electricity purposes.

(4.) In payment of all other their expenses of executing this Order, not being expenses properly chargeable to capital.

(5.) In providing a reserve fund if they think fit by setting aside such money as they may from time to time think reasonable, and investing the same and the resulting income thereof in Government securities, or in any other securities in which trustees are by law for the time being authorised to invest, or in any stock or securities of the undertakers, and accumulating the same at compound interest until the fund so formed amounts to one tenth of the aggregate capital expenditure on the undertaking, which fund shall be applicable from time to time to answer any deficiency at any time happening in the income of the undertakers from the undertaking, or to meet any extraordinary claim or demand at any time arising against the undertakers in respect of the undertaking, and so that if that fund is at any time reduced, it may thereafter be again restored to the prescribed limit, and so from time to time as often as such reduction happens.

And shall carry the net surplus remaining in any year, and the annual proceeds of the reserve fund, when amounting to the prescribed limit, to the credit of the local rate as defined by the Electric Lighting Act, 1882, or, at the option of the undertakers, shall apply such surplus, or some part thereof, to the improvement of the city and public benefit of the inhabitants, or in reduction of the capital moneys borrowed for electricity purposes.

Provided always, that if the surplus shall in any year exceed seven pounds per centum per annum upon the aggregate capital expenditure on the undertaking, the undertakers shall make such a rateable reduction in the charge for the supply of electricity as in their judgment will reduce the surplus to the said maximum rate of profit.

Any deficiency of income in any year shall be charged upon and payable out of the local rate.

Regulations as to Safety.

Regulations to be observed by undertakers.

59. The following regulations shall be observed in relation to the supply of electricity under this Order :—

(*a.*) All mains and service lines, so far as they lie in or under streets and public places (otherwise than in distributing boxes or stations), shall be of a pattern to be approved of by the Board of Trade, and shall be covered with thoroughly waterproof covering and be contained in pipes or cases of sufficient strength to protect them from injury, and due precautions shall be taken to prevent any insulating material which may be used being rendered plastic or being otherwise injured by the action of external heat.

(*b.*) All mains or service lines shall be well and sufficiently insulated with some material affording an insulation of a durable character, to be approved of by the Board of Trade, and all parts of service lines shall be so secured that they shall not be liable to be brought into contact with metallic masses upon accidental abrasion of the insulation.

(*c.*) No conductor in any part of any circuit shall be connected with earth unless such connection is sanctioned by the Board of Trade by any regulations to be hereafter made under the provision of the principal Act.

(*d.*) The current through any conductor used as a service line shall not exceed

one thousand ampères, if such current exceeds ten ampères, or two thousand ampères, if such current is less than ten ampères, per square inch of section of a pure copper wire of a conductivity equal to that of such conductor; provided that when the insulation employed is such that it would become plastic at a temperature of 120° Fahrenheit, only three fourths of the above-mentioned currents shall be allowed.

(*e.*) The supply of electricity to any premises shall be capable of being turned off at some point outside such premises.

(*f.*) In each conductor of each service line shall be inserted a safety fuze or other safety connection of a pattern to be approved by the Board of Trade. Such fuze or connection shall be situated in a distributing box or at some other point in the service line which is easily accessible, and shall be of such a nature as to cut off the supply when the current through such conductor exceeds by more than fifty per centum (or such other smaller proportion as the undertakers may think fit) the maximum current which such service line is intended to supply.

(*g.*) All service lines and positive and negative poles of service lines upon the premises of any consumer shall be at a distance of not less than three inches from one another respectively, and the terminals and any joints which may be made in any portion of any service lines which may be upon the premises of any consumer between the point at which they enter upon the said premises and the said poles shall be of some construction and pattern to be approved of by the Board of Trade, and notice in writing of the position of every such joint as aforesaid shall be given to every such consumer by the undertakers before commencing to supply electricity through such service lines.

(*h.*) Where the maximum current given to any consumer by any service lines exceeds fifty ampères, the supply shall be divided and given at more than one pair of poles, so that the maximum current at each pair of poles shall not exceed fifty ampères except in such cases and under such conditions as may be approved of by the Board of Trade.

(*i.*) Where the difference of potential between any point of any main or electric line used by the undertakers and the earth, or between such point and any other point upon the same circuit exceeds two hundred volts, such precaution shall be taken by the undertakers, as may from time to time be prescribed by the Board of Trade by any regulations to be made by them under the provisions of the principal Act, to prevent such main or electric line becoming electrically connected with or leaking into any main or electric line through which electricity passes at a different potential.

(*j*). Where the difference of potential between any point of any charging main and the earth or between such point and any other point upon the same circuit exceeds two hundred volts, all distributing mains connected therewith shall be fitted with such appliances and apparatus of such pattern and construction as may be from time to time prescribed or approved of by the Board of Trade for the purpose of ensuring that such mains shall be effectively disconnected and kept disconnected from such batteries during the hours of charging.

(*k.*) No portion of any electric line which may be placed by the undertakers above ground, and which is not enclosed within any distributing box or building, shall be at a potential differing from that of the earth by more than two hundred volts.

(*l.*) Where any portions of any electric lines belonging to the undertakers are exposed in such a position as to be liable to be struck by lightning, they shall be efficiently protected by lightning dischargers of such pattern and construction as may be from time to time prescribed or approved by the Board of Trade.

(*m.*) The difference of potential at corresponding points of the positive and negative conductors used as distributing mains or service lines shall not at any time exceed two hundred volts in the case of continuous currents

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and one hundred volts in the case of alternating currents (the difference of potential in the case of alternating currents being taken as equal to the constant difference of potential which would in the case of continuous currents produce the same mean effect), and no portion of any such conductor shall be at a potential differing from that of the earth by more than such quantity.

(*n.*) The difference of potential at any two points of a charging main shall not exceed four thousand volts, and no portion of any such main shall be at a potential differing from that of the earth by more than such quantity.

(*o.*) The Board of Trade may at any time direct an inquiry to be made into the condition of any mains, electric lines, or works of the undertakers if they consider it expedient to do so in the interest of the public safety, and for such purpose they may order any such mains, electric lines, or works to be tested in such manner as they may think expedient, and may require the undertakers to remedy or repair any defects therein. If the undertakers make default in remedying or repairing any such defects as aforesaid upon being required to do so, as above mentioned, within the time prescribed in that behalf by the Board of Trade, they shall be liable to a penalty not exceeding one hundred pounds for every day during which such default continues.

Provided always, that if the undertakers at any time desire to supply electricity by agreement at a high tension for the purpose of arc lighting or for any other purpose, the Board of Trade, if they think fit, may relieve the undertakers from all or any of the obligations by this section imposed upon them, and may substitute such other regulations to be observed by the undertakers in relation to such supply as they may think expedient; and all regulations so substituted shall be observed by the undertakers, and shall, for all purposes of enforcement or otherwise, be deemed to have been inserted in this section in lieu of the regulations for which the same are substituted.

Notices, &c.

Notices, &c., may be printed or written.

60. Notices, orders, and other documents under this Order may be in writing or in print, or partly in writing and partly in print; and where any notice, order, or document requires authentication by the undertakers, the signature thereof by the mayor or the clerk to the urban sanitary authority for the district of the city and county of shall be sufficient authentication.

Service of notices, &c.

61. Any notice, order, or document required or authorised to be served upon any body or person, under this Order or the principal Act, may be served by the same being addressed to such body or person and being left at or transmitted through the post to the following addresses respectively:—

(*a.*) In the case of the Board of Trade, the office of the Board of Trade;

(*b.*) In the case of the Postmaster-General, the General Post Office;

(*c.*) In the case of the undertakers, the office of the clerk to the urban sanitary authority for the district of the city and county of ;

(*d.*) In the case of the justices of the peace for any county, the office of the clerk of the peace for the said county.

(*e.*) In the case of any company having a registered office, the registered office of such company;

(*f.*) In the case of a company having an office or offices, but no registered office, any such office;

(*g.*) In the case of any other person, the usual or last known place of abode of such person.

Where any notice is served by post it shall be deemed to have been served at the time when the letter containing the notice would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

A notice, order, or document by this Order required or authorised to be served on the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming them), without further name or description.

A notice, order, or document by this Order required or authorised to be served on the owner or occupier of premises may be served by delivering the same, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by fixing the notice on some conspicuous part of the premises.

Revocation of Order.

Provisions where Order revoked.

62. If the Board of Trade at any time revoke this Order as to the whole or any part of the area affected thereby, any persons who may be liable to repair any street or part of a street within such area or part thereof in which any works of the undertakers may have been placed may forthwith remove such works with all reasonable care, and the undertakers shall pay to such persons such reasonable costs of such removal as may be specified in a notice to be served on the undertakers, by such persons, or, if so required by the undertakers, within one week after the service of such notice upon them, as may be settled by arbitration.

If the undertakers fail to pay such reasonable costs as aforesaid within one month after the service upon them of such notice or the delivery of the award of the arbitrator, as the case may be, such persons as aforesaid may, without any previous notice to the undertakers (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of any such works as aforesaid either by public auction or private sale, and for such sum or sums and to such person or persons as they may think fit; and may, out of the proceeds of such sale, pay and reimburse themselves the amount of the costs so specified or settled as aforesaid, and of the costs of sale, and the balance (if any) of the proceeds of the sale shall be paid over by them to the undertakers.

General.

Nature and amount of security.

63. Where any consumer is required under this Order to give any security to the undertakers, such security may be by way of deposit or otherwise, and of such amount as he and the undertakers agree on, or as, in default of agreement, may be determined on the application of either party by a court of summary jurisdiction, who may also order by which of the parties the costs of the proceedings before them shall be paid, and the decision of the said court shall be final and binding on all parties: Provided that where any such security is given by way of deposit the undertakers shall pay interest at the rate of five pounds per centum per annum on every sum of ten shillings so deposited for every six months during which the same remains in their hands.

Board of Trade may suspend obligation to supply.

64. The Board of Trade at any time and from time to time upon sufficient cause shown to their satisfaction by the undertakers, and upon such conditions (if any) as the Board of Trade think just, may for any limited or unlimited period suspend or modify any obligation of the undertakers with respect to the supply of electricity under the principal Act or this Order, in the whole or any part of the area of supply.

Proceedings where approval of Board of Trade is required.

65. Where under the provisions of this Order the approval of the Board of Trade is required to be given in any case, such approval shall be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade, and all costs and expenses of or incident to any application for such approval, including the costs of the tests (if any) which may be required to be made by the Board of Trade for the purpose of determining whether such approval shall be given, shall be borne and paid by the applicant or applicants for such approval; provided always that where any approval is given by the Board of Trade to any plan, pattern, or specification, they may require such copies of the same as they may think fit to be prepared and deposited at their office at the expense of the said applicant or applicants, and may from time to time, if they think fit, revoke any approval so given, or permit such approval to be continued subject to such modifications as they may think necessary.

Notice of approval of

66. Where the Board of Trade, upon the application of the undertakers, give any approval or grant any extension of any time limited for the performance of any

Secs. 66–72.

Board of Trade, &c., to be given by advertisement.

duties by the undertakers under this Order, or where the Board of Trade, upon the application of any such persons as hereinbefore specified in that behalf, revoke this Order as to the whole or any part of the area affected thereby, notice that such approval has been given, or such extension of time granted, or such revocation made, shall be published by public advertisement once at least in each of two successive weeks in some one and the same local newspaper by the body or persons by whom such application was made as aforesaid.

Recovery of penalties.

67. All penalties under this Order, the recovery of which is not otherwise specially provided for, may be recovered in a summary manner before a court of summary jurisdiction.

Undertakers to be responsible for all damages.

68. The undertakers shall be answerable for all accidents, damages, and injuries happening through the act or default of the undertakers, or of any person in their employment by reason or in consequence of any of the undertakers works, and shall save harmless all authorities, bodies, and persons by whom any street is repairable, and all other authorities, companies, and bodies collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.

Incorporation of sections 264 and 265 of Public Health Act, 1875.

69. The provisions of sections two hundred and sixty-four and two hundred and sixty-five of the Public Health Act, 1875, shall be incorporated with this Order, and for the purposes of this Order in the construction of the said provisions "this Act" means this Order and the principal Act, and the "local authority" means the undertakers under this Order.

Saving clause for Postmaster-General.

70. Nothing in this Order shall affect any right or remedy of the Postmaster-General under the Electric Lighting Act, 1882, or the Telegraph Acts, 1863 to 1878, and all provisions contained in this Order in favour of the Postmaster-General shall be construed to be in addition to and not in modification of the provisions of those Acts.

Undertakers not exempted from proceedings for nuisance.

71. Nothing in this Order shall exonerate the undertakers from any indictment, action or other proceeding for nuisance in the event of any nuisance being caused by them.

Provision as to general Acts.

72. Nothing in this Order shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of or price to be charged for electricity which may be passed in this or any future session of Parliament.

SCHEDULES.

SCHEDULE A.

The streets within the city of known as (1) including the houses and buildings on both sides of such streets.

The undertakers are to lay distributing mains along the said streets within two years from the commencement of this Order.

SCHEDULE B.

The whole of the city and county of , as the same is constituted at the date of the commencement of this Order excepting the area included in Schedule A.

(1) Here specify streets.

SCHEDULE C.

The term "unit" as used in this schedule shall be deemed to mean the energy contained in a current of 1,000 ampères flowing under an electro-motive force of one volt during one hour.

SECTION 1.

Where the undertakers charge any consumer by the quantity of energy contained in the supply given to him, they shall be entitled to charge him at the following rates per quarter:—For any quantity up to 100 units, three pounds ten shillings; for each unit over 100 units, sevenpence per unit.

SECTION 2.

Where the undertakers charge any consumer by the actual quantity of electricity supplied to him, they shall be entitled to charge him according to the rates set forth in section 1 of this schedule, the quantity of energy contained in the supply given to him being taken to be the product of the actual quantity of electricity supplied to him and the standard pressure at the point of junction of the mains and the service lines by which he is supplied.

SECTION 3.

Where the undertakers charge any consumer by the number of hours during which he actually uses his supply, they shall be entitled to charge him at the rates specified in section 2 of this schedule, the quantity of electricity supplied to him being calculated on the supposition that the consumer uses the maximum current specified by him under the provisions of this Order during all the hours that he has used the supply.

SCHEDULE D.

List of Streets, Railways, and Tramways which may be broken up by the undertakers in pursuance of the special powers granted by this Order (1).

(1) Here specify Streets, Railways, and Tramways.

MODEL LICENCE FOR ELECTRIC LIGHTING.

Licence (1) *authorising the*
Company, Limited, to erect and maintain Electric Lines and Works, and to supply Electricity within certain parts of the Borough of in the County of .

Preliminary.

Secs. 1, 2.

Short title.

1. This licence may be cited as "The Electric Lighting Licence, 18 ."

Interpretation.

2. This licence is to be read and construed subject in all respects to the provisions of the Electric Lighting Act, 1882, and of any other Acts or parts of Acts incorporated therewith, which said Act and Acts and parts of Acts are in this licence collectively referred to as "the principal Act"; and the several words, terms, and expressions to which by the Electric Lighting Act, 1882, meanings are

(1) This is a copy of what is believed to be the only licence yet granted. As licences only last for seven years (see section 3 of Act, sub-section 2), and were originally intended for experimental purposes, the Board of Trade have resolved not to grant them to private undertakers, except in respect of small undertakings. They announced this decision on the occasion of the Swan Provisional Order on the Strand district being in the House of Lords Committee. This decision only relates to private undertakings as the main peculiarity of licences as opposed to Provisional Orders, viz., their requiring the consent of the local authority to renewal every seven years, does not of course affect the local authority itself, if it is the undertaker under the licence. The reason nominally given by the Board of Trade was, that it did not think that powers such as those contained in a Provisional Order, should be given to private companies over larger as without Parliamentary sanction. It would appear, however, to be almost as necessary that such sanction should be a condition precedent to local authorities undertaking industrial enterprises of so difficult a nature on a large scale, and it is believed that the Board of Trade would not grant a licence even to a local authority over any considerable area.

The principal points of difference between the form of Licence and Provisional Order are as follows:—

The meter clauses are omitted, and it is difficult to understand the reason for such omission, inasmuch, as the clauses which relate to charging by quantity are left in, and it is hard to see how the quantity supplied can be arrived at without meters. It might be, however, that the reason was that the Board of Trade thought that the existence of meter clauses might render necessary an expensive staff of inspectors, &c., and that it would not be worth while to have this staff for an undertaking which was on a small scale, and only temporary in character. For a similar reason the testing clauses are greatly modified so as to prevent its being obligatory on the local authority to appoint electric inspectors, but it is difficult to appreciate the motive which has lead to their being modified in the way they are. Clause 27 takes the place of a group of clauses which gave a legal status to the tests of the local authority by making them receivable in evidence. It would seem that it was intended to allow the local authority to ascertain how the undertakers are doing their work, but permits that to be done in a comparatively informal manner. Clauses 23—26 seem intended to allow any electric inspector of any district in England to officiate in the district covered by the licence, so that a special electric inspector need not be appointed.

assigned shall have in this licence the same respective meanings, provided that in this licence: **Secs. 2—6.**

The expression "main" shall mean any continuous metallic conductor which may be laid down by the undertakers in any street or public place, and through which electricity may be supplied, or intended to be supplied, by the undertakers for the purposes of general supply or for charging storage batteries used for the purposes of general supply:

The expression "service line" shall mean any continuous metallic conductor through which electricity may be supplied, or intended to be supplied, by the undertakers to any particular consumer on the parallel system, either from any main or directly from the premises of the undertakers:

The expression "charging main" shall mean a main which for the time being is being used solely for the purpose of charging storage batteries:

The expression "distributing main" shall mean the portion of any main which is used for the purpose of giving origin to service lines for the purposes of general supply:

The expression "general supply" shall mean the supply of electricity to ordinary consumers, and, unless otherwise specially agreed with the local authority, to the public lamps, but shall not include the supply of electricity to any one or more particular consumers under special agreement:

The expressions "Schedule A.," "Schedule B.," and "Schedule C." shall mean the Schedules A., B., and C. to this licence annexed respectively.

Commencement of licence.

3. This licence shall come into force and have effect upon the first day of December, 1883, which date is in this licence referred to as "the commencement of this licence," and shall continue in force for a period of seven years from the commencement thereof, which period is in this licence referred to as the "term of this licence."

Address and Description of the Undertakers.

Address and description of undertakers.

4. The undertakers for the purpose of this licence are the Company, Limited, being a company registered under the Companies Acts, 1862 to 1880, with limited liability, and having its registered office at , in the city of , and having its capital divided into 20,000 shares of 5*l.* each.

Area of Supply.

Area of supply.

5. The area within which the undertakers are authorised to supply electricity under this licence shall be the streets described in Schedule A. (which said streets are more particularly delineated upon the map deposited at the Board of Trade by the undertakers together with this licence and thereon coloured blue).

Capital.

Separate capital for undertaking.

6. The undertakers within a period of six months after the commencement of this licence, and before exercising any of the powers by this licence conferred on them in relation to the execution of works, shall show to the satisfaction of the Board of Trade that they are in a position to fully and efficiently discharge the duties and obligations imposed upon them by this licence.

These clauses constitute the principal points of difference between the licence and the Provisional Order excepting that, as might be expected, there is no district B. in the case of the license, and therefore the clauses as to area of supply and as to capital are greatly simplified. The streets through which the mains may be placed are specifically enumerated in Schedule A., so there is no need of a clause enabling the inhabitants in a street by requisition to compel the undertakers to lay down mains in their street. There is also considerable modification in the clauses as to expiration or revocation of licence arising from the fact that the license is itself terminable, whereas a Provisional Order is not.

Secs. 6—10.

If the undertakers fail to show to the satisfaction of the Board of Trade that they are in such a position as in this section above mentioned within the said period of six months, or such extended period as may from time to time be approved of by the Board of Trade, this licence may be revoked by the Board of Trade upon such terms as they may think just.

Accounts.

7. The undertakers shall, except with the special approval of the Board of Trade, to be previously given, at all times keep accounts of the capital employed for the purposes of the undertaking distinct from the accounts kept by them in respect of any other undertaking.

Nature and Mode of Supply.

Description of systems of supply.

8. Subject to the provisions of this licence, and of the principal Act, the undertakers may supply electricity within the area of supply for all public and private purposes as defined by the said Act.

Such electricity may be supplied by means of any one or more of the following systems:—

(*a.*) The "parallel system," that is to say, a system under which the electricity used by each consumer is drawn off from a double series of mains (in this licence referred to as "the positive and negative mains") in connection respectively with the positive and negative poles of the immediate source of supply by means of service lines forming a series of parallel circuits:

(*b.*) The "series system," that is to say, a system under which the whole current is utilised at various points situated successively in the same circuit, and is not divided up for the purpose of utilisation into different parallel circuits which supply different consumers:

(*c.*) Any other system which may be approved of by the Board of Trade either for general or special use.

Provided that under no such system shall the undertakers permit any part of any circuit to be connected with earth, except so far as may be necessary for carrying out the provisions of this licence as regards the regulations for safety and as regards testing, unless such connection is hereafter approved of by the Board of Trade, with the concurrence of the Postmaster-General, either for general use or for individual cases, and then subject only to such regulations as the Board of Trade may from time to time impose.

Works.

Powers for execution of works.

9. Subject to the provisions of this licence and the principal Act, the undertakers may from time to time exercise all or any of the powers conferred on them by this licence and the principal Act, and may break up and otherwise interfere with the several tramways specified in Schedule C. to this licence, so far as the same may be or be upon any land dedicated to public use, and they may from time to time construct distributing boxes in any street for the purpose of supplying electricity.

Every such distributing box shall be for the exclusive use of the undertakers and under their sole control, except so far as the Board of Trade may otherwise order, and shall be used by the undertakers only for the purpose of leading off service lines and other distributing conductors, or for examining, testing, regulating, measuring, directing, or controlling the supply of electricity, or for examining or testing the condition of the mains or other portions of the electric lines or works, or for other like purposes connected with the undertaking, and the undertakers may place therein meters, switches, and any other suitable and proper apparatus for any of the above purposes, and may maintain and use the same.

Notice of works, with plan, to be served on the

10. Where the exercise of any of the powers of the undertakers in relation to the execution of any works (including the construction of distributing boxes) will involve the placing of any works in, over, along, or across any street or public bridge, the following provisions shall have effect:—

Secs. 10. 11.

Postmaster-General and local authority.

(*a.*) One month before commencing the execution of such works (not being the repairs, renewals, or amendments of existing works of which the character and position are not altered), the undertakers shall serve a notice upon the Postmaster-General and the local authority describing the proposed works, together with a plan of the works showing the mode and position in which such works are intended to be executed, and the manner in which it is intended that such street or bridge, or any sewer, drain, or tunnel therein or thereunder should be interfered with, and shall, upon being required to do so by the Postmaster-General or the local authority, from time to time give him or them any such further information in relation thereto as he or they may desire.

(*b.*) The Postmaster-General or the local authority may in his or their discretion approve of any such works or plan, with or without any amendments or alterations, or disapprove the same, and may give notice of such approval or disapproval to the undertakers.

(*c.*) Where the Postmaster-General or the local authority disapprove of any such works or plan, the undertakers may appeal to the Board of Trade against such disapproval, and the Board of Trade may inquire into the matter and may allow or disallow such appeal, and approve any such works or plan, with or without any amendments or alterations, or disapprove the same: Provided that nothing in this licence shall authorise the undertakers to place any electric line above ground, along, over, or across any street without the express consent of the local authority.

(*d.*) If the Postmaster-General or the local authority fail to give any such notice of approval or disapproval to the undertakers within three weeks after the service of the notice upon them, he or they shall be deemed to have approved of such works or plan.

(*e.*) Notwithstanding anything in this licence or the principal Act, the undertakers shall not be entitled to execute any such works as above specified, except so far as the same may be of a description and in accordance with a plan which has been approved or is to be deemed to have been approved by the Postmaster-General and the local authority, or by the Board of Trade as above-mentioned under this licence; but where any such works and such plan are so approved or to be deemed to be approved, the undertakers may cause such works to be executed in accordance with such plan, subject in all respects to the provisions of this licence and of the principal Act.

(*f.*) If the undertakers make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of this licence or the principal Act) make full compensation to the Postmaster-General and the local authority for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the Court having cognizance of the case are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

As to streets not repairable by the local authority, railways, &c.

11. Where the exercise of the powers of the undertakers in relation to the execution of any works will involve the placing of any works in, over, along, or across any street or part of a street not repairable by the local authority, or over or under any railway, tramway, or canal, the following provisions shall have effect, unless otherwise agreed between the parties interested:—

(*a.*) One month before commencing the execution of any such works (not being the repairs, renewals, or amendments of existing works of which the character and position are not altered) the undertakers shall, in addition to any other notices which they may be required to give under this

Secs. 11, 12.

licence or the principal Act, serve a notice upon the authority, company, or persons liable to repair such streets or parts of streets, or the authority, company, or persons for the time being entitled to work such railway or tramway, or the owners of such canal, as the case may be (in this section referred to as the "owners"), describing the proposed works, and stating the amount of compensation proposed to be made in respect thereof, and the manner in which such compensation is proposed to be paid or secured, together with a plan of the works showing the mode and position in which such works are intended to be executed and placed, and shall, upon being required to do so by any such persons as aforesaid, from time to time give them any such further information in relation thereto as they may desire.

(*b.*) Every such notice shall contain a reference to this section, and direct the attention of the owners to whom it is given to the provisions thereof.

(*c.*) Within three weeks after the service of any such notice and plan upon any owners, such owners may, if they think fit, serve a requisition upon the undertakers requiring that any question in relation to such works and any other question arising upon such notice or plan as aforesaid shall be settled by arbitration; and thereupon such question shall be settled by arbitration accordingly.

(*d.*) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of such street, railway, tramway, or canal, and may, if he thinks fit, require the undertakers to execute any temporary or other works so as to avoid interference with any traffic so far as may be possible.

(*e.*) Where no such requisition as in this section mentioned is served upon the undertakers, or where, after any such requisition has been served upon them, any question required to be settled by arbitration has been so settled, the undertakers, upon paying or securing any compensation which they may be required to pay or secure in the manner proposed by them or settled by arbitration as aforesaid, may cause the works specified in such notice and plan as aforesaid to be executed, and may from time to time repair, renew, and amend the same (provided that their character and position are not altered), but subject in all respects to the provisions of this licence and the principal Act, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been settled by arbitration as hereinbefore mentioned, or as may be agreed upon between the parties.

(*f.*) If the undertakers make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of this licence or the principal Act) make full compensation to the owners affected thereby for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency, and that the undertakers complied with the requirements of this section so far as was reasonable under the circumstances.

As to alteration of pipes, wires, &c., under streets.

12. The undertakers may from time to time alter the position of any pipes or wires being under any street or place authorised to be broken up by them which may interfere with the exercise of their powers under the principal Act or this licence; and any local or other public authority, company, or person may in like manner alter the position of any electric lines or works of the undertakers, being under any such street or place as aforesaid, which may interfere with the lawful exercise of any powers vested in such local authority, company, or

person in relation to such street or place, subject to the following provisions, unless otherwise agreed between the parties interested:—

(*a.*) One month before commencing any such alteration the undertakers, or such local or other public authority, company, or person (as the case may be), in this section referred to as "the operators," shall serve a notice upon the authority, company, or persons for the time being entitled to such pipes, wires, electric lines, or works (as the case may be), in this section referred to as the "owners," describing the proposed alteration, and stating the amount of compensation proposed to be made in respect thereof, and the manner in which such compensation is proposed to be paid or secured, together with a plan showing the manner in which it is intended that such alterations shall be made, and shall, upon being required to do so by any such owners, from time to time give them any such further information in relation thereto as they may desire.

(*b.*) Within three weeks after the service of any such notice and plan upon any owners, such owners may, if they think fit, serve a requisition upon the operators requiring that any question in relation to such works and any other question arising upon such notice or plan as aforesaid shall be settled by arbitration; and thereupon such question shall be settled by arbitration accordingly.

(*c.*) In settling any question under this section an arbitrator shall have regard to any duties or obligations which the owners may be under in respect of such pipes, wires, electric lines, or works, and may, if he thinks fit, require the operators to execute any temporary or other works so as to avoid interference with any purpose for which such pipe, wire, electric line, or work is used so far as may be possible.

(*d.*) Where no such requisition as in this section mentioned is served upon the operators, the owners shall be held to have agreed to the notice or plan served on them as aforesaid, and in such case, or where, after any such requisition has been served upon them, any question required to be settled by arbitration has been so settled, the operators, upon paying or securing any compensation which they may be required to pay or secure in the manner proposed by them or settled by arbitration as aforesaid, may cause the alterations specified in such notice and plan as aforesaid to be made, but subject in all respects to the provisions of this licence and the principal Act, and only in accordance with the notice and plan so served by them as aforesaid, or such modifications thereof respectively as may have been settled by arbitration as hereinbefore mentioned, or as may be agreed upon between the parties.

(*e.*) At any time before any operators are entitled to commence any such alterations as aforesaid the owners may serve a statement upon them, stating that they desire to execute such alterations themselves, and where any such statement has been served upon the operators they shall not be entitled to proceed themselves to execute such alterations except where they have notified to such owners that they require them to execute such alterations, and such owners have refused or neglected to comply with such notification as hereinafter provided.

(*f.*) Where any such statement as last aforesaid has been served upon the operators, they shall, not more than forty-eight hours and not less than twenty-four hours before the execution of such alterations are required to commence, serve a notification upon the owners stating the time when such alterations are required to be commenced, and the manner in which such alterations are required to be made.

(*g.*) Upon receipt of any such notification as last aforesaid, the owners may proceed to execute such alterations as required by the operators, subject to the like restrictions and conditions as the operators would themselves be subject to in executing such alterations so far as the same may be applicable.

(*h.*) If the owners decline, or for twenty-four hours after the time when any such alterations are required to be commenced, neglect to comply with

Secs. 12, 13.

such notification, the operators may themselves proceed to execute such alterations in like manner as they might have done if no such statement as aforesaid had been served upon them.

(*i.*) All expenses properly incurred by any owners in complying with any notification of any operators under the last preceding sub-sections shall be repaid to them by such operators, and may be recovered summarily before any court of summary jurisdiction, who shall have power to determine the amount thereof.

(*j.*) Any owners may, if they think fit, by any statement served by them upon any operators under this section, require the operators to give them such security for the repayment to them of any expenses to be incurred by them in executing any alterations as above mentioned, as may be agreed upon between such owners and operators, or in default of agreement as may be determined by arbitration, and where any operators have been so required to give security they shall not be entitled to serve a notification upon the owners requiring them to execute such alterations until such security has been duly given.

(*k.*) If the operators make default in complying with any of the requirements or restrictions of this section they shall (in addition to any other compensation which they may be liable to make under the provisions of this licence or the principal Act) make full compensation to the owners affected thereby for any loss, damage, or penalty which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues: Provided that the operators shall not be subject to any such additional penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency, and that the operators complied with the requirements of this section so far as was reasonable under the circumstances.

Laying of electric lines, pipes, &c., near those of gas or water company or of undertakers

13. Whenever the undertakers require to dig or sink any trench for laying down any new electric lines (other than service lines) or other works near to which any pipe belonging to any gas or water company, or any branch or service pipe for the supply of gas or water has been lawfully placed, or where any gas or water company require to dig or sink any trench for laying down any new mains or pipes other than service pipes or other apparatus near to which any electric lines or works of the undertakers have been lawfully placed, the undertakers or such gas or water company (as the case may be), in this section referred to as the "operators," shall, unless otherwise agreed between the parties interested, give to such gas or water company, or to the undertakers (as the case may be), in this section referred to as "the owners," not more than forty-eight hours and not less than twenty-four hours notice before commencing to dig or sink such trench as aforesaid, and such owners shall be entitled by their officers to superintend the digging or sinking of such trench, and the operators shall conform with such reasonable requirements as may from time to time be made by the owners or any such officer for the protection of every such pipe, electric line, or work, and for securing the same from injury, and they shall also repair any damage that may be done thereto.

If the operators make default in complying with any of the requirements or restrictions of this section, they shall make full compensation to all owners affected thereby for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such default continues: Provided that the operators shall not be subject to any such penalty if the court having cognizance of the case are of opinion that the case was one of emergency and that the operators complied with the requirements and restrictions of this section so far as was reasonable under the circumstances, or that the default in question was due to the fact that the operators were ignorant

of the position of the pipe, electric line, or work affected thereby, and that such ignorance was not owing to any negligence on the part of the operators.

For protection of telephone companies, &c.

14. Seven days before commencing to lay down any electric line, or to supply electricity through any electric line in any manner whereby the work of telegraphic or telephonic communication through any wires or lines lawfully laid down or placed in any position may be injuriously affected, the undertakers shall, unless otherwise agreed between the parties interested, give to the persons for the time being entitled to such wires or lines notice in writing specifying the course, nature, and gauge of such electric lines, and the amount and nature of the current intended to be sent along the same, and the extent to and manner in which, if at all, earth returns are proposed to be used; and the undertakers shall conform with such reasonable requirements as may from time to time be made by such persons as aforesaid for the purpose of preventing the communication through such wires or lines from being injuriously affected as aforesaid.

If any difference arises between any such persons and the undertakers with respect to the reasonableness of any requirements so made, such difference shall be determined by arbitration.

Provided that nothing in this section shall apply to repairs or renewals of existing electric lines so long as the character and position thereof is not altered, nor to the laying of connections with mains where the direction of the electric line so laid down crosses the direction of the said telegraphic or telephonic wires or lines at right angles at the point of shortest distance, and such directions continue the same for a distance of six feet on each side of such point.

If the undertakers make default in complying with any of the requirements or restrictions of this section they shall make full compensation to the persons entitled to any such wire or line as aforesaid for any loss or damage which they may incur by reason thereof, and in addition thereto they shall be liable to a penalty not exceeding five pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding forty shillings for every day after the first day during which such default continues: Provided that the undertakers shall not be subject to any such penalties as aforesaid if the court having cognizance of the case are of opinion that the case was one of emergency, and that the undertakers complied with the requirements and restrictions of this section so far as was reasonable under the circumstances, or that the default in question was due to the fact that the undertakers were ignorant of the position of the wires or lines affected thereby, and that such ignorance was not owing to any negligence on the part of the undertakers.

Exercise of powers of Undertakers as to breaking up Streets, &c., by Local Authority, &c.

Local authority, &c., may give notice of desire to break up streets, &c., on behalf of undertakers.

15. The local authority, and the authority, company, or persons for the time being entitled to work any railway or tramway which the undertakers may be empowered to break up for the purposes of this licence may, if they think fit, from time to time give a notice to the undertakers stating that they desire to exercise or discharge all or any part of any of the powers or duties of the undertakers as therein specified in relation to the breaking up, filling in, reinstating, or making good any streets, bridges, sewers, drains, or tunnels, vested in or under the control or management of the local authority or any such railway or tramway (as the case may be).

Every such notice shall be served upon the undertakers, and may from time to time be amended or revoked by another notice similarly served.

Proceedings where local authority, &c., give such notice.

16. Where the local authority, or the authority, company, or persons for the time being entitled to work any railway or tramway (in this section referred to as "the givers of the notice") have given notice that they desire to exercise or discharge any specified powers and duties of the undertakers as in the last section mentioned, then so long as such notice remains in force the following provisions shall have effect:—

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(*a.*) The undertakers shall not be entitled to proceed themselves to exercise or discharge any such specified powers or duties as aforesaid, except where they have required the givers of the notice to exercise or discharge such powers or duties, and the givers of the notice have refused or neglected to comply with such requisition, as hereinafter provided, or in cases of emergency.

(*b.*) In addition to any other notices which they may be required to give under the provisions of this licence or the principal Act, the undertakers shall, not more than forty-eight hours and not less than twenty-four hours before the exercise or discharge of any powers or duties so specified as aforesaid is required to commence, serve a requisition upon the givers of the notice stating the time when such exercise or discharge is required to be commenced and the manner in which any such powers or duties are required to be exercised or discharged.

(*c.*) Upon receipt of any such requisition as last aforesaid the givers of the notice may proceed to exercise or discharge any such powers or duties as required by the undertakers, subject to the like restrictions and conditions as the undertakers would themselves be subject to in such exercise or discharge so far as the same may be applicable.

(*d.*) If the givers of the notice decline, or for twenty-four hours after the time when any such exercise or discharge of any powers or duties is by any requisition required to be commenced, neglect to comply with such requisition, the undertakers may themselves proceed to exercise or discharge the powers or duties therein specified in like manner as they might have done if such notice as aforesaid had not been given to them by the givers of the notice.

(*e.*) In any case of emergency the undertakers may themselves proceed to at once exercise or discharge so much of any such specified powers or duties as aforesaid as may be necessary for the actual remedying of any defect from which the emergency arises without serving any requisition on the givers of the notice.

(*f.*) If the undertakers exercise or discharge any such specified powers or duties as aforesaid otherwise than in accordance with the provisions of this section, they shall be liable to a penalty not exceeding ten pounds for every such default, and in the case of a continuing offence to a further penalty not exceeding five pounds for every day after the first day during which such offence continues.

(*g.*) All expenses properly incurred by the givers of the notice in complying with any requisition of the undertakers under this section shall be repaid to them by the undertakers, and may be recovered summarily before any court of summary jurisdiction, who shall have power to determine the amount thereof.

(*h.*) The givers of the notice may from time to time, if they think fit, require the undertakers to give them such security for the repayment to them of any expenses to be incurred by them under this section, as may be agreed upon between them and the undertakers, or in default of agreement as may be determined by arbitration. If the undertakers fail to give any such security within seven days after being required to do so, or in case of difference after the delivery of the arbitrator's award, they shall not be entitled to serve any further requisition upon such givers of notice requiring them to exercise or discharge any powers or duties under this section, until such security has been duly given.

Provided that nothing in this or the last preceding section shall in any way affect the rights of the undertakers to exercise or discharge any powers or duties conferred or imposed upon them by this licence or the principal Act, in relation to the execution of any works beyond the actual breaking up, filling in, reinstating, or making good any such streets, bridges, sewers, drains, or tunnels, or railway or tramway, as in the last section mentioned.

17. The undertakers shall, within a period of two years after the commencement of this licence, lay down suitable and sufficient distributing mains for the purposes of general supply upon the parallel system, in every street and part of a street specified in Schedule A., and shall thereafter maintain the same.

Mains, &c., to be laid down in area included in Schedule A.

18. If the undertakers make default in laying down any mains in accordance with the provisions of the last preceding section, within the period prescribed in that behalf, the Board of Trade may upon the application of the local authority revoke this licence as to the whole or (with the consent of the undertakers) any part of the area affected thereby, or if the undertakers so desire, may, after having given an opportunity to the local authority to make representations and objections with reference thereto, suffer the same to remain in force as to such area or part thereof, subject to such conditions as they may think fit to impose, and any conditions so imposed shall be binding on and observed by the undertakers, and shall be of the like force and effect in every respect as though they were contained in this licence.

If undertakers fail to lay down mains, &c. licence may be revoked.

Maps.

19. The undertakers shall forthwith, after commencing to supply electricity under this Order, cause a map to be made of the area of supply on such a scale as may from time to time be prescribed by the local authority with the approval of the Board of Trade, and shall cause to be marked thereon the line of all their then existing mains, service lines, and other underground works and distributing boxes, and shall once in every year correct such map and make such additions thereto as will show the line of all their then existing mains, service lines, and other underground works and distributing boxes.

Map of area of supply to be made.

20. Every map so made for the undertakers, or a copy thereof, with the date expressed thereon of the last time when it was so corrected, shall be kept by the undertakers at their principal office within the area of supply, and a copy of every such map shall within one month after such map is made be served by the undertakers upon the Board of Trade, and upon the Postmaster-General, and upon the local authority.

Deposit and inspection of maps.

Every copy of the said map as last corrected which may be served upon the local authority shall be kept by them at their office, and shall at all reasonable times be open to the inspection of all applicants, and such applicants may take copies of the same or any part thereof.

The local authority may demand and take from every such applicant as aforesaid such fee not exceeding one shilling for each inspection of such map or copy, and such further fee not exceeding one shilling for each copy of the same, or any part thereof, taken by such applicant, as they may from time to time prescribe.

21. If the undertakers fail to comply with any of the requirements of the last preceding sections of this licence with respect to maps, they shall for every such offence be liable to a penalty not exceeding ten pounds, and to a further penalty not exceeding two pounds for every day after the first day during which such offence continues.

Penalty on undertakers in respect of maps.

Regulations as to Supply on the Parallel System.

22. The following provisions shall apply to the supply of electricity by the undertakers upon the parallel system:—

Provisions as to parallel system.

(*a.*) One week at least before commencing to supply electricity through any distributing main the undertakers shall serve a notice upon the local authority of their intention to commence such supply, and that the said main is ready to be tested.

Notice of intention to supply through any distributing mains to be given to local authority.

(*b.*) From and after the time when the undertakers commence to supply electricity through any distributing main, they shall maintain in such main a current of electricity sufficient for the use of all the consumers for the time being entitled to be supplied from such main, and such supply shall,

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to provide constant supply.

except so far as may be otherwise agreed upon from time to time between the local authority and the undertakers, be constantly maintained at such pressure as may be fixed under the provisions of this licence: Provided that during the six months after the undertakers first commence to supply electricity under this licence, or such longer period as may in any case be approved of by the Board of Trade, the undertakers need not maintain a supply of electricity during the hours between sunrise and sunset in each day; and that, for the purposes of testing or for any other purpose which the Board of Trade may consider necessary for the efficient working of the undertaking, the Board of Trade may from time to time permit the undertakers to discontinue the supply of electricity at such intervals of time and for such periods as the Board of Trade may think expedient.

Pressure in mains during supply.

(*c.*) During the whole of the period when a supply of electricity is required to be maintained by the undertakers in the distributing mains under this licence (in this licence termed "the hours of supply") the potential at corresponding points of the positive and negative distributing mains shall differ at each point by a constant difference (in this licence termed "the standard pressure") to be fixed as hereinafter specified: Provided that the undertakers shall be deemed to have complied with the requirements of this sub-section so long as the difference in potential does not at any point vary more than five per cent. from the corresponding standard pressure, unless changes in potential recur so frequently as to cause unsteadiness in the supply.

Limit of standard pressure.

(*d.*) The standard pressure may be different for different points of any main and, with the approval of the local authority, for different hours during the period of supply, but it shall in all cases be within the limits following:

In the case of continuous currents it shall not be less than thirty volts or more than two hundred volts, and

In the case of alternating currents it shall not be less than fifty volts or more than one hundred volts, the difference of potential in the case of alternating currents being taken as equal to the constant difference of potential which would in the case of continuous currents produce the same mean effect.

Provided that such limits may from time to time be varied by the Board of Trade either generally or in respect of individual cases.

Fixing of standard pressure.

(*e.*) The "standard pressure" shall be fixed by the undertakers for every main, and notice of the amount of such standard pressure shall be given to the local authority before the undertakers commence to supply electricity to consumers through such main, and such standard pressure shall not be altered except by permission of the local authority, and upon such terms and conditions as the local authority may impose, and after public notice has been given during a period of one month in such manner as the local authority may require of the intention of the undertakers to apply for permission to alter the same.

Number of alternations in alternating currents.

(*f.*) The number of alternations per minute of alternating currents shall not during the hours of supply be less than six hundred, or such other number as may from time to time be fixed by the undertakers and sanctioned by the local authority.

Supply to be given at two poles on consumer's premises.

(*g.*) The supply of electricity upon any premises shall (except by agreement) be given at two poles, situated thereon at a safe and convenient distance from one another in connection respectively with the positive and negative mains, and the undertakers shall be responsible for the maintenance of such poles and any other lines, fittings, and apparatus belonging to the undertakers, or under their control upon such premises in a fit and proper condition for supplying electricity, but the undertakers shall not be in any way responsible for any defects in the construction of any electric lines or fittings within such premises, whether for the utilisation of the electricity supplied or otherwise where such electric lines or fittings have not been supplied by them, nor for any neglect in the maintenance

of any such electric lines or fittings where they do not belong to the undertakers, or are not under their control.

Pressure at poles on consumer's premises.

(*h.*) The resistance of the service lines by which the supply is given to any consumer shall not, except by agreement, be greater than would cause the difference of potential at the positive and negative poles in any consumer's premises to be less than the corresponding difference of potential at the point of junction of the mains and the service lines by which he is supplied by more than two and a-half per centum of the corresponding standard pressure when the maximum current with which he is entitled to be supplied by the undertakers under this licence is passing through such service lines, or such other per-centage as may from time to time be approved of by the Board of Trade, either generally or in respect of individual cases.

Testing.

Testing of mains.

23. Where the local authority may have appointed any competent and impartial person or persons to be an electric inspector or electric inspectors for the purpose of inspecting electric lines and works under this licence, any such person, in this licence referred to as an "electric inspector," may from time to time test for insulation and conductivity any portion of any main of the undertakers within the area of supply through which electricity is supplied by them, or through which they have given notice to the local authority, as by this licence provided, that they intend to commence supplying electricity: Provided that such testings shall not be made in regard to any particular portion of a main oftener than once in any three months, unless in pursuance of a special order in that behalf made by the Board of Trade.

Testing of service lines.

24. Any electric inspector, if and when required to do so by any person supplied with electricity by the undertakers may from time to time test the insulation and conductivity of the service lines by which such electricity is supplied, and the efficiency of any joints in such service lines, and make such other tests in relation to such service lines as may from time to time be approved of by the Board of Trade.

Mode of testing.

25. Notice shall be given to the undertakers before the commencement of any testing by an electric inspector, and such testing shall be carried out at such suitable hours as, in the opinion of such inspector, will least interfere with the supply of electricity by the undertakers, and in such manner as such inspector may think expedient, but except under the provisions of a special order in that behalf made by the Board of Trade he shall not be entitled to have access to or to interfere with the mains of the undertakers at any points other than those at which the undertakers have reserved for themselves access to the said mains: Provided that the undertakers shall not be held responsible for any interruption in the supply of electricity which may be occasioned by or required by such inspector for the purpose of any such testing as aforesaid.

Expenses of testing.

26. If the report of any electric inspector shows as the result of any testing that the undertakers were in default, the expenses of such testing, including such reasonable fees to the electric inspector as may from time to time be prescribed in that behalf by the local authority, with the approval of the Board of Trade, shall be paid by the undertakers.

Provided, that if any authority, company, or person is dissatisfied with any report of any electric inspector under the last preceding sections, they may appeal to the Board of Trade against such report, and thereupon the Board of Trade may inquire into and decide upon the matter of any such appeal, and their decision shall be final and binding on all parties.

Undertakers to connect testing places with mains.

27. The undertakers shall at their own expense, upon the request of the local authority, connect such reasonable number of testing stations as the local authority may establish, within a reasonable distance from any distributing main, by means of proper and sufficient service lines with such main, and supply electricity thereto for the purpose of testing free of charge.

If any dispute arises between the local authority and the undertakers as to

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whether the number of such testing stations and the distance from the main at which they are established is reasonable or excessive, or as to the performance by the undertakers of their duties under this section, such dispute shall be determined by arbitration.

Undertakers to keep instruments.

28. The undertakers shall also set up and keep in efficient working order upon all premises from which they supply electricity by any distributing mains or electric lines suitable and proper instruments of such pattern and construction as may be from time to time approved of or prescribed by the Board of Trade for measuring thereat the difference of potential between any corresponding points of such mains and electric lines and between such mains and electric lines and the earth, and the current passing along such mains and electric lines, and shall record and keep recorded the readings of these instruments taken at intervals of not more than one hour during the time that electricity is being supplied thereto from such premises, and any readings so recorded shall be receivable in evidence.

Electric inspector may test undertakers' instruments.

29. Any electric inspector shall have the right to have access at all reasonable hours to the instruments mentioned in the last preceding section for the purpose of testing the same and ascertaining if the same are in order, and in case the same are not in order he may require the undertakers forthwith to have the same put in order.

Representation of undertakers at testings.

30. The undertakers may, if they think fit, on each occasion of the testing of any main or service line, or the testing or inspection of any instruments of the undertakers by the electric inspector, be represented by some officer or other agent, but such officer or agent shall not interfere in the testing or inspection.

Undertakers to give facilities for testing.

31. The undertakers shall afford all facilities for the proper execution of this licence with respect to testing, and shall comply with all the requirements of this licence in that behalf; and in case the undertakers make default in complying with any of the provisions of this section they shall be liable to a penalty not exceeding five pounds, and in the case of a continuing offence to a further penalty not exceeding one pound for every day after the first day during which such offence continues.

Supply.

Undertakers to furnish sufficient supply of electricity to owners and occupiers within the area of supply.

32. The undertakers shall, upon being required so to do, at any time within six years after the commencement of this licence, by the owner or occupier of any premises situate within twenty-five yards from any distributing main of the undertakers, give and continue to give a supply of electricity for such premises subject to the provisions of this licence, and they shall furnish and lay any electric lines that may be necessary for the purpose of supplying the maximum current with which any such owner or occupier may be entitled to be supplied under this licence, subject to the conditions following; (that is to say,)

The cost of so much of any electric line for the supply of electricity to any owner or occupier as may be laid upon the property of such owner or in the possession of such occupier, and of so much of any such electric line as may be laid for a greater distance than thirty feet from any distributing main of the undertakers, although not on such property, shall be defrayed by such owner or occupier.

Every owner or occupier of premises requiring a supply of electricity shall—

Serve a notice upon the undertakers at their office, specifying the premises in respect of which such supply is required and the maximum current required to be supplied, and the day (not being an earlier day than a reasonable time after the date of the service of such notice) upon which such supply is required to commence:

Enter into a written contract with the undertakers (if required by them so to do) to continue to receive and pay for a supply of electricity for a period of at least two years, or for the residue of the term of this licence where such residue is less than two years, of such an amount that the rent payable for the same, at the rate of charge for the time being charged by the undertakers for a supply of electricity to ordinary consumers within the area of supply, shall not be less than twenty pounds per centum per annum on the outlay

incurred by the undertakers in providing any electric line to be provided by them for the purpose of such supply, and give to the undertakers (if required by them so to do) security for the payment to them of all moneys which may become due to them by such owner in respect of any electric lines to be furnished by the undertakers, and in respect of electricity to be supplied by them.

Provided always, that the undertakers may, after they have given a supply of electricity for any premises, by notice in writing, require the owner or occupier of such premises, within seven days after the date of the service of such notice, to give to them security for the payment of all moneys which may from time to time become due to them in respect of such supply, in case such owner or occupier has not already given such security, or in case any security given has become invalid or is insufficient; and in case any such owner or occupier fail to comply with the terms of such notice, the undertakers may, if they think fit, discontinue to supply electricity for such premises so long as such failure continues.

Provided also, that if the owner or occupier of any such premises as aforesaid uses any form of lamp or burner, or uses the electricity supplied to him by the undertakers for any purposes, or deals with it in any manner so as to unduly or improperly interfere with the supply of electricity to any other authority, company, or person by the undertakers, the undertakers may, if they think fit, discontinue to supply electricity to such premises so long as such user continues.

Maximum current.

33. The maximum current with which any such consumer, as in the last section mentioned, shall be entitled to be supplied shall be of such amount as he may from time to time require to be supplied with, not exceeding what may be reasonably anticipated as the maximum consumption on his premises: Provided that where any consumer has required the undertakers to supply him with a maximum current of any specified amount, he shall not be entitled to alter that maximum except upon one month's notice to the undertakers, and any expenses incurred by the undertakers in respect of the service lines, by which electricity is supplied to the premises of such consumer, or any electric lines, fittings, or apparatus of the undertakers upon such premises, consequent upon such alteration, shall be paid by him to the undertakers.

If any difference arises between any such owner or occupier and the undertakers as to what may be reasonably anticipated as the consumption on his premises such difference shall be determined by arbitration.

Supply of electricity to public lamps.

34. The undertakers shall supply electricity to any public lamps within the distance of fifty yards from any of the distributing mains of the undertakers in such quantities as the local authority may from time to time require to be supplied.

Penalty for failure to supply.

35. Whenever the undertakers make default in giving a supply of electricity at such pressure and during such hours as are by this licence required to any owner or occupier of premises to whom they may be and are required to supply electricity under this licence, they shall be liable to a penalty not exceeding forty shillings in respect of every such default for each day upon which any such default occurs.

Whenever the undertakers make default in supplying electricity at such pressure and during such hours as are by this licence required to all or any of the public lamps to which they may be and are required to supply electricity under this licence, they shall be liable to a penalty not exceeding forty shillings in respect of every such default for each such lamp, and for each day upon which any such default occurs.

Provided that the penalties to be inflicted on the undertakers under this section shall in no case exceed in the aggregate the sum of one hundred pounds in respect of any defaults in supplying private consumers, and one hundred pounds in respect of any defaults in supplying public lamps for any one day, and provided also that in no case shall any penalty be inflicted in respect of any default if the court having cognizance of the case are of opinion that such default was caused by inevitable accident, or by force majeure, or was of so

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slight or unimportant a character as not materially to affect the value of the supply.

Price.

Methods of charging.

36. The undertakers may charge for electricity supplied by them from any distributing main to any ordinary consumer (otherwise than by agreement)—

(1.) By the quantity of energy contained in such supply; or

(2.) By the actual quantity of electricity so supplied; or

unless the Board of Trade from time to time otherwise direct,

(3.) By the number of hours during which the supply of electricity is actually used by such consumer, and the maximum current with which he is for the time being entitled to be supplied:

Provided that before commencing to supply electricity through any distributing main for the purposes of general supply, the undertakers shall give notice to the local authority by what method they propose to charge for electricity supplied through such main; and, where the undertakers have given any such notice, they shall not be entitled to change such method of charging, except after one month's notice of such change has been given by them to the local authority and to every consumer of electricity who is supplied by them from such main.

Maximum prices.

37. The prices to be charged by the undertakers for electricity supplied by them shall not exceed those stated in that behalf in Schedule B. in the first, second, and third sections thereof respectively.

Other charges by agreement.

38. Subject to the provisions of this licence, and of the principal Act, and to the right of the consumer to require that he shall be charged according to some one or other of the methods above mentioned in cases where he is entitled to require a supply, the undertakers may make any agreement with a consumer as to the price to be charged for electricity, and the mode in which such charges are to be ascertained and may charge accordingly.

Price to public lamps.

39. The price to be charged by the undertakers and to be paid to them for all electricity supplied to the public lamps, and the mode in which such charges are to be ascertained, shall be settled by agreement between the local authority and the undertakers, and in case of difference, by arbitration, regard being had to the circumstances of the case and the distributing or other mains (if any) which may have to be laid for the purpose, and the prices charged to ordinary consumers in the district.

Regulations as to Safety.

Regulations as to safety.

40. The following regulations shall be observed in relation to the supply of electricity under this licence:

(*a.*) All mains and service lines, so far as they lie in or under streets and public places (otherwise than in distributing boxes or stations), shall be of a pattern to be approved of by the Board of Trade, and shall be covered with thoroughly waterproof covering and be contained in pipes or cases of sufficient strength to protect them from injury, and due precautions shall be taken to prevent any insulating material which may be used being rendered plastic or being otherwise injured by the action of external heat.

(*b.*) All mains or service lines shall be well and sufficiently insulated with some material affording an insulation of a durable character, to be approved of by the Board of Trade, and all parts of service lines shall be so secured that they shall not be liable to be brought into contact with metallic masses upon accidental abrasion of the insulation.

(*c.*) No conductor in any part of any circuit shall be connected with earth unless such connection is sanctioned by the Board of Trade by any regulations to be hereafter made under the provisions of the principal Act or this licence.

(*d.*) The current through any conductor used as a service line shall not exceed one thousand ampères, if such current exceeds ten ampères, or two

thousand ampères, if such current is less than ten ampères, per square inch of section of a pure copper wire of a conductivity equal to that of such conductor; provided that when the insulation employed is such that it would become plastic at a temperature of 120° Fahrenheit, only three-fourths of the above-mentioned currents shall be allowed.

(*e.*) The supply of electricity to any premises shall be capable of being turned off at some point outside such premises.

(*f.*) In each conductor of each service line shall be inserted a safety fuse or other safety connection of a pattern to be approved by the Board of Trade. Such fuse or connection shall be situated in a distributing box or at some other point in the service line which is easily accessible, and shall be of such a nature as to cut off the supply when the current through such conductor exceeds by more than fifty per centum (or such other smaller proportion as the undertakers may thiuk fit) the maximum current which such service line is intended to supply.

(*g.*) All service lines and positive and negative poles of service lines upon the premises of any consumer shall be at a distance of not less than three inches from one another respectively, and the terminals and any joint which may be made in any portion of any service lines which may be upon the premises of any consumer between the point at which they enter upon the said premises and the said poles shall be of some construction and pattern to be approved of by the Board of Trade; and notice in writing of the position of every such joint as aforesaid shall be given to every such consumer by the undertakers before commencing to supply electricity through such service lines.

(*h.*) Where the maximum current given to any consumer by any service lines exceeds fifty ampères, the supply shall be divided and given at more than one pair of poles, so that the maximum current at each pair of poles shall not exceed fifty ampères, except in such cases and under such conditions as may be approved of by the Board of Trade.

(*i.*) Where the difference of potential between any point of any main or electric line used by the undertakers and the earth, or between such point and any other point upon the same circuit, exceeds two hundred volts, such precautions shall be taken by the undertakers as may from time to time be prescribed by the Board of Trade by any regulations to be made by them under the provisions of the principal Act, to prevent such main or electric line becoming electrically connected with or leaking into any main or electric line through which electricity passes at a different potential.

(*j.*) Where the difference of potential between any point of any charging main and the earth or between such point and any other point upon the same circuit exceeds two hundred volts, all distributing mains connected therewith shall be fitted with such appliances and apparatus of such pattern and construction as may be from time to time prescribed or approved of by the Board of Trade for the purpose of ensuring that such mains shall be effectively disconnected and kept disconnected from such batteries during the hours of charging.

(*k.*) No portion of any electric line which may be placed by the undertakers above ground, and which is not enclosed within any distributing box or buildiug, shall be at a potential differing from that of the earth by more than two hundred volts.

(*l.*) Where any portions of any electric lines belonging to the undertakers are exposed in such a position as to be liable to be struck by lightning, they shall be efficiently protected by lightning dischargers of such pattern and construction as may be from time to tiue prescribed or approved by the Board of Trade.

(*m.*) The difference of potential at corresponding points of the positive and negative conductors used as distributing mains or service lines shall not at any time exceed two hundred volts in the case of continuous currents and one hundred volts in the case of alternating currents (the difference

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of potential in the case of alternating currents being taken as equal to the constant difference of potential which would in the case of continuous currents produce the same mean effect), and no portion of any such conductor shall be at a potential differing from that of the earth by more than such quantity.

(*n.*) The difference of potential at any two points of a charging main shall not exceed four thousand volts, and no portion of any such main shall be at a potential differing from that of the earth by more than such quantity.

(*o.*) The Board of Trade may at any time direct an inquiry to be made into the condition of any mains, electric lines, or works of the undertakers if they consider it expedient to do so in the interest of the public safety, and for such purpose they may order any such mains, electric lines, or works to be tested in such manner as they may think expedient, and may require the undertakers to remedy or repair any defects therein. If the undertakers make default in remedying or repairing any such defects as aforesaid upon being required to do so as above mentioned within the time prescribed in that behalf by the Board of Trade, they shall be liable to a penalty not exceeding one hundred pounds for every day during which such default continues.

Provided always, that if the undertakers at any time desire to supply electricity by agreement at a high tension for the purpose of arc lighting, or for any other purpose, the Board of Trade, if they think fit, may relieve the undertakers from all or any of the obligations by this section imposed upon them, and may substitute such other regulations to be observed by the undertakers in relation to such supply as they may think expedient; and all regulations so substituted shall be observed by the undertakers, and shall, for all purposes of enforcement or otherwise, be deemed to have been inserted in this section in lieu of the regulations for which the same are substituted.

Notices, &c.

Notices, &c., may be printed or written.

41. Notices, orders, and other documents under this licence may be in writing or in print, or partly in writing and partly in print; and where any notice, order, or document requires authentication by the local authority, the signature thereof by the clerk or surveyor to the local authority shall be sufficient authentication.

Service of notices, &c.

42. Any notice, order, or document required or authorised to be served upon any body or person under this licence may be served by the same being addressed to such body or person and being left at or transmitted through the post to the following addresses respectively:—

(*a.*) In the case of the Board of Trade, the office of the Board of Trade;

(*b.*) In the case of the Postmaster-General, the General Post Office;

(*c.*) In the case of the local authority, the office of the local authority;

(*d.*) In the case of the justices of the peace for any county, the office of the clerk of the peace for the said county;

(*e.*) In the case of the undertakers or any other company having a registered office, the registered office of the undertakers or such company;

(*f.*) In the case of a company having an office or offices, but no registered office, any such office;

(*g.*) In the case of any other person, the usual or last known place of abode of such person.

Where any notice is served by post it shall be deemed to have been served at the time when the letter containing the notice would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

A notice, order, or document by this licence required or authorised to be served on the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming them), without further name or description.

A notice, order, or document by this licence required or authorised to be served on the owner or occupier of premises may be served by delivering the same, or a

true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by fixing the notice on some conspicuous part of the premises.

Expiration or Revocation of Licence.

Revocation of licence were undertakers are insolvent.

43. If at any time after the commencement of this licence the local authority make a representation to the Board of Trade that the undertakers have made any default in executing works or supplying electricity in accordance with the terms of this licence, and that such default is in consequence of the insolvency of the undertakers, and that by reason of such insolvency the undertakers are unable fully and efficiently to discharge the duties and obligations imposed upon them by this licence, the Board of Trade shall inquire into the truth of such representation, and if upon such inquiry they are satisfied of the truth of such representation they shall, upon the application of the local authority, revoke this licence as to the whole or (with the consent of the undertakers) as to any part of the area affected thereby.

Revocation of licence with consent of undertakers and local authority.

44. In addition to any other powers which the Board of Trade may have in that behalf, they may revoke this licence at any time with the consent and concurrence of the undertakers and the local authority, upon such terms as they may think fit.

Notice where licence revoked.

45. If the Board of Trade at any time revoke this licence as to the whole or any part of the area affected thereby under any of the provisions of this licence, the Board of Trade shall serve a notice of such revocation upon the undertakers and upon the local authority, and shall in such notice fix a date at which such revocation shall take effect, and from and after such date all the powers of the undertakers for the supply of electricity within such area, or part thereof as aforesaid, shall absolutely cease and determine.

Removal of works where licence expires or is revoked.

46. Except so far as may be otherwise specially provided by any licence, order, or special Act to be hereafter granted or passed, upon the expiration of the term of this licence, or upon the revocation of this licence, the local authority, and any persons who may be liable to repair any street or part of a street in which any works of the undertakers may have been placed, may forthwith remove such works, with all reasonable care, and the undertakers shall pay to the local authority or other such persons as aforesaid such reasonable costs of such removal as may be specified in a notice to be served on the undertakers by such local authority or other persons, or (if so required by the undertakers within one week after the service of such notice upon them) as may be settled by arbitration.

If the undertakers fail to pay such reasonable costs as aforesaid within one month after the service upon them of such notice or the delivery of the award of the arbitrator, as the case may be, the local authority or other such persons as aforesaid may, without any previous notice to the undertakers (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of any such works as aforesaid either by public auction or private sale, and for such sum or sums and to such person or persons as they may think fit; and may, out of the proceeds of such sale, pay and reimburse themselves the amount of the costs so specified or settled as aforesaid, and of the costs of sale, and the balance (if any) of the proceeds of the sale shall be paid over by them to the undertakers.

General.

Proceedings where approval of Board of Trade is required.

47. Where under the provisions of this licence the approval of the Board of Trade is required to be given in any case such approval shall be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade, and all costs and expenses of or incident to any application for such approval, including the costs of the tests (if any) which may be required to be made by the Board of Trade for the purpose of determining whether such approval should be given, shall be borne and paid by the applicant or applicants for such approval: Provided always that where any approval is given by the

Secs. 47–55.

Board of Trade to any plan, pattern, or specification, they may require such copies of the same as they may think fit to be prepared and deposited at their office at the expense of the said applicant or applicants, and may from time to time, if they think fit, revoke any approval so given or permit such approval to be continued subject to such modifications as they may think necessary.

Notice of approval of Board of Trade, &c., to be given by advertisement.

48. Where the Board of Trade, upon the application of the undertakers, give any approval or grant any extension of any time limited for the performance of any duties by the undertakers under this licence, notice that such approval has been given, or such extension of time granted, or such revocation made, shall be published by public advertisement once at least in each of two successive weeks in some one and the same local newspaper by the undertakers.

Notice of applications for extension of time to be given to local authority.

49. Where any application is made to the Board of Trade to extend any time limited for the performance of any duties by the undertakers under this licence, notice of such application shall be served on the local authority by the undertakers, and an opportunity shall be given to the local authority to make representations or objections with reference thereto.

Recovery of penalties.

50. All penalties under this licence, the recovery of which is not otherwise specially provided for, may be recovered in a summary manner before a court of summary jurisdiction.

Undertakers to be responsible for all damages.

51. The undertakers shall be answerable for all accidents, damages, and injuries happening through the act or default of the undertakers, or of any person in their employment, by reason or in consequence of any of the undertakers works, and shall save harmless all authorities, bodies, and persons by whom any street is repairable, and all other authorities, companies, and bodies, collectively and individually, and their officers and servants, from all damage and costs in respect of such accidents, damages and injuries.

Saving rights of the Crown in the foreshore.

52. Nothing in this licence shall authorise the undertakers to take, use, or in any manner interfere with any portion of the shore or bed of the sea, or of any river, channel, creek, bay, or estuary, or any right in respect thereof, belonging to the Queen's most Excellent Majesty, in right of her crown, and under the management of the Board of Trade, without the previous consent in writing of the Board of Trade on behalf of Her Majesty (which consent the Board of Trade may give): neither shall anything in this licence contained extend to take away, prejudice, diminish, or alter any of the estates, rights, privileges, powers, or authorities vested in, or enjoyed or exerciseable by, the Queen's Majesty, her heirs or successors.

Works not to be constructed on shore of navigable waters without consent of Board of Trade.

53. The undertakers shall not construct on the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up the same as the tide flows and re-flows, any work without the previous consent of the Board of Trade, to be signified in writing under the hand of one of the secretaries or assistant secretaries of the Board of Trade, and then only according to such plan and under such restrictions and regulations as the Board of Trade may approve of, such approval being signified as last aforesaid; and where any such work may have been constructed, the undertakers shall not at any time alter or extend the same without obtaining previously to making any such alteration or extension the like consents or approvals. If any such work be commenced or completed contrary to the provisions of this licence the Board of Trade may abate and remove the same, and restore the site thereof to its former condition at the cost and charge of the undertakers; and the amount of such cost and charge may be recovered by the Board of Trade summarily as a civil debt.

Saving clause for Postmaster General.

54. Nothing in this licence shall affect any right or remedy of the Postmaster-General under the Electric Lighting Act, 1882, or the Telegraph Acts, 1863 to 1878, and all provisions contained in this licence in favour of the Postmaster-General shall be construed to be in addition to and not in modification of the provisions of those Acts.

Saving for Conservators of River Thames.

55. Nothing in this licence shall authorise or empower the undertakers to embank or encroach upon or break up or interfere with any part of the soil or bed of the River Thames or the shore thereof, so far as the same may be under the jurisdiction of the Conservators of the River Thames, without the consent of the said Conservators.

56. Nothing in this licence shall exonerate the undertakers from any indictment, action, or other proceeding for nuisance in the event of any nuisance being caused by them.

Undertakers not exempted from proceedings for nuisance.

57. Nothing in this licence shall exempt the undertakers or their undertaking from the provisions of any general Act relating to the supply of electricity which may be hereafter passed.

Provision as to general Acts.

SCHEDULES.

SCHEDULE A.

The streets described in this schedule are—

[Specify streets.]

The houses, buildings, and premises on both sides the said streets being included within this area.

SCHEDULE B.

The term "unit" as used in this schedule shall be deemed to mean the energy contained in a current of 1,000 ampères flowing under an electro-motive force of one volt during one hour.

Section 1.

Where the undertakers charge any consumer by the quantity of energy contained in the supply given to him, they shall be entitled to charge him at the following rates per quarter:—For any quantity up to 100 units, three pounds ten shillings; for each unit over 100 units, sevenpence per unit.

Section 2.

Where the undertakers charge any consumer by the actual quantity of electricity supplied to him, they shall be entitled to charge him according to the rates set forth in section 1 of this schedule, the quantity of energy contained in the supply given to him being taken to be the product of the actual quantity of electricity supplied to him and the standard pressure at the point of junction of the mains and the service lines by which he is supplied.

Section 3.

Where the undertakers charge any consumer by the number of hours during which he actually uses his supply, they shall be entitled to charge him at the rates specified in section 2 of this schedule, the quantity of electricity supplied to him being calculated on the supposition that the consumer uses the maximum current specified by him under the provisions of this licence during all the hours that he has used the supply.

SCHEDULE C.

Tramways which may be broken up by the undertakers in pursuance of the special powers granted by this licence:—

[Specify tramways.]

ARTIZANS' AND LABOURERS' DWELLINGS ACT, 1868.

31 & 32 VICT. c. 130.

An Act to provide better Dwellings for Artizans and Labourers.
[31*st July*, 1868.]

Secs. 1—3.

Whereas it is expedient to make provision for taking down or improving dwellings occupied by working men and their families which are unfit for human habitation, and for the building and maintenance of better dwellings for such persons instead thereof: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. In citing this Act it shall be sufficient to use the words "The Artizans' and Labourers' Dwellings Act, 1868" (1).

Application of Act, and definition of "local authority," "local rate," and "clerk of local authority."

This Act shall apply only to the places named in the first column of Table (A.) in the First Schedule annexed hereto; and "local authority," "local rate," and "clerk of local authority" shall mean "the bodies of persons," "rate," and "officer" in that table in that behalf mentioned; and the said table shall be of the same force as if it were enacted in the body of this Act: Provided always, that this Act shall not apply to any city, borough, town, or place that would otherwise be included within the said table, the population whereof does not according to the census for the time being in force amount to the number of ten thousand persons (2).

Interpretation of terms:

3. The following words and expressions have in this Act the following meanings, unless excluded by the subject or context; (that is to say,)

"Street" and "square."

The word "street" includes any court, alley, street, square, or row of houses:

"Premises."

The word "premises" means any dwelling-house or inhabited building, and the site thereof, with the yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith:

"Owner."

The expression "owner," in addition to the definition given by the Lands Clauses Act (3), shall include all lessees or mortgagees of any premises required to be dealt with under this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired:

"Person."

"Person" shall include a body of persons, corporate or unincorporate:

"Quarter sessions."

"Quarter sessions" shall include general sessions, and in Ireland shall mean, in towns and boroughs where there are separate quarter sessions, the quarter sessions of said boroughs and towns, and in boroughs where there are no

(1) This Act is extended by the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879, and so far as consistent with the tenour thereof (see section 1, *post*, p. 610) this Act and the amending Act are to be construed together as one Act. See also Part II. of the Artizans' Dwellings Act, 1882, *post*, p. 623.

(2) This section is repealed by s. 13 of the Amendment Act of 1879, *post*, p. 612.

(3) See the Lands Clauses Act, 1845, section 3, *post*, p. 895.

separate quarter sessions, the quarter sessions of the divisions of the courts in which such towns or boroughs shall be situate:

"Officer of health" shall mean and include medical officer of health, sanitary inspector, or any statutory officer performing the duties which a medical officer or sanitary inspector performs under or by virtue of any Act of Parliament: "Officer of health."

In all cases in which the name of a local authority, local court, magistrate, or officer having any local jurisdiction in respect of their or his office is referred to, without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the local authority, local court, magistrate, or officer having jurisdiction in that place within which are situate the premises or other subject matter or any part thereof to which such reference applies: "Local officer," &c.

"The metropolis" shall not include the city of London or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the Metropolitan Board of Works: "The metropolis."

"Borough" in England shall mean any place for the time being subject to the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales": "Borough" in England.

"Burgh" in Scotland shall mean any place returning or contributing to return members to Parliament, or any place subject to the jurisdiction of a town council: "Burgh" in Scotland.

"Borough" in Ireland shall mean any place for the time being subject to the Act passed in the session of the third and fourth years of the reign of her present Majesty, chapter one hundred and eight, and intituled "An Act for the Regulation of Municipal Corporations in Ireland." "Borough" in Ireland.

4. If in any place to which this Act applies there is no officer of health within the meaning of this Act, the local authority, with the approval of one of Her Majesty's principal Secretaries of State(1), shall forthwith appoint such an officer for such period as shall be necessary, shall assign him his duties, and pay him such salary or emolument out of the local rate as they, with such approval as aforesaid, shall think fit. The local authority, with the like approval, may from time to time remove any officer appointed under this section, and in manner aforesaid appoint another officer in his place (2). As to appointment of officers of health and payment of salaries.

5. If in any place to which this Act applies the officer of health find that any premises therein are in a condition or state dangerous to health so as to be unfit for human habitation (3), he shall report the same in manner hereinafter provided to the local authority. Officer of health to report as to condition of streets.

6. Every report made under this Act by the officer of health shall be made in writing and delivered to the clerk of the local authority, and the local authority shall refer such report to a surveyor or engineer, who shall thereupon consider the report so furnished to him, and report to the local authority what is the cause of the evil so reported on, and the remedy thereof, and if such evil is occasioned by defects in any premises, whether the same can be remedied by structural alterations and improvements or otherwise, or whether such premises, or any and what part thereof, ought to be demolished. Officer of health to deliver copies of report to clerk of local authority, who shall refer the same to a surveyor, &c.

7. Upon receipt of the report of the surveyor and engineer the local authority shall cause copies of both the reports to be given to the owner, with notice of the time and place appointed by the local authority for the consideration thereof, and such owner shall be at liberty to attend and to state his objections (if any) to such reports, or either of them, including therein any objection that the necessary works ought to be done by or at the expense of some other person or persons, or at the expense of the parish or district in which the premises are situate; and on such objections the local authority shall make an order in writing, signed by the clerk of such local authority, which shall be subject to appeal in manner hereinafter Local authority to cause copies of reports to be given to owner, who may object to the same, and to prepare plan and specification

(1) Now the Local Government Board, see *ante*, p. 393.

(2) This section is repealed by section 11 of the Public Health Act, 1872. See now the Public Health Act, 1875, ss. 189, 190, *ante*, pp. 150, 151.

(3) See *Flight* v. *The Vestry of St. George the Martyr, Southwark*, 25 L. T. N. S. 24, 36 J. P. 303. See also section 8 of the Artizans' Dwellings Act, 1882, *post*, p. 623.

Secs. 7—11.

of required work.

mentioned; and if such objections are overruled, the local authority, if they deem it necessary, shall cause to be prepared a plan and specification of the works (if any), and an estimate of the cost of such works, required to be executed.

Clerk of local authority to give notice to owner of plan, &c., of required works having been prepared.

8. The clerk of the local authority shall thereupon forthwith give notice to the owner of the premises, informing him that a plan and specification and estimate of the cost of such works as are required in reference thereto have been prepared, and that such plan and specification and estimate may, if such owner think fit, be inspected and transcribed by him or his agent at the office of the clerk of the local authority without charge; and any such owner may at any time within three weeks after the receipt of such notice state in writing to the clerk of the local authority, any objection which he may entertain to the said plan, specification, and estimate, or any of them, and may attend at a time and place to be appointed for such purpose by the local authority to support such objections; and the local authority shall thereupon make such order in relation thereto as they may think fit; and if they decide that any alteration is to be made in the said plan, specification, and estimate, the local authority shall cause such alteration to be made accordingly, and the plan and specification and estimate so amended shall be the plan and specification and estimate according to which the works shall be executed.

Persons aggrieved by order of local authority may appeal against the same.

9. Any person aggrieved by any order of the local authority, or his agent, may appeal against the same to the court of quarter sessions held next after the making of the said order, but the appellant shall not be heard in support of the appeal unless, within one calendar month after the making of the order appealed against, he give to the clerk of the local authority notice in writing stating his intention to appeal, together with a statement in writing of the grounds of appeal, and shall, within two days after giving such notice, enter into a recognisance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the said court, and to abide the order of and pay such costs as may be awarded by the court or any adjournment thereof; and the court, upon the appearing of the parties, or upon their making default, shall have full power and jurisdiction to make such order and give such directions as under the circumstances shall seem just, and may, according to its discretion, award such costs to the party appealing or appealed against as they think proper, and the determination of the court in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided,—

First, that if there be no time to give such notice and enter into such recognisance as aforesaid, then such appeal may be made to, and such notice, statement, and recognisance be given and entered into for the next sessions at which the appeal can be heard:

Secondly, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid:

Thirdly, that in any case of appeal the court shall, at the request of either party, state the facts specially for the determination, in England or Ireland, of Her Majesty's Court of Queen's Bench, or in Scotland of either division of the Court of Session, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or by petition, into the said Courts of Queen's Bench or to the Court of Session respectively:

Fourthly, that pending any appeal no work shall be done nor proceedings taken under any order until after the determination of such appeal, or it shall cease to be prosecuted.

Owner may appeal where decision of local authority is against him.

10. If the owner appeal from the decision of the local authority upon the objection that he is not responsible for the state and condition of his premises, he shall be bound to give notice of his appeal, and a statement in writing of the ground thereof, to the person or persons, or to the parish or district, alleged by him to be the occasion of his premises being in such a state or condition as to render them liable to be reported upon under the provisions of the Act, and such person or persons, or parish or district, may appear before the Court, and be heard against his or their alleged liability.

Where local authority de-

11. If the local authority shall decide in favour of the objection of the owner of

the premises that some other person or persons, or that the parish or district in which the premises are situate, is or are responsible for the state and condition of his premises, the local authority shall forthwith send copies of the reports of the officer of health and of the surveyor or engineer to such person or persons, or to the officer of such parish or district, together with notice of his or their alleged liability, and shall appoint a time and place for hearing the parties so alleged to be liable, and give notice thereof to the said parties and also to the owner of the premises, and the local authority shall make such order thereupon as to them shall seem just, and the same shall be subject to appeal in manner aforesaid.

cide in favour of owner, reports and notices to be sent to parties liable.

12. If and whenever any four or more householders living in or near to any street by writing under their hands represent to the officer of health that in or near that street any premises are in a condition or state dangerous to health so as to be unfit for human habitation, he shall forthwith inspect the premises, and report thereon; but the absence of any such representation shall not excuse him from inspecting any premises, and reporting thereon.

On representation by householders that disease exists in any house, officer of health to inspect and report.

13. In the event of the local authority declining or neglecting for the space of three calendar months after receiving such report to take any proceedings to put this Act in force, the householders who signed such representation may address a memorial to the Secretary of State [1] stating the circumstances, and asking that an inquiry be made, and upon receipt of such memorial the said Secretary of State may direct the local authority to proceed under the provisions of the Act, and such direction shall be binding on the local authority.

If local authority neglect to enforce Act, Secretary of State may compel it to proceed.

14. Within three calendar months after the service on the owner of the order by the clerk of the local authority, or, in the case of appeal, within one calendar month after the order of quarter sessions, or, in the event of a further appeal, within one calendar month after the order of the Court of Final Appeal, the persons so served with the order of the local authority shall each of them signify in writing to the clerk of the local authority whether he is willing to effect the works required to be executed; and where two or more persons shall so signify, the right of effecting the works shall be given first to the person whose ownership is first or earliest in title.

Owner to signify to clerk of local authority whether he is willing to execute specified works.

15. Where the owner of the premises and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the owner be residing or have a place of business within the district of such local authority, to give any notice by this Act required to be served on him to the owner, or for him, to some inmate of his place of residence or business within the place; and if he be not residing within such district, or has no place of business therein, then to send the notice by post in a registered letter addressed to the owner at his place of residence or business; provided that the notice served upon the agent of the owner shall be deemed notice to the owner.

Service of notice on owner whose name and residence are known.

16. Where the owner of the premises or his residence or place of business is not known to, or after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the premises, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the premises.

Service of notice on owner whose name or residence is not known.

17. Every notice required to be given by the clerk of the local authority by this Act shall be in writing or print, or partly in writing and partly in print, and shall be signed by the clerk of the local authority or deputy appointed by him.

Notices to be signed by the local authority.

18. The owner on whom the local authority shall have imposed in the first instance the duty of executing the work shall, within two calendar months thereafter, commence the works as shown on the plan and described in the specification, and shall diligently proceed with and complete the same in conformity with the specification to the satisfaction of the surveyor or engineer appointed by the local authority; and if such owner shall fail therein, the local authority shall require the owner next in order as aforesaid to execute the said works, and in case of his default shall require the remaining owners in their order as aforesaid; and if all such owners shall make default, the local authority shall, as the case may seem to

Local authority to require owners to execute works as in specification.

Proceedings of local authority in case owners neglect.

[1] The Local Government Board has been substituted for the Secretary of State by section 2 of 34 & 35 Vict. c. 70, *ante*, p. 393.

Secs. 18–24. them to require, either order the premises to be shut up or to be demolished, or may themselves execute the required works in conformity with the specification.

Provision in case local authority themselves execute the works.

19. Where the local authority themselves execute the works, they may apply to the court of quarter sessions having jurisdiction over the place of which they are the local authority for an order charging on the premises on which the works have been executed the amount of all costs, charges and expenses that have been incurred by such authority in or about the execution of such works, including the costs of obtaining the order; and the court of quarter sessions, when satisfied of the amount so expended, shall make an order accordingly, charging on the premises the amount of such costs, charges, and expenses, together with interest at the rate of four pounds per cent. per annum, and such order shall be filed and recorded in manner hereinafter mentioned, and thereupon the amount of principal and interest thereby secured shall be a charge on the house, bearing interest at four per centum, and having priority over all other estates, incumbrances, and interests whatsoever, and the local authority shall, for the purpose of obtaining satisfaction of the moneys so charged, or of any interest thereon, be deemed to be a mortgagee of an absolute estate in the house, and shall be invested with all the powers conferred on mortgagees by Part II. of the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and forty-five, and in Scotland such order shall be recorded in the appropriate register of sasines.

Local authority to pay compensation when total demolition required.

20. If the requirements of the order involve the total demolition, and not the improvement of the premises specified therein, the owner shall, within three months after service of the order, proceed to take down and remove the premises, and if such owner fail therein, then the local authority shall proceed to take down and remove the same; and the local authority shall sell the materials, and, after deducting the expenses incident to such taking down and removal, pay over the balance of moneys, if any, to the owner.

Determination of tenancies.

21. Where at the time of making the order the premises specified therein, or any part thereof, are or is subject to any tenancy from year to year, or for a year or for any less term, the local authority shall give notice to every such tenant, stating the time at which such tenancy will be determined.

Remedies of owner for breach of covenant, &c., not to be prejudiced.

22. Provided always, that nothing in this Act contained shall prejudice or interfere with the rights or remedies of any owner for the breach, non-observance, or non-performance of any covenant or contract entered into by a tenant or lessee in reference to any premises in respect of which any order shall be made by a local authority; and if any owner shall be obliged to take possession of any premises in order to comply with any order made under the provisions of this Act, such entry or taking possession shall not affect his right to avail himself of any such breach, non-observance, or non-performance that may have occurred prior to his so taking possession.

Owner instead of effecting improvements may take down premises.

23. If the order be that the premises require improvement, the owner, including therein the owner of the first estate of inheritance, if he think fit, may, instead of effecting the works required by the plan and specification, take down the premises; but in every such case, and also in the event of the owner desiring to retain the site [1] of the premises required by the order to be totally demolished, no house or other building or erection shall be erected on all or any part of the site of the premises so taken down which shall be injurious to health; and the local authority may at any time make an order upon the owner to abate or alter the said house, building, or erection, as the case may require; and in the event of non-compliance with such order the local authority may, at the expense of the owner thereof, abate or alter any house or other building or erection at any time wholly or partly erected contrary to the provisions of this section.

Application may be made to justices where more than one owner of

24. When there are two or more owners of any premises, and it appears to any two justices in petty sessions, on application of any owner of such premises, that the interest of the applicant in the premises will be prejudiced by the neglect and default of any other owner to deal with the premises in conformity with the order so made, it shall be lawful for such justices, if the applicant undertake to their

[1] See section 8, sub-section (7), of the Artizans' Dwellings Act, 1882, *post*, p. 624.

satisfaction to bring the premises into conformity with such order, to make an order empowering the applicant forthwith to take possession of the premises and to do all such works as may be necessary for bringing the same into conformity with such order, and within such time as shall be fixed by such justices, and on non-compliance by such last-mentioned applicant with his undertaking it shall be lawful for the justices to make a like order in favour of any other owner.

premises included in order under Act, and any one owner neglects to comply with such order.

25. Where any owner has completed any works required to be executed by a local authority in pursuance of this Act, he may on the completion thereof apply to the local authority for a charging order charging on the premises on which the works have been executed an annuity as compensation to the owner for the expenditure incurred by him in executing such works, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts and vouchers for such works, and the local authority, when satisfied that the owner has duly executed such works, shall make a charging order accordingly.

Grant of annuity to owner on completion of works.

The annuity charged shall be a sum of six pounds for every 100*l.* of such expenditure, and so in proportion for any less sum, to commence from the date of the order, and to be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

Charging orders made under this Act shall be made according to the form marked A. in the Second Schedule hereto annexed, or as near thereto as the circumstances of the case will admit.

The costs of obtaining the order to be allowed by the local authority shall be deemed to be part of the expenditure incurred by the owner.

Incidence of charge.

26. Every annuity created by a charging order under this Act shall be a charge on the premises comprised in the order, having priority over all existing and future estates, interests and incumbrances, with the exception of quitrents and other charges incident to tenure, tithe commutation rentcharges, and any charges created under any Act authorising advances of public money; and where more annuities than one are chargeable under this Act on any premises, such annuities shall, as between themselves, take order according to their respective dates.

Charges recoverable as rentcharges in lieu of tithes.

27. Every annuity charged on any premises by a charging order under this Act may be recovered by the persons for the time being entitled to the same by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the premises by the owner thereof.

An order to be evidence of compliance with Act.

28. An order made in pursuance of this Act charging an annuity on any premises shall be, both at law and in equity, conclusive evidence that all notices, acts, and proceedings by this Act directed with reference to or consequent on the obtaining such order, or the making such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the premises declared to be subject thereto.

Registry of charging order on premises in Middlesex and Yorkshire.

29. Every charging order made in pursuance of this Act relating to premises in Middlesex or Yorkshire shall be registered in the same manner respectively as if such charge were made by deed by the absolute owner of such lands without the aid of this Act; and a copy of every such charging order of the certificate of such surveyor or engineer as aforesaid, together with a copy of the accounts as passed by the local authority, and which copies shall be certified to be true copies by the clerk of such local authority, shall, within six months after the date of such charging order, be deposited with the clerk of the peace of the county in which the premises are situate, who shall be entitled to a fee of ten shillings for filing and recording the same; and every charging order made in pursuance of this Act relating to premises in Scotland shall be recorded in the appropriate register of sasines.

Assignment of charge.

30. The proprietor of any charge may, by deed under seal, stamped with the same *ad valorem* stamp as if it were an assignment of a charge created by deed, assign the benefit of the charging order, or of any portion of the charge comprised therein, to any other person; and on such assignment being executed the assignee shall have the same rights under the order as the proprietor would have had if no such assignment had been executed; and any assignee of a charging order may, by deed stamped in manner aforesaid, assign the charge to any other person. Any

Secs. 30–39.

assignment of a charging order may be in the form marked B. in the Schedule hereto, or in any other convenient form.

As to expenses of local authority.

31. All expenses incurred by the local authority in pursuance of this Act shall be defrayed by them out of a special local rate, not exceeding twopence in the pound in any year, which they are hereby empowered to assess and levy for the purposes of this Act.

Power to Public Works Loan Commissioners to advance moneys to local authority.

32. The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, may, if they think fit, lend to any local authority, and any local authority may borrow from the said Commissioners, such sums as the said authority may require for the purposes of this Act, but the amount of every loan shall be sanctioned by the Lords Commissioners of the Treasury.

Service of notice on the local authority.

33. Any summons, notice, writ, or other proceeding at law or in equity, or otherwise, in relation to carrying into effect the objects and purposes of this Act, required to be served upon the local authority, may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Notices served by local authority to be signed by the clerk.

34. Any notice, demand, or other written document served by the local authority for the purposes of this Act shall be signed by the clerk of the local authority.

Penalty for obstructing officer of health, &c., in execution of Act.

35. Where any person at any time obstructs the officer of health or other person acting in the performance of anything which the local authority or their officers respectively are by this Act required or authorised to do, every person so offending shall for every such offence forfeit not exceeding twenty pounds.

Penalty for preventing execution of Act.

36. If the occupier of any premises prevents the owner thereof, or if the owner or occupier of any premises prevents the officer of health, or their officers, agents, servants, or workmen, from carrying into effect with respect to the premises any of the provisions of this Act, after notice of the intention so to do has been given to the occupier, or, as the case shall be, to the owner, any justice on proof thereof may make an order in writing requiring the occupier to permit the owner, or, as the case shall be, requiring the owner or occupier, or both, to permit the officer of health, or the local authority, and their officers, agents, servants, and workmen, to do all things requisite for carrying into effect with respect to the premises the provisions of this Act; and if at the expiration of ten days after the service of such order of the justice the occupier or owner fails to comply therewith, every person so offending shall for every day during which the failure continues forfeit not exceeding twenty pounds: Provided that during any such failure by the occupier the owner, unless assenting thereto, shall not be liable to the forfeiture.

Appearance of local authority.

37. The local authority may appear before any judge, justices, borough magistrates, sheriff, or sheriff substitute, by their clerk, and any company or body corporate may appear before the said magistrate or magistrates by any member of their board of management.

Recovery of penalties.

38. Penalties under this Act may be recovered before two justices in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of Her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," or any Act amending the same, and in Scotland by summary complaint before the Sheriff, Sheriff Substitute, or two justices, or in boroughs before the magistrates, in manner provided by "The Summary Procedure Act, 1864," and in Ireland in manner directed by "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

Application of Act to Scotland.

39. For the purpose of adapting this Act to Scotland the following alteration shall be made; (that is to say,)

1. "The Lands Clauses Consolidation Act (Scotland), 1845," shall be substituted for "The Lands Clauses Consolidation Act, 1845:"
2. All the judicial powers given to justices in quarter sessions by this Act shall be exercised by sheriffs of counties or sheriff substitutes; and wherever by this Act an appeal is given to the court of quarter sessions, and thence to the Court of Queen's Bench, such appeal shall be to the

sheriff of the county, and from him to the Court of Session in the usual manner.

Secs. 39–41.

Application of Act to Ireland.

40. For the purpose of adapting this Act to Ireland the words "The Lands Clauses Consolidation Act, 1845," shall mean "The Railways Act (Ireland), 1851," and the several Acts amending the same.

Jurisdiction of certain magistrates.

41. Any act, power, or jurisdiction hereby authorised to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say: As to England, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor of the City of London, or any alderman of the said city, sitting alone or with others, at the Mansion House or Guildhall; as to Scotland, by the Sheriff or Sheriff Substitute, or by any two magistrates of a burgh; and as to Ireland, by any one or more divisional magistrates of police in the police district of Dublin, and elsewhere by two or more justices of the peace in petty sessions.

SCHEDULES.

FIRST SCHEDULE (1).

TABLE A.

ENGLAND AND WALES.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The City of London and the Liberties thereof. Local Acts { 11 & 12 Vict. c. 163. 14 & 15 Vict. c. 91.	Commissioners of Sewers of the City of London. Local Act 11 & 12 Vict. c. 163.	The Consolidated Rate 11 & 12 Vict. c. 163, s. 158.	The clerk to the commissioners. 11 & 12 Vict. c. 163, s. 25.
The metropolis - -	The vestries and district boards under the Act 18 & 19 Vict. c. 120, within their respective parishes and districts.	Rate to be levied for defraying the expenses of the Act 18 & 19 Vict. c. 120.	Clerk of the vestries or district boards.
Boroughs not within the jurisdiction of such local board as aforesaid.	The mayor, aldermen, and burgesses, acting by the council.	The Borough Fund or other property applicable to the purposes of a borough rate or the borough rate.	The town clerk.
Any town not included in the above descriptions and under the jurisdiction of commissioners, trustees, or other persons entrusted by any local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons entrusted by the local Act with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.	The clerk of the commissioners or trustees or other persons or other officer performing the duties of clerk.
Places within the jurisdiction of local boards, constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board -	General District Rate 11 & 12 Vict. c. 63, s. 87.	Clerk of the local board or other officer performing duties of clerk. 11 & 12 Vict. c. 63, s. 37.

(1) By section 13 of the Artizans' and Labourers' Dwellings Improvement Act, 1879 (see *post*, p. 612) this schedule is repealed. See now section 2 of this latter Act, *post*, p. 610.

SCOTLAND.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
Burghs - - -	The magistrates and town council.	The revenue of the burgh or the local rate leviable for prison purposes under 23 & 24 Vict. c. 105, or any other local rate leviable by the town council.	Town clerk.
Places where police commissioners or trustees exercise the functions of police commissioners acting under "The General Police and Improvement (Scotland) Act or trustees or commissioners acting under any general or local Act.	The police or other commissioners or trustees.	Property or rate belonging to or leviable by the commissioners or trustees.	Clerk of the commissioners or trustees or any other officer performing the duties of clerk.

IRELAND.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The city of Dublin -	The Right Honourable the Lord Mayor, aldermen, and burgesses, acting by the council.	The borough fund or borough or improvement rate.	The town clerk.
Towns corporate or boroughs (with the exception of the city of Dublin).	The mayor, aldermen, and burgesses, acting by the council.	The borough fund, or town fund, or borough rate.	The town clerk.
Towns having town commissioners under 9 Geo. IV. c. 82, or 17 & 18 Vict. c. 103, or any Acts amending the same, or having commissioners or other governing body under any local Act.	The town commissioners or other governing body.	Any rate leviable by these bodies, or any fund belonging to them applicable in the whole or in part to the making or repairing of sewers within their jurisdiction.	The clerk of the commissioners or other governing body.

SECOND SCHEDULE.

Form marked A.

The Artizans' and Labourers' Dwellings Act, 1868.

County of
Parish of
No.

Charging Order.

Insert description of local authority.

The being the local authority under the above-mentioned Act, do, by this order under their hands and seal, charge the inheritance or fee of the premises mentioned in the schedule hereto with the payment to of the sum of pounds, papable yearly on the day of for the term of years, and being in consideration of an expenditure of pounds incurred by him in respect of the said premises.

Insert description of premises charged.

Schedule.

Form marked B.

Form of Assignment of Charge.

To be endorsed on Charging Order.

Dated the day of .

I, the within-named in pursuance of the Artizans' and Labourers' Dwellings Act, 1868, and in consideration of pounds this day paid to me, hereby assign to the within-mentioned charge.

(Signed)

THIRD SCHEDULE.

I. *Form of Order by Court of Quarter Sessions or Petty Sessions or Court of Burgh Magistrates in Scotland.*

Be it remembered, that on the day of 18 , upon the report hereinafter mentioned, we, the undersigned justices, assembled at the court of quarter sessions holden in and for the county of , *or* assembled in petty sessions for the division or district of the borough or county of , *or* members of the court of burgh magistrates for [*as the case may be*], do hereby order and determine that one or more house or houses or buildings situate in a certain court or alley within the borough or burgh, known or designated as court or alley [*or otherwise distinguishing the premises*], and specified in the report of the officer of health for the dated the day of 18 , is or are unfit for human habitation, and ought to be improved or demolished [*as the case may be*], in pursuance of "The Artizans' and Labourers' Dwellings Act, 1868."

II. *Form of Notice by Clerk of the Peace, Clerk of the Justices, or Clerk of the Court of Burgh Magistrates in Scotland to Clerk of Local Authority.*

Artizans' and Labourers' Dwellings Act, 1868.

I, *A. B.*, clerk of the peace *or* clerk of the justices [*or* clerk of the court of burgh magistrates] for the , do hereby certify, that on the day of 18 , the justices assembled at the court of quarter sessions, *or* assembled at the petty sessions for the [*or* court of the burgh magistrates] [*as the case may be*], made an order, of which the following is a true copy:

[*Here give a copy of the presentment, Form* I.]

As witness my hand, this day of in the year of our Lord 18 .

(Signed) (*A. B.*) Clerk of the Peace *or* Clerk of the Justices for [*or* Clerk of the Court of Burgh Magistrates].

To the Clerk of the of

ARTIZANS' AND LABOURERS' DWELLINGS IMPROVEMENT ACT, 1875.

38 & 39 VICT. c. 36.

ARRANGEMENT OF CLAUSES.

Preliminary.

Clause.
1. Short title.
2. Application of Act to certain districts, and description of local authority.

PART I.

UNHEALTHY AREAS.

1. *Scheme by Local Authority.*

3. Local authority on being satisfied by official representation of the unhealthiness of district to make scheme for its improvement.
4. Official representation, by whom to be made.
5. Requisites of improvement scheme of local authority.

2. *Confirmation of Scheme.*

6. Improvement scheme by provisional order to be confirmed by Parliament. Publication of notices. Services of notices. Petition to Secretary of State or Local Government Board.
7. Costs to be awarded in certain cases.
8. Inquiry on refusal of local authority to make an improvement scheme.

3. *Execution of Scheme by Local Authority.*

9. Duty of local authority to carry scheme, when confirmed, into execution.
10. Completion of scheme on failure by local authority.
11. Notice to occupiers by placards.
12. Power of confirming authority to modify authorised scheme.

PART II.

PROVISIONS ANCILLARY TO IMPROVEMENT SCHEME.

As to Local Authority.

1. *Medical Officer.*

13. Medical officer of health in Metropolis.
14. Provision in case of absence of medical officer of health.
15. Inquiry on default of medical officer in certain cases.

2. *Local Inquiry.*

Clause.
16. Proceedings on local inquiry.
17. Notice of inquiry to be publicly given.
18. Power to administer oath.

3. *Acquisition of Land.*

19. Acquisition of land.
20. Extinction of rights of way and other easements.

4. *Expenses.*

21. Formation of improvement fund for purposes of this Act
22. Power of borrowing money for the purposes of the Act.
23. Audit of accounts.

PART III.

General Provisions.

24. Provision where local authority has no seal.

Notices.

25. Service of notice on the local authority.
26. Power of confirming authority as to advertisements and notices.
27. Power of confirming authority to dispense with notices in certain cases.
28. Authentication of notices served by the local authority.

Penalties.

29. Penalty for obstructing officers in execution of Act.

Saving Clauses.

30. Relation of local Acts to general Acts.

Definitions.

31. Definitions of terms of Act.

Schedule.

THE ARTIZANS' AND LABOURERS' DWELLINGS IMPROVEMENT ACT, 1875.

38 & 39 VICT. c. 36.

An Act for facilitating the Improvement of the Dwellings of the Working Classes in Large Towns. [29 *June*, 1875.]

Whereas various portions of many cities and boroughs are so built, and the buildings thereon are so densely inhabited, as to be highly injurious to the moral and physical welfare of the inhabitants:

And whereas there are in such portions of cities and boroughs as aforesaid a great number of houses, courts, and alleys which, by reason of the want of light, air, ventilation, or of proper conveniences, or from other causes, are unfit for human habitation, and fevers and diseases are constantly generated there, causing death and loss of health, not only in the courts and alleys but also in other parts of such cities and boroughs:

And whereas it often happens that owing to the above circumstances, and to the fact that such houses, courts, and alleys are the property of several owners, it is not in the power of any one owner to make such alterations as are necessary for the public health:

And whereas it is necessary for the public health that many of such houses, courts, and alleys should be pulled down, and such portions of the said cities and boroughs should be reconstructed:

And whereas in connection with the reconstruction of those portions of such cities and boroughs it is expedient that provision be made for dwellings for the working class who may be displaced in consequence thereof:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Secs. 1, 2.

Short title.

Application of Act to certain districts, and description of local authority.

1. This Act may be cited for all purposes as "The Artizans' and Labourers' Dwellings Improvement Act, 1875."

2. This Act shall apply only to

(1.) The City of London; and

(2.) The Metropolis, exclusive of the City of London; and

(3.) Urban sanitary districts in England containing, according to the last published census, for the time being a population of twenty-five thousand and upwards;

(4.) Urban sanitary districts in Ireland containing, according to the last published census, a population of twenty-five thousand and upwards;

and the local authority shall be as follows; (that is to say,)

(1.) As respects the City of London, the Commissioners of Sewers; and

(2.) As respects the Metropolis, the Metropolitan Board of Works; and

(3.) As respects each urban sanitary district, the urban sanitary authority of that district.

PART I.

UNHEALTHY AREAS.

1. *Scheme by Local Authority.*

Local authority on being satisfied by official representation of the unhealthiness of district to make scheme for its improvement.

3. Where an official representation as hereinafter mentioned is made to the local authority that any houses, courts, or alleys within a certain area under the jurisdiction of the local authority are unfit for human habitation, or that diseases indicating a generally low condition of health amongst the population have been from time to time prevalent in a certain area within the jurisdiction of the local authority, and that such prevalence may reasonably be attributed to the closeness, narrowness, and bad arrangement or the bad condition of the streets and houses or groups of houses within such area, or to the want of light, air, ventilation, or proper conveniences, or to any other sanitary defects, or to one or more of such causes, and that the evils connected with such houses, courts, or alleys, and the sanitary defects in such area, cannot be effectually remedied otherwise than by an improvement scheme for the re-arrangement and reconstruction of the streets and houses within such area, or of some of such streets or houses, the local authority shall take such representation into their consideration, and if satisfied of the truth thereof, and of the sufficiency of their resources, shall pass a resolution to the effect that such area is an unhealthy area, and that an improvement scheme ought to be made in respect of such area, and after passing such resolution they shall forthwith proceed to make a scheme for the improvement of such area.

Provided always, that no person being beneficially interested in any lands within such area shall vote as member of the local authority upon such resolution, or upon any question relating to the purchase or taking of lands in which he is so interested.

If any person votes in contravention of this proviso, he shall, on summary conviction, incur a penalty not exceeding twenty pounds; but the fact of his giving such vote shall not invalidate any resolution passed by the local authority.

Provided always, that any number of such areas may be included in one improvement scheme.

Official representation by whom to be made.

4. An official representation shall mean, in the Metropolis, a representation made by the medical officer of health of any district board, or vestry, or by such medical officer as is hereafter in this Act mentioned, to the local authority, and elsewhere shall mean a representation made to the local authority by the medical officer of health of such authority. A medical officer acting in pursuance of this Act shall make such representation whenever he sees cause to make the same; and if two or more justices of the peace acting within the jurisdiction for which he is medical officer, or twelve or more persons liable to be rated to any rate out of the proceeds of which the expenses of the local authority under this Act are made payable, complain to him of the unhealthiness of any area within such jurisdiction, it shall be the duty of the officer forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the area is an unhealthy area or not an unhealthy area, for the purpose of this Act.

Requisites of improvement scheme of local authority.

5. The improvement scheme of a local authority shall be accompanied by maps, particulars, and estimates; it may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands, if the local authority are of opinion that such exclusion is expedient or inclusion is necessary for making their scheme efficient for sanitary purposes; it may also provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; also it shall distinguish the lands proposed to be taken compulsorily, and shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed, in suitable dwellings, which, unless there are any special reasons to the contrary, shall be situate within the

Secs. 5, 6.

limits of the same area, or in the vicinity thereof [1]; it shall also provide for proper sanitary arrangements. It may also provide for such scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property subject to the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

2. *Confirmation of Scheme.*

Improvement scheme by provisional order to be confirmed by Parliament.

Publication of notices.

Service of notices.

6. Upon the completion of an improvement scheme the local authority shall—

Publish, during three consecutive weeks in the month of September, or October, or November, in some one and the same newspaper circulating within the jurisdiction of the local authority, an advertisement stating the fact of a scheme having been made, the limits of the area to which the scheme relates, and naming a place within such area or in the vicinity thereof where a copy of the scheme may be seen at all reasonable hours; and,

During the month next following the month in which such advertisement is published serve a notice on every owner or reputed owner, lessee, or reputed lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can reasonably be ascertained, stating that such lands are proposed to be taken compulsorily for the purpose of an improvement scheme, and in the case of any owner or reputed owner, lessee or reputed lessee, requiring an answer stating whether the person so served dissents or not in respect of such lands, such notice to be served—

(*a.*) By delivery of the same personally to the person required to be served, or if such person is absent abroad, or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the premises; or,

(*b.*) By leaving the same at the usual or last known place of abode of such person as aforesaid; or,

(*c.*) By forwarding the same by post in a prepaid letter addressed to the usual or last known place of abode of such person.

One notice addressed to the occupier or occupiers without naming him or them, and left at any house, shall be deemed to be a notice served on the occupier or on all the occupiers of any such house.

Petition to Secretary of State or Local Government Board.

Upon compliance with the provisions contained in this section with respect to the publication of an advertisement and the service of notices, the local authority shall present a petition, if such authority be the Commissioners of Sewers or the Metropolitan Board of Works to a Secretary of State, and if such authority be an urban sanitary authority to the Local Government Board, praying that an order may be made confirming such scheme. The petition shall be accompanied by a copy of the scheme, and shall state the names of the owners or reputed owners, lessees or reputed lessees, who have dissented in respect of the taking their lands, and shall be supported by such evidence as the Secretary of State or Local Government Board, according to the circumstances of the case (in this Act referred to as the confirming authority), may from time to time require:

If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case they shall direct a local inquiry to be held in, or in the vicinity of, the area to which the scheme relates, for the purpose of ascertaining the correctness of the official representation made as to the area and the sufficiency of

[1] By section 4 of the Artizans' and Labourers' Dwellings Improvement Act, 1879 (see *post*, p. 619), it is enacted that the requirements of this section may be complied with if the confirming authority so authorise, by the provision of equally convenient accommodation at some place other than within the area or the immediate vicinity of the area comprised in such scheme. See also section 3 of the Artizans' Dwellings Act, 1882 (*post*, p. 622), which further modifies this provision.

the scheme provided for its improvement, and any local objections to be made to such scheme:

After receiving the report made upon such inquiry, the confirming authority may make a Provisional Order declaring the limits of the area to which the scheme relates, and authorising such scheme to be carried into execution. Such Provisional Order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and it shall be the duty of the local authority to serve a copy of any Provisional Order so made in the manner and upon the persons in which and upon whom notices in respect of lands proposed to be taken compulsorily are required by this Act to be served, except tenants for a month or a less period than a month.

A Provisional Order made in pursuance of this section shall not be of any validity until and unless it has been confirmed by Act of Parliament; and it shall be lawful for the confirming authority, as soon as conveniently may be, to obtain such confirmation, and any Provisional Order made in pursuance of this Act, when confirmed by Parliament, with such modifications as may seem fit to Parliament, shall be deemed to be a Public General Act of Parliament, and is in this Act referred to as the confirming Act.

The confirming authority may make such Order as they think fit in favour of any person whose lands were proposed by the scheme to be taken compulsorily for the allowance of the reasonable costs, charges, and expenses properly incurred by him in opposing such scheme.

All costs, charges, and expenses incurred by the confirming authority in relation to any Provisional Order under this Act shall, to such amount as the confirming authority think proper to direct, and all costs, charges, and expenses of any person to such amount as may be allowed to him by the confirming authority in pursuance of the aforesaid power, shall be deemed to be an expense incurred by the local authority under this Act, and shall be paid to the confirming authority and to such person respectively, in such manner and at such times and either in one sum or by instalments as the confirming authority may order, with power for the confirming authority to direct interest to be paid at such rate not exceeding five pounds in the hundred by the year as the confirming authority may determine, upon any sum for the time being due in respect of such costs, charges, and expenses as aforesaid.

Any Order made by the confirming authority in pursuance of this section may be made a rule of one of Her Majesty's superior courts, and be enforced accordingly.

Costs to be awarded in certain cases.

7. Where any Bill for confirming a Provisional Order authorising an improvement scheme is referred to a committee of either House of Parliament upon the petition of any person opposing such Bill, the committee shall take into consideration the circumstances under which such opposition is made to the Bill, and whether such opposition was or was not justified by such circumstances, and shall award costs accordingly to be paid by the promoters or the opponents of the Bill as the committee may think just.

Any costs under this section may be taxed and recovered in the manner in which costs may be taxed and recovered under the Act of the session of the twenty-eighth and twenty-ninth years of the reign of Her present Majesty, chapter twenty-seven.

The decision of the majority of the members of the committee for the time being present and voting on any question under this section shall be deemed to be the decision of the committee.

Inquiry on refusal of local authority to make an improvement scheme

8. Where an official representation is made to the local authority with a view to their passing a resolution in favour of an improvement scheme, and they fail to pass any resolution in relation to such representation, or pass a resolution to the effect that they will not proceed with such scheme, such local authority shall, as soon as possible, send a copy of the official representation, accompanied by their reasons for not acting upon it, to the confirming authority, and, upon the receipt thereof, the confirming authority may direct a local inquiry to be held, and a report to be made to them with respect to the correctness of the official representation

Secs. 8—11. made to the local authority, and any matters connected therewith on which the confirming authority may desire to be informed.

3. *Execution of Scheme by Local Authority.*

Duty of local authority to carry scheme, when confirmed, into execution.

9. When the confirming Act authorising any improvement scheme of a local authority under this Act has been passed by Parliament, it shall be the duty of that authority to take steps for purchasing the lands required for the scheme, and otherwise for carrying the scheme into execution as soon as practicable. They may sell or let all or any part of the area to which such scheme relates to any purchasers or lessees for the purposes and under the condition that such purchasers or lessees will, as respects the land so purchased by or leased to them, carry the scheme into execution; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease. The local authority may also engage with any body of trustees, society or societies, persons or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes, the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements.

Provided also, that in any case in which the local authority erect any dwellings out of funds to be provided under this Act, they shall, unless the confirming authority shall otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

The local authority may, where they think it expedient so to do, without themselves acquiring the land, or after or subject to their acquiring any part thereof, contract with the person entitled to the first estate of freehold in any land comprised in an improvement scheme for the carrying out of the scheme in respect of such land by such person.

Completion of scheme on failure by local authority.

10. If within five years after the removal of any buildings on the land set aside by any Provisional Order as sites for working men's dwellings the local authority have failed to sell or let such land for the purposes prescribed by the scheme, or have failed to make arrangements for the erection of the said dwellings, the confirming authority may order the said land to be sold by public auction or public tender, with full power to fix a reserve price, subject to the conditions imposed by the scheme, and to any modifications thereof which may be made in pursuance of this Act, and to a special condition on the part of the purchaser to erect upon the said land dwellings for the working classes, in accordance with plans to be approved by the local authority, and subject to such other reservations and regulations as the confirming authority may deem necessary.

Notice to occupiers by placards.

11. The local authority shall, not less than thirteen weeks before taking any fifteen houses or more, make known their intention to take the same by placards, handbills, or other general notices placed in public view upon or within a reasonable distance of such houses, and the local authority shall not take any such houses until they have obtained a certificate of a justice of the peace that it has been

proved to his satisfaction that the local authority have made known, in manner required by this section, their intention to take such houses.

Power of confirming authority to modify authorised scheme.

12. The confirming authority, on application from the local authority, and on its being proved to their satisfaction that an improvement can be made in the details of any scheme, and that due provision has been made or secured for the accommodation in suitable dwellings of as many persons of the working class as may be displaced in the area to which such scheme relates, either in manner provided by the scheme or in some other manner, or will be more advantageously made or secured under the proposed alteration, may permit the local authority to modify any part of an improvement scheme authorised by the confirming Act which it may appear inexpedient to carry into execution in accordance with such Act (1).

A statement of any modifications permitted to be made in any part of an improvement scheme in pursuance of this section shall be laid by the confirming authority before both Houses of Parliament as soon as practicable after they are made, if Parliament be then sitting, and if not, within one month after the next meeting of Parliament: Provided always, that if such modification or alteration shall require a larger public expenditure than that sanctioned by the former scheme, or the taking of any property otherwise than by agreement, or shall affect injuriously other property in a manner different to that proposed in the former scheme without the consent of the owner and occupier of any such property, it must be made by a Provisional Order to be confirmed by Act of Parliament in the manner provided in section six of this Act on the completion of an improvement scheme.

PART II.

Provisions ancillary to Improvement Scheme.

As to Local Authority.

1. *Medical Officer.*

Medical officer of health in metropolis.

13. The Metropolitan Board of Works may, with the assent of a Secretary of State, at any time appoint one or more legally qualified medical practitioner or practitioners, with such remuneration as they think fit, for the purpose of better carrying into effect this Act in the metropolis. Any officer so appointed by the Metropolitan Board of Works shall be deemed to be a medical officer of health of a local authority within the meaning of this Act, and shall perform the duties and be subject to the liabilities which such medical officer is by this Act required to perform and be subject to.

Provision in case of absence of medical officer of health.

14. In case of the illness or unavoidable absence of the medical officer of health, the district board, vestry, or local authority, as the case may be, may (subject to the approval of the confirming authority) appoint a duly qualified medical practitioner, who shall for the period of six calendar months, or any less period to be named in the appointment, have and perform all the powers and duties of a medical officer of health under this Act.

Inquiry on default of medical officer in certain cases.

15. Where twelve or more ratepayers have complained to a medical officer of the unhealthiness of any area within the jurisdiction of such officer, and the medical officer has failed to inspect such area, or to make an official representation with respect thereto, or has made an official representation to the effect that in his opinion the area is not an unhealthy area, such ratepayers may appeal to the confirming authority, and, upon their giving security to the satisfaction of that authority for costs, the confirming authority shall appoint a medical officer to inspect such area and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area is an unhealthy area or not an

(1) See section 3 of the Artizans' Dwellings Act, 1882, *post*, p. 622.

Secs. 15–19.

unhealthy area. The representation so made shall be transmitted by the confirming authority to the local authority, and if it state that the area is an unhealthy area the local authority shall proceed therein in the same manner as if it were an official representation made to that authority.

The confirming authority shall make such Order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the officer appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where such officer is of opinion that the area is an unhealthy area.

Any Order made by the confirming authority in pursuance of this section may be made a rule of one of Her Majesty's superior courts, and be enforced accordingly.

2. *Local Inquiry.*

Proceedings on local inquiry.

16. Where a local inquiry is directed, an officer shall be sent by the confirming authority to the area to which such inquiry relates for the purpose of making an inquiry into the correctness of the official representation made to the local authority as to such area being an unhealthy area, and into the sufficiency of the scheme provided for its improvement, and into any local objections to be made to such scheme.

Notice of inquiry to be publicly given.

17. Before commencing such inquiry the officer appointed to conduct the same shall make public by advertisement or otherwise in such manner as he thinks best calculated to give information to the persons residing in the area his intention to make such inquiry, and a statement of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of the inquiry.

Power to administer oath.

18. The officer conducting such inquiry shall have power to administer an oath; he shall report the result of the inquiry to the confirming authority, who shall deal with such report in such manner as they think expedient.

3. *Acquisition of Land.*

Acquisition of land.

19. (1.) The clauses of the Lands Clauses Consolidation Act, 1845, with respect to the purchase and taking of lands otherwise than by agreement shall not, except to the extent set forth in the schedule hereto, apply to any lands taken in pursuance of this Act, but save as aforesaid the said Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, as amended by the provisions contained in the schedule hereto, shall regulate and apply to the purchase and taking of lands in England, and shall for that purpose be deemed to form part of this Act in the same manner as if they were enacted in the body thereof; and (2.) "The Lands Clauses Consolidation Act, 1845," as amended by "The Lands Clauses Consolidation Act, 1860," "The Railways Act (Ireland), 1851," "The Railways Act (Ireland), 1860," "The Railways Act (Ireland), 1864," and "The Railways Traverse Act," shall, subject to the provisions following, regulate and apply to the purchase and taking of lands in Ireland, and shall for this purpose be deemed to form part of this Act, in the same manner as if they were enacted in the body hereof.

Subject, as respects both England and Ireland, to the provisions following; that is to say,

(1.) This Act shall authorise the taking by agreement any lands which the local authority may require for the purpose of carrying into effect the scheme authorised by any confirming Act, but it shall authorise the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming Act to be taken compulsorily:

(2.) Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this Act requires to be assessed, [1] the estimate of the value of such

[1] See *Mayor of Dublin* v. *Dowling*, 6 L. R. Ir. 503.

lands or interests shall be based upon the fair market value (1), as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state and to the state of repair thereof, and all circumstances affecting such value, (2) without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands which in the opinion of the arbitrator have been included in a scheme as falling under the description of property named in the third section of this Act;

(3.) In the construction of the said Lands Clauses Consolidation Acts, and the provisions in the said schedule, this Act shall be deemed to be the special Act and the local authority shall be deemed to be the promoters of the undertaking; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised, shall be three years after the passing of the confirming Act.

Extinction of rights of way and other easements.

20. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme authorised by a confirming Act, all rights of way, rights of laying down or of continuing any pipes, sewers or drains on, through, or under such lands, or part thereof, and all other rights or easements (3) in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this Act, or as near thereto as circumstances admit.

4. *Expenses.*

Formation of improvement fund for purposes of this Act.

21. A separate account shall be kept by the local authority of their receipts and expenditure in respect of any transactions under this Act. Their receipts shall form a fund (in this Act referred to as "The Dwelling-house Improvement Fund"), and their expenditure shall be made out of such fund.

The moneys required in the first instance to establish such fund, and any deficiency for the purposes of this Act from time to time appearing in such fund by reason of the excess of expenditure of receipts, shall be supplied out of the local rates or out of moneys borrowed in pursuance of this Act.

In settling any accounts of the local authority in respect of any transactions under this Act, care shall be taken that as far as may be practicable all expenditure shall ultimately be defrayed out of the property dealt with under this Act; and any balances of profit made by the local authority under this Act shall be applicable to any purposes to which the local rates are for the time being applicable.

The local rates shall, in the case of the Commissioners of Sewers, mean the sewer rate and the consolidated rate leviable by such commissioners, or either of such rates.

The Metropolitan Board of Works shall levy as part of the metropolitan con-

(1) Section 4 of the Artizans' Dwellings Act, 1882 (see *post*, p. 623), provides that no addition to or improvement of the property made after the publication of an advertisement in accordance with the provisions of section 6 of this Act shall be taken into consideration in the estimate of value.

(2) These words are repealed by section 4 of the Artizans' Dwellings Act, 1882 (see *post*, p. 623).

See also section 7 of the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879, and footnote thereto, *post*, p. 611.

(3) A right to light over the purchased lands is an easement within the meaning of this section: *Badham* v. *Morris*, 52 L. J. Ch. 237, 45 L. T. N. S. 579. See further as to right to support, *Swainston* v. *Finn*, 52 L. J. Ch. 235, 48 L. T. N. S. 634, 31 W. R. 498.

Secs. 21, 22.

solidated rate within the area of the metropolis, without making any demand on the city of London, a sufficient amount for the purposes of this Act, and the part so levied shall, for the purposes of this Act, in the case of the Metropolitan Board of Works, be referred to and included under the expression "local rates."

The "local rates" shall, in the case of an urban sanitary authority, mean all or any rates or rate levied throughout the district of such authority, and out of which the local authority is authorised to pay any expenses incurred under the Sanitary Acts, as defined by the Public Health Act, 1872, and by the Public Health (Ireland) Act, 1874.

The local authority may carry to the account of the Dwelling-house Improvement Fund any moneys or the produce of any property, which moneys or produce are or is legally applicable to purposes similar to the purposes of this Act; and in case of doubt as to whether, in any particular case, the purposes are similar to the purposes of this Act, it shall be lawful for the confirming authority to decide such question, and such decision shall be conclusive.

Power of borrowing money for the purposes of the Act.

22. Any local authority under this Act may, for the purposes of this Act, borrow any moneys on the security of any lands, houses, or other property acquired by them under this Act, and may mortgage such lands, houses, or other property to any person advancing such moneys, and it shall not be in any way incumbent on the mortgagees to see to the application of such moneys, nor shall they be responsible for the misapplication thereof.

Every local authority borrowing on the credit of such lands, houses, or other property as aforesaid, may pay out of local rates the interest of any moneys so borrowed by them.

Any local authority under this Act borrowing any moneys on the security of any lands, houses, or other property as aforesaid, may execute such instruments by way of security, with such power of sale and other conditions as they think expedient.

An urban sanitary authority shall have the same power of borrowing on the credit of the local rates such sums of money as they may require for the purposes of this Act as they have under section forty of the Public Health Act, 1872, or under the Public Health (Ireland) Act, 1874, for sanitary purposes.

The Commissioners of Sewers may borrow and take up at interest such money on the credit of the local rates, or any of them, as they may require for the purposes of this Act, and may mortgage any such rate or rates to the persons by or on behalf of whom such money is advanced for securing the repayment to them of the sums borrowed, with interest thereon, and for the purposes of any mortgages so made by the Commissioners of Sewers the clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners shall be incorporated with this Act; and in the construction of that Act "the special Act" shall mean this Act; "the commissioners" shall mean the Commissioners of Sewers; "the clerk of the commissioners" shall include any officer appointed for the purpose by the Commissioners of Sewers by this Act; and the mortgagees or assignees of any mortgage made as last aforesaid may enforce payment of the arrears of principal and interest due to them by the appointment of a receiver.

The Metropolitan Board of Works may, with the assent of the Treasury, create consolidated stock under the Metropolitan Board of Works (Loans) Act, 1869, for the purpose of raising such sums as they may require for the purposes of this Act; but there shall be repaid to the consolidated rate out of the local rate all moneys required for payment of the dividends on and the redemption of the consolidated stock created for the purposes of this Act.

The Public Works Loan Commissioners, or, in the case of Ireland, the Commissioners of Public Works, acting with the consent of the Treasury, may, on the recommendation of the confirming authority, lend to any local authority any money required by them for purposes of this Act, on the security, in the case of the Metropolitan Board of Works, of consolidated stock created under the Metropolitan Board of Works (Loans) Act, 1869, and in any other case, on the security of the local rates. Such loan shall be repaid within such period, not exceeding fifty years, as may be recommended by the confirming authority, and

shall bear interest at the rate of three and a half per cent. per annum, or such higher rate as may, in the judgment of the Treasury, be necessary to enable the loan to be made without loss to the exchequer.

Any limit imposed on or in respect of local rates by any Act of Parliament other than this Act shall not apply to any rate required to be levied for the purpose of defraying any expenses under this Act.

Audit of accounts.

23. The accounts of the Commissioners of Sewers and the accounts of the Metropolitan Board of Works under this Act shall respectively be audited in the same manner and with the same power in the officers auditing the same in which the accounts of those bodies, when acting in their capacities of Commissioners of Sewers and Metropolitan Board of Works, are for the time being required to be audited by law.

The accounts of an urban sanitary authority under this Act shall be audited in the same manner and with the same power in the officers auditing the same in which the accounts of that authority in its character of sanitary authority are for the time being required to be audited by law.

PART III.

General Provisions.

Provision where local authority has no seal.

24. Any petition or document proceeding from a local authority may be authenticated by their seal where such authority have a seal, and in any other case by the signature of any two or more members of the local authority, or in such other manner as the confirming authority may require.

Notices.

Service of notice on the local authority.

25. Any notice required to be served upon the local authority may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Power of confirming authority as to advertisement and notices.

26. The confirming authority may from time to time by order prescribe the forms of advertisements and notices under this Act; it shall not be obligatory on any persons to adopt such forms, but the same, when adopted, shall be deemed sufficient for all the purposes of this Act.

Power of confirming authority to dispense with notices in certain cases.

27. The confirming authority may, on the consideration of any petition of a local authority for an order confirming a scheme, dispense with the publication of any advertisement, or the service of any notice, proof of which publication or service is not given to them as required by this Act, where reasonable cause is shown to their satisfaction why such publication or service should be dispensed with, and such dispensation may be made by the confirming authority, either unconditionally or upon such condition as to the publication of other advertisements and the service of other notices or otherwise as the confirming authority may think fit, due care being taken by the confirming authority to prevent the interest of any person being prejudiced by the fact of the publication of any advertisement or the service of any notice being dispensed with in pursuance of this section.

Authentication of notices served by the local authority.

28. Any notice served by the local authority for the purposes of this Act may be signed by the clerk of the local authority.

Penalties.

Penalty for obstructing officers in execution of Act.

29. Where any person obstructs the officer of health or any officer of the local or confirming authority acting in the performance of anything which the local or confirming authority are by this Act required or authorised to do, every person so offending shall, on summary conviction, for every such offence forfeit a sum not exceeding twenty pounds.

Secs. 30, 31.

Saving Clauses.

Relation of local Acts to general Acts.

30. Where in any place to which this Act applies, any local Act is in force providing for objects the same as or similar to the objects of this Act, the enactments of such local Act may be enforced at the discretion of the local authority either instead of or in concurrence with this Act; provided that the local authority of any place to which this Act applies shall not, by reason of any local Act within its jurisdiction, be exempted from the performance of any duty or obligation to which such authority are subject under this Act.

Definitions.

Definitions of terms of Act.

31. The expressions hereinafter mentioned shall respectively have the meanings hereby assigned to them, unless there is something in the context inconsistent with such meanings; that is to say,—

"Secretary of State." "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

"Person." "Person" shall include a body of persons, corporate or unincorporate:

"Lands." "Lands" shall include messuages, lands, tenements, and hereditaments of any tenure, and any right over land:

"The city of London." "The city of London" shall include the liberties thereof:

"The Metropolis." "The metropolis" shall not include the city of London or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the Metropolitan Board of Works:

"A district board or vestry." "A district board or vestry" within the metropolis means a district board or vestry as incorporated by the Metropolis Management Act, 1855:

"Medical officer of health." "Medical officer of health" shall, in the case of Ireland, mean consulting sanitary officer:

"Local Government Board." "Local Government Board" shall, in the case of Ireland, mean Local Government Board of Ireland:

"Clerk of local authority." "Clerk of local authority" shall, in the case of Ireland, mean executive sanitary officer and acting clerk:

"Superior courts." "Superior courts" shall mean, in the case of Ireland, Her Majesty's superior courts in Ireland:

"The Tresury." "The Treasury" shall mean the Lords Commissioners of the Treasury or any two of them:

"This Act." "This Act" includes any confirming Act as herein-before defined.

SCHEDULE (1).

PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS IN ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE AMENDING THE LANDS CLAUSES ACT, 1845.

Deposit of Maps and Plans.

(1.) The local authority shall as soon as practicable after the passing of the confirming Act cause to be made out, and to be signed by their clerk or some other principal officer appointed by them, maps and schedules of all lands proposed to be taken compulsorily (which lands are hereinafter referred to as the scheduled lands), together with the names, so far as the same can be reasonably ascertained, of all persons interested in such lands as owners or reputed owners, lessees or reputed lessees, or occupiers.

(2.) The maps made by the local authority shall be upon such scale and be framed in such manner as may be prescribed by the confirming authority.

(3.) The local authority shall deposit such maps and schedules at the office of the

(1) By section 2 of 42 & 43 Vict. c. 63, *post*, p. 619, this schedule is to be construed as if the schedule to that Act formed part thereof.

confirming authority, and shall deposit and keep copies of such maps and schedules at the office of the local authority. **Schedule.**

Appointment of Arbitrator.

(4.) After such deposit at the office of the confirming authority as aforesaid, it shall be lawful for the confirming authority, upon the application of the local authority, to appoint an arbitrator between the local authority and the persons interested in such of the scheduled lands, or lands injuriously affected by the execution of such scheme, so far as compensation for the same has not been made the subject of agreement.

Proceedings on Arbitration (1).

(5.) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

"I *A. B.* do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Artizans' and Labourers' Dwellings Improvement Act, 1875.

"*A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanor.

(6.) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars (2):—

(*a.*) The appointment of the arbitrator:

(*b.*) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same:

(*c.*) A requisition directing the owners of or parties by this Act enabled to sell and convey or release any of the said scheduled lands, or any lands injuriously affected by the execution of the scheme of the local authority or any interest in such lands, to deliver to the arbitrator, on or befor a day fixed by the arbitrator and named in such requisition (and being a day not earlier than twenty-one days from the date of the insertion of the last of such notices), a short statement in writing of the nature of their respective claims.

(7.) The arbitrator shall, after the expiration of the period within which such claims are required to be delivered to him as aforesaid, and so far as such claims may not be settled by agreement, proceed to inquire into and adjudicate according to the basis provided in this Act upon the compensation (3) to be paid in respect of the scheduled lands, and of the several interests in such lands, and the compensation to be made for injury to any lands as are mentioned in his appointment injuriously affected by the execution of the scheme of the local authority.

(8.) The arbitrator shall, after due inquiry and examination, frame a provisional award (4), setting forth the compensation to be paid by the local authority in respect of the several interests in the said scheduled lands, and also, where any inquiry relates to

(1) These articles from (5) to (13), both inclusive, are repealed by section 5 of the Artizans' Dwellings Act, 1882 (see *post*, p. 623), and the articles contained in the schedule to that Act are substituted for them.

(2) When these particulars have been published no new interest can be created against the local authority: *Wilkins* v. *Mayor of Birmingham*, L. R. 25 Ch. D. 78, 53 L. J. Ch. 93, 49 L. T. N. S. 468, 32 W. R. 118. Section 18 of Lands Clauses Act, 1845, is incorporated with this Act: *Ibid.*

(3) The arbitrator may assess the amount of compensation without deciding as to the right to compensation: *Wilkins* v. *Mayor of Birmingham*, *supra.*

(4) The provisional award does not transfer the ownership to the local authority. This is effected by the final award: *Barnett* v. *Metrop. Board*, 46 L. T. N. S. 384, 46 J. P. 469.

Schedule.

injury to any lands injuriously affected by the execution of the scheme of the local authority, the compensation payable in respect of such injury.

(9.) The provisional award shall be deposited at the office of the confirming authority, and a copy shall be deposited at the office of the local authority.

(10.) The arbitrator shall cause notice of such award to be given to all persons entitled to compensation under the same, or who have made a claim before such arbitrator as claimants for compensation; the arbitrator shall cause notice to be published once in each of three successive weeks, stating that a copy of the provisional award has been deposited at the office of the local authority, and he shall in the notice of the award given to such persons as aforesaid, and also in the published notice, appoint a time and place, or times and places, for holding a meeting or meetings to hear objections against such provisional award (the first such meeting to be not earlier than twenty-one days after the last day of publication of the said notice).

(11.) The arbitrator shall hold such meeting or meetings according to such notices, and thereat hear and determine any objections which may then and there be made to such provisional award by any person interested therein, or adjourn the further hearing thereof, if the arbitrator see fit, to a future meeting, and may take any measures which he may deem proper for ascertaining the compensation payable in respect of any such lands or interests as aforesaid, or the justice or propriety of any other matter of such provisional award, and may from time to time, if he see occasion, appoint and hold further meetings for hearing and determining objections to such provisional award, of which further meetings, when not holden by adjournment, notice shall be given in manner hereinbefore directed.

(12.) When the arbitrator has heard and determined all such objections, and made such inquiries as he may think necessary in relation thereto, and made such alterations (if any) as he may deem proper in the provisional award, he shall confirm such award under his hand and seal accordingly; and thereupon such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form [1].

(13.) Such final award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award so confirmed, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority, on or before a day to be named in such notice (such day not being earlier than twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years, previous to the claim when the abstract shall commence with such conveyance.

Payment of Purchase Money.

(14.) Within thirty days from the delivery of such statement and abstract as aforesaid to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate stating the amount of the compensation to which he is entitled under the said award.

(15.) Every such certificate shall be prepared by and at the costs of the local authority; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it

[1] *Carr* v. *Metropolitan Board of Works*, L. R. 14 Ch. D. 807, 49 L. J. Ch. 272, 42 L. T. N. S. 354.

appears to them that such person is absolutely entitled, deliver to such person a like certificate.

(16.) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, or his or her executors, administrators, or assigns.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in any of Her Majesty's superior courts of law at Westminster, or in any court to which the jurisdiction of such courts may be transferred, for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorised to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18.) When and so soon as the local authority have paid to the party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

(19.) In every case in which any moneys are paid by any local authority under this Act, for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has had an ad valorem stamp of the same amount impressed thereon in respect of the purchase moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance of such estate or interest, every such receipt to be prepared by and at the costs of the local authority.

(20.) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the party making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of "The Lands Clauses Consolidation Act, 1845," as amended by "The Court of Chancery Funds Act, 1872," "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title."

(21.) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of this Act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of "The Lands Clauses Consolidation Act, 1845," as amended by "The Court of Chancery Funds Act, 1872," and the amount so paid into the said Bank shall be accordingly dealt with as by the said Act provided.

(22.) Nothing herein contained shall prevent the local authority from requiring any further abstract or evidence of title respecting any lands included in any such award as

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aforesaid, in addition to the abstract or statement hereinbefore mentioned, if they think fit, so as the same be obtained at the costs of the local authority.

(23.) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this Act may, at the costs and charges of the local authority, be enforced by any party or parties, by application to the High Court of Chancery, or any court to which the jurisdiction of the High Court of Chancery may be transferred, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this Act may be in like manner enforced against the local authority by such application as aforesaid.

Entry on Lands on making Deposit.

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the local authority, at any time, after the arbitrator has framed his provisional award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorised to be purchased or taken by the local authority, and mentioned in such provisional award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority; and the arbitrator shall, upon the request of the local authority, at any time after he has framed such provisional award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in such provisional award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such provisional award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under this Act, shall be had, and payments made, as if such entry and deposit had not been made; provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of this Act, such compensation is required to be paid into the said Bank, then until the same, with such interest, is paid into such Bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or Act for the time being in force in relation to moneys deposited in the Bank in similar cases, or to such account as may be directed by any order of the Court of Chancery, or of any court to whom the powers of the Court of Chancery may be transferred, and remain in the Bank by way of security to the parties interested in the lands which have been so entered upon, for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in Bank Annuities or Government securities, and accumulated; and upon such payment as aforesaid by the local authority it shall be lawful for the Court of Chancery, or any other court to which the jurisdiction of the Court of Chancery may be transferred, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited.

Appeal.

(26.) Where the party named in any certificate issued under the provisions hereinbefore contained of the amount of the compensation ascertained by any award under this Act (or any party claiming under the party so named) is dissatisfied with the amount in such certificate certified to be payable, and such amount exceeds five hundred pounds, and

Where any party claiming any interest in any moneys so paid into court as aforesaid is dissatisfied with the amount of the price or compensation in respect of which such moneys are paid into court, and such amount exceeds five hundred pounds, also

Where the local authority is dissatisfied with the amount of compensation which the arbitrator appointed under the provisions of this Act has awarded to be paid by the local authority to any person in respect of any estate or interest in lands, and such amount exceed the sum of five hundred pounds;

The party dissatisfied may submit the question of the proper amount of compensation to a jury, provided that such party give notice in writing to the other party of their intention to appeal within ten days after the cause of appeal has arisen.

The cause of appeal shall be deemed to have arisen,—

(1.) Where a certificate has been issued as aforesaid, at the date of the issue of the certificate:

(2.) Where moneys have been paid into court, at the date of the payment into court:

(3.) Where the local authority appeals, at the date of the making of the final award.

(27.) Where a notice has been given under this Act of an appeal to a jury in respect of compensation for land, or any interest in land, a question of disputed compensation required to be determined by the verdict of a jury shall be deemed to have arisen within the meaning of the Lands Clauses Consolidation Act, 1845, and all the provisions of that Act contained in sections thirty-eight to fifty-seven, both inclusive, shall be deemed to apply, except sections forty-seven and fifty-one: Provided also, that,—

(1.) Where the local authority appeals, that authority shall be deemed to be the plaintiff, and the party entitled to compensation to be the defendant; and

(2.) Where the party claiming compensation appeals, then, in case the verdict of the jury is for a sum exceeding the award of the arbitrator, the local authority shall pay to such party the costs of the trial, such costs to be taxed and ascertained in the same manner as costs are by law ascertained on the trial of issues tried in the Court of Queen's Bench, or any court to which the jurisdiction of the Court of Queen's Bench may be transferred; but in case the verdict of the jury is for a sum not exceeding the award of the arbitrator, the party appealing shall pay to the local authority the costs of the trial to be taxed and ascertained in manner aforesaid.

(3.) Where the local authority is the appellant,—

(1.) Notwithstanding the verdict of the jury may be for a sum less than that awarded by the arbitrator, the local authority shall pay to the other party such sum not exceeding twenty pounds for the costs of the trial as the sheriff or other officer before whom the same is tried shall direct; and,

(2.) In case the verdict of the jury is for a sum equal to or exceeding the award of the arbitrator, the local authority shall pay to the other party the costs of the trial, such costs to be taxed and ascertained in manner aforesaid.

(4.) The amount of compensation awarded by the arbitrator shall not be communicated to the jury, but they shall be required to make an independent assessment of the amount of compensation to which the party claiming compensation is entitled.

Costs of Arbitration.

(28.) The salary or remuneration, travelling and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of this Act into execution, shall be paid by the local authority; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be

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made to the reasonableness of any such costs, charges, and expenses by or on behalf of the local authority; and every certificate of the said confirming authority certifying the amount of such costs, charges, and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the local authority to the Crown, and shall be recoverable accordingly. Further, any such certificate may be made a rule of one of the superior courts of law on the application of any party named therein, and may be enforced accordingly.

(29.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt, from such local authority with interest at the rate of five per cent. for any time during which the same remains unpaid after such seven days as aforesaid, but no such certificate shall be given where the arbitrator has awarded the same or a less sum that has been offered by the local authority in respect of such claim before the appointment of the arbitrator.

Miscellaneous.

(30.) The arbitrator may call for the production of any documents in the possession or power of the local authority, or of any party making any claim under the provisions of this Act, which such arbitrator may think necessary for determining any question or matter to be determined by him under this Act, and may examine any such party and his witnesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31.) If any arbitrator appointed in pursuance of this Act die, or refuse, decline, or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed; and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the *London Gazette.*

(32.) All notices required by this schedule to be published shall be published in some one and the same newspaper circulating within the jurisdiction of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by this Act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.

ARTIZANS' AND LABOURERS' DWELLINGS ACT (1868) AMENDMENT ACT, 1879.

42 & 43 VICT. c. 64.

ARRANGEMENT OF SECTIONS.

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SCHEDULES.

ARTIZANS' AND LABOURERS' DWELLINGS ACT (1868) AMENDMENT ACT, 1879.

42 & 43 VICT. c. 64.

An Act to extend the powers of the Artizans' Dwellings Act of 1868, *by provisions for compensation and rebuilding.* [15*th August*, 1879.]

Secs. 1—7.

31 & 32 Vict. c. 130.

Whereas it is expedient to extend and amend the provisions of the Artizans' and Labourers' Dwellings Act, 1868:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, and construction of Act. 31 & 32 Vict. c. 130.

1. This Act may be cited as the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879, and shall, so far as is consistent with the tenour thereof, be construed together with the Artizans' and Labourers' Dwellings Act, 1868 (hereinafter referred to as "the Act of 1868"), as one Act (1).

Application of Act, and definition of "local authority," "local rate," and "clerk of local authority." 31 & 32 Vict. c. 130.

2. The Act shall apply only to the places named in the first column of Table (A.) in the First Schedule annexed hereto, and "local authority," "local rate," and "clerk of local authority" shall mean the "bodies of persons," "rate," and "officer" in that table in that behalf mentioned; and the said table, and the explanation annexed thereto, shall be of the same force as if they were enacted in the body of the Act of 1868 and this Act.

Officer of health. 31 & 32 Vict. c. 130. 38 & 39 Vict. c. 55. 41 & 42 Vict. c. 52.

3. The term "officer of health" as used in the Act of 1868, shall, as respects any urban sanitary district in England, mean the medical officer of health appointed by the urban sanitary authority of the district under the Public Health Act, 1875, and as respects any urban sanitary district in Ireland shall mean the medical officer of health appointed by the urban sanitary authority of the district under the Public Health (Ireland) Act, 1878, and shall not include any other officer.

8 & 9 Vict. c. 18, and 23 & 24 Vict. c. 106, incorporated. 31 & 32 Vict. c. 130.

4. The Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, except the provisions of those Acts with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the entry on lands by the promoters of the undertaking, and save so far as any of the provisions of those Acts respectively are expressly varied by or are inconsistent with the provisions of this Act, are incorporated with the Act of 1868 as amended by this Act, and for the purpose of such incorporation the Act of 1868, as amended by this Act, shall be deemed to be the special Act, and the local authority to be the promoters of the undertaking.

Owner may require local authority to purchase premises. 31 & 32 Vict. c. 130.

5. Notwithstanding anything in the Act of 1868, the owner of any premises specified in an order of the local authority made under that Act, and requiring him to execute any works or to demolish such premises, may, within three months after service on him of the order, require the local authority in writing to purchase such premises.

In default of agreement amount of compensation to be settled by arbitration.

6. Where the owner of any premises has in manner aforesaid required the local authority to purchase the same, and no agreement is come to between such owner and the local authority as to the amount of the compensation to be paid by the local authority, the amount of the compensation to be paid by the local authority for the premises shall be settled by arbitration in manner provided by this Act.

Provisions as to arbitration.

7. In all cases in which the amount of any compensation is, in pursuance of this Act, to be settled by arbitration, the following provisions shall have effect; (namely,)

(1) See also Part II. of the Artizans' Dwellings Act, 1882, *post*, p. 623.

(1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board;

(2.) In settling the amount of any compensation—

(*a.*) The estimate of the value of the premises shall be based on the fair market value as estimated at the time of the valuation being made of such premises, and of the several interests in such premises, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and all circumstances affecting such value [1], and without any additional allowance in respect of compulsory purchase; and

(*b.*) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other premises of the same owner by the alteration or demolition by the local authority of the premises;

(3.) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the premises, or on payment thereof in manner prescribed by the Lands Clauses Consolidation Act, 1845, the owner shall, when required by the local authority, convey his interest in such premises to them, or as they may direct; and in default thereof, or if the owner fails to adduce a good title to such premises to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll in such manner, and with such consequences, as are mentioned in the Lands Clauses Consolidation Act, 1845:

8 & 9 Vict. c. 18.

(4.) Sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the Lands Clauses Consolidation Act, 1845, shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this Act;

8 & 9 Vict. c. 18.

8 & 9 Vict. c. 18.

(5.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the premises included in one or more order or orders made by the local authority;

(6.) In the event of the death, resignation, or incapacity, refusal, or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered;

(7.) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority; and if within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per centum per annum for any time during which the same remains unpaid after such seven days as aforesaid, but no such certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator;

(8.) The award of an arbitrator shall be final and binding on all parties.

Application of 31 & 32 Vict. c. 130, s. 23, to site of purchased premises.

8. Section twenty-three of the Act of 1868 shall apply to the site of any premises purchased by a local authority which the owner has elected to retain under the provisions of this Act.

Recovery of expenses incurred by local authority in executing works.

9. Where the local authority, on default of the owner of any premises, themselves execute the required works, they may sell the old materials and retain the proceeds towards the expenses incurred by them in executing such works, and may

[1] Section 9 of the Artizans' Dwellings Act, 1882, provides that this section shall be construed as if these words were omitted. See also section 19 of the Artizans' Dwellings Act, 1875, and foot-note thereto, *ante*, p. 599.

Secs. 9—15.

recover the balance of such expenses from such owner as a debt due from him by action in any court of competent jurisdiction.

The expression "court of competent jurisdiction" shall, for the purposes of this section, be read and have effect as if the debt herein referred to were a simple contract debt, and not a debt or demand created by statute.

Disposal of land acquired by local authority under 30 & 31 Vict. c. 130.

10. Any land or premises acquired by any local authority under the Act of 1868 and this Act may from time to time be sold, let, and disposed of in like manner as any other lands acquired for sanitary purposes by such authority, and not needed for the purposes for which they were acquired; but in cases where the approbation of any Government department is required for any such disposal, then only with that approbation.

Local authority may dedicate land as highway, &c.

11. A local authority may, where they so think fit, dedicate any land acquired by them under the authority of the Act of 1868 and this Act as a highway or other public place.

30 & 31 Vict. c. 130.

Metropolitan Board empowered to enforce Act in case local authority fail to do so.

12. In the event of any local authority within the metropolis declining or neglecting for the space of three months after receiving a notice from the Metropolitan Board of Works (hereinafter called the Board) requiring such local authority to put in force the provisions of this Act, in respect of any premises described in such notice, then and in such case all the powers vested in the local authority under this Act, so far as relates to any such premises, shall become vested in the said Board, and the Board shall have power so far as relates to any such premises to act in all respects for the purposes of this Act as though they were the local authority, and all expenses incurred by the Board under this Act may be recovered by the Board from and shall upon demand be paid by the local authority out of the local rates which they are authorised to make or apply for the purpose of defraying expenses incurred by them under this Act, and the amounts so payable to the Board may and shall be included in the precepts from time to time issued by the Board under the Metropolis Management Acts to the local authority.

Repealing 31 & 32 Vict. c. 130, s. 2, and Sch. I.

13. Section two of the Act of 1868 and the First Schedule to that Act are hereby repealed.

Appropriation of property acquired by local authority.

14. In the metropolis the local authority or their lessees shall hold all property acquired by them under this Act upon trust to carry into effect some one or more of the purposes thereof:

The purposes of this Act shall in the metropolis be deemed to be—

First, the providing by the construction of new buildings, or the repairing or improvement of existing buildings, the labouring classes with suitable dwellings situate within the jurisdiction of the local authority:

Second, the opening out of closed or partially closed alleys or courts inhabited by the labouring classes, and the widening of the same, by pulling down any building, or otherwise leaving such open spaces as may be necessary to make such alleys or courts healthful:

But subject to the aforesaid trust, the local authority or lessees may from time to time sell, exchange, lease, or otherwise dispose of any premises acquired by them under this Act: Provided that if any property acquired by the local authority under this Act shall not within seven years after the acquisition thereof be disposed of by way of absolute sale or of exchange, or by a lease for a period of not less than ninety-nine years, or be effectually dealt with by way of public improvement, then and in such case the property so acquired may be sold by the order of one of Her Majesty's Principal Secretaries of State, by public auction or public tender, with full power to fix a reserve price and subject to such terms and conditions as the said Secretary of State shall deem proper, and the proceeds of such sale, after deducting the whole of the expenses attending the same, shall be paid to the local authority to be by them applied to the purposes of this Act, and a receipt signed by the said Secretary of State for the amount of the purchase money shall absolutely vest such property in the purchaser for the whole estate and interest of the local authority therein subject to the before-mentioned terms and conditions.

Lessee acquiring property under this Act to

15. Every lessee who in the metropolis shall acquire any property under this Act shall forthwith, at his own costs, charges, and expenses, proceed to execute thereon, to the satisfaction of the surveyor of the local authority, the works shown

on the plans referred to in the specifications prepared by the local authority, and such other works (being for some one or more of the purposes of this Act) as may have been agreed upon between the local authority and the lessee; and if the lessee shall at any time, in the opinion of the surveyor of the local authority, fail to exercise due diligence in the execution of the works, the local authority may, by themselves, their contractors, servants, workmen, and agents, enter upon the premises and execute the works so far as the same shall be incomplete, and reimburse themselves all costs, charges, and expenses incident to the execution of such works by sale of the old materials, so far as the same may extend, or may recover from the parties making default the amount of such costs, charges, and expenses as a debt in Her Majesty's High Court of Justice, and shall also have an express charge upon the premises in respect of such amount, which charge may be realised by a sale of the premises, or any part thereof.

execute works to satisfaction of surveyor.

16. In the metropolis the local authority may also, by the resolution empowering any lessee to acquire property under this Act, require such lessee to give such security as the local authority shall think fit for the due execution by the lessee of the works to be done by them.

Lessee to give security for execution of works.

17. If any lessee shall not, within three calendar months after he shall have obtained possession of any part of the premises in the metropolis, commence the execution of the works to be done by him, or if he shall not complete the same to the satisfaction of the local authority within one year after obtaining such possession, or within such extended time as the local authority shall by resolution determine, then the premises, together with all building materials, plant, tools, and other articles and effects thereon, shall be absolutely forfeited to and vest in the local authority, and they shall thenceforth hold the same for the purposes of this Act.

Premises, &c. to be forfeited on lessee not completing works within specified time.

18. Every local authority shall, in the metropolis, every year present to one of Her Majesty's Principal Secretaries of State, and in all other places shall present to the Local Government Board, in such form as he directs, an account of what has been done, and of all moneys received and paid by them during the previous year, with a view to carrying into effect the purposes of this Act.

Annual account to be presented by the local authority.

19. The local authority in the metropolis may from time to time, with the sanction and approval of one of Her Majesty's Secretaries of State, enter into any contract with any persons or companies for building and for altering and enlarging, repairing, and otherwise improving such workmen's dwellings, forming part of any premises held by the said authority for the purposes of this Act, and for lighting and for supplying the same with water, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and true copies of all such contracts shall be entered in books to be kept for the purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by the local authority for the purposes of this Act, unless previous to the making thereof fourteen days' notice shall have been given in one or more of the public newspapers published in or circulating within the jurisdiction of the local authority, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the local authority at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the local authority to contract with the person offering the lowest price.

Contracts for building, repairing, lighting, watering, &c. workmen's dwellings.

20. The local authority may from time to time make, alter, and repeal bye-laws for the regulation of the dwellings belonging to them under this Act, and there may be imposed by such bye-laws a penalty, recoverable in a summary manner, not exceeding two pounds for any breach of the bye-laws by the tenants or occupiers of the said houses. A copy of such bye-laws shall be given to every tenant or occupier upon his taking possession of every such dwelling, or of any portion thereof. A bye-law under this Act and any alteration made therein, and any repeal of a bye-law, shall not be of any validity until it has been submitted

Power of local authority to make bye-laws for regulation of dwelling-houses.

Secs. 20–24. to and confirmed by one of Her Majesty's Principal Secretaries of State in the case of the metropolis, or by the Local Government Board in the case of all other places.

Expenses of local authority.

21. All expenses incurred by the local authority in pursuance of this Act shall be defrayed by them out of the local rate; and it shall be lawful for the local authority, notwithstanding any limit contained in any Act of Parliament respecting any local rate, to levy such local rate, or any increase of the same, not exceeding twopence in the pound in any year, for the purposes of this Act.

As to loans from Public Works Loan Commissioners.

16 & 17 Vict. c. 40.

22. The Public Works Loan Commissioners, as defined by the Public Works Loan Act, 1853, or in the metropolis the Metropolitan Board of Works may, if they think fit, lend to any local authority, and any local authority may borrow from the said Commissioners, or in the metropolis from the Metropolitan Board of Works, such sums as the said authority may require for the purposes of this Act, subject to the following regulations:

1. The amount of every loan shall be sanctioned by the Commissioners of the Treasury:
2. No loan shall be made except for the purpose of defraying the cost of building suitable dwellings for the labouring classes, or of defraying the cost of purchasing sites, and of building thereon such dwellings:
3. Every loan, with interest thereon at such rate as shall be agreed upon, but not a less rate of interest than four per centum per annum, shall be secured by a mortgage, [in the form set forth in the Third Schedule hereto, (1)] of certain dwellings for the labouring classes erected or improved, or about to be erected or improved, by a local authority, in pursuance of this Act, and of the sites of such dwellings, and the appurtenances, if any, and also by a mortgage of the local rate:
4. Any sum borrowed on mortgage under this section may be paid off by sale of the premises comprised in such mortgage, or by instalments, or otherwise, as may be agreed upon between the parties, so that the period of the borrowing do not exceed seven years:
5. The amount borrowed by any local authority on the mortgage of any building and sites, and of the local rate, shall not exceed the estimated value of the proposed buildings, including the sites thereof, comprised in such mortgage, such value to be ascertained in manner approved by the said Public Works Loan Commissioners:
6. The powers conferred by Act of Parliament on the said Public Works Loan Commissioners in relation to loans shall apply to any loans made under this section.

Jurisdiction of certain magistrates.

23. Any act, power, or jurisdiction hereby authorised to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say, as to England, by any metropolitan police magistrate or other stipendiary or police magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor of the City of London, or any alderman of the said city, sitting alone or with others, at the Mansion House or Guildhall; as to Scotland, by the sheriff or sheriff substitute, or by any two magistrates of a burgh; and as to Ireland, by any one or more divisional magistrates of police in the police district of Dublin, and elsewhere by two or more justices of the peace in petty sessions.

Application of Act to Scotland.

24. In the application of this Act to Scotland the following provisions shall have effect:

(1.) This Act shall be read and construed as if for the expression "the Local Government Board," wherever it occurs therein, the expression "the Secretary of State" were substituted, and the expression "the Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State:

8 & 9 Vict. c. 18. 8 & 9 Vict. c. 19.

(2.) The term "the Lands Clauses Consolidation Act, 1845," means the Lands Clauses Consolidation (Scotland) Act, 1845; and sections thirty-two, thirty-three, thirty-five, thirty-six, and thirty-seven of the former Act, shall mean sections thirty-one, thirty-three, and thirty-four of the latter Act.

[1] By 43 Vict. c. 8, a short Act passed for that purpose alone, it is enacted that the above section shall be construed and read as if the words between brackets had not been inserted therein.

25. In the application of this Act to Ireland the following provisions shall take effect:

(1.) The term "the Lands Clauses Consolidation Act, 1845," means and includes the said Act as the same is amended by the Lands Clauses Consolidation Acts Amendment Act, 1860, the Railways Act (Ireland), 1851, the Railways Act (Ireland), 1860, the Railways Act (Ireland), 1864, and the Railway Traverse Act:

(2.) The term "the Local Government Board" means the Local Government Board for Ireland:

(3.) The term "Public Works Loan Commissioners" means the Commissioners for Public Works in Ireland.

Sec. 25.

Application of Act to Ireland.

8 & 9 Vict. c. 18.
23 & 24 Vict. c. 106.
14 & 15 Vict. c. 70.
23 & 24 Vict. c. 97.
27 & 28 Vict. c. 71.
31 & 32 Vict. c. 70.

SCHEDULES.

FIRST SCHEDULE.

TABLE A.

ENGLAND AND WALES.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The city of London and the liberties thereof. Local Acts { 11 & 12 Vict. c. 163. 14 & 15 Vict. c. 91.	Commissioners of Sewers of the city of London. Local Act 11 & 12 Vict. c. 163.	The consolidated rate. 11 & 12 Vict. c. 163, s. 158.	The clerk to the commissioners. 11 & 12 Vict. c. 163, s. 25.
The metropolis, exclusive of the city of London and the liberties thereof.	The vestry of each parish, or the board of works of each district elected under the Metropolis Local Management Act, 1855, and the Acts amending the same within their respective parishes and districts. The Metropolitan Board of Works.	Rate to be levied in the metropolis in the same manner as the rate leviable by law by the vestry or district board of works respectively. 25 & 26 Vict. c. 120, s. 5.	Clerk of the vestry or district board.
Boroughs or urban sanitary district as aforesaid.	The urban sanitary authority.	The fund or rate out of which the general expenses of the execution of the Public Health Act, 1875, are defrayed by the urban sanitary authority.	The clerk of the urban sanitary authority.

SCOTLAND.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
Burghs - - -	The magistrates and town council.	The revenue of the burgh or any local rate leviable by the town council.	Town clerk.
Places where police commissioners or trustees exercise the functions of police commissioners acting under the General Police and Improvement (Scotland) Act, or trustees or commissioners acting under any general or local Act.	The police or other commissioners or trustees.	Property or rate belonging to or leviable by the commissioners or trustees.	Clerk of the commissioners or trustees, or any other officer performing the duties of clerk.

IRELAND.

Places to which Act applies.	Description of Local Authority.	Description of Local Rate.	Description of Clerk of Local Authority.
The city of Dublin -	The Right Honourable the Lord Mayor, aldermen, and burgesses, in council.	The borough fund or borough or improvement rate.	The town clerk.
Towns corporate or boroughs (with the exception of the city of Dublin).	The mayor, aldermen, and burgesses, acting in council.	The borough fund or town fund, or borough rate.	The town clerk.
Towns having town commissioners under 9 Geo. IV. c. 82, or 17 & 18 Vict. c. 103, or any Acts amending the same, or having commissioners or other governing body under any local Act.	The town commissioners or other governing body.	Any rate leviable by these bodies, or any fund belonging to them applicable in the whole or in part to the making or repairing of sewers within their jurisdiction.	The clerk of the commissioners or other governing body.

Explanation.

For the purposes of this Act the following words shall have the meanings hereinafter assigned to them; (that is to say,)

(1.) "The metropolis" has the same meaning as it has in the Metropolis Management Act, 1855.

(2.) "Burgh" in Scotland shall mean any place returning or contributing to return members to Parliament, or any place subject to the jurisdiction of a town council.

(3.) "Borough" in Ireland shall mean any place for the time being subject to the Act passed in the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, and intituled "An Act for the regulation of Municipal Corporations in Ireland."

SECOND SCHEDULE.

I. *Form of Order by Court of Quarter Sessions or Petty Sessions or Court of Burgh Magistrates in Scotland.*

Be it remembered that on the day of 18 , upon the report hereinafter mentioned, we the undersigned justices assembled at the court of quarter sessions holden in and for the county of , *or* assembled in petty sessions for the division or district of the borough or county of , *or* members of the court of burgh magistrates for [*as the case may be*], do hereby order and determine that one or more house or houses or buildings situate in or abutting upon or contiguous to or at the entrance of a certain court or alley within the borough *or* burgh, known or designated as court or alley [*or otherwise distinguishing the premises*], and specified in the report of the officer of health for the dated the day of 18 , is or are unfit for human habitation, and ought to be improved *or* demolished [*as the case may be*], in pursuance of the Artizans' and Labourers' Dwellings Act, 1868.

II. *Form of Notice by Clerk of the Peace, Clerk of the Justices, or Clerk of the Court of Burgh Magistrates in Scotland to Clerk of Local Authority.*

Artizans' and Labourers' Dwellings Act, 1868.

I, *A.B.*, clerk of the peace or clerk of the justices [*or* clerk of the court of burgh magistrates] for the , do hereby certify that on the day of 18 , the justices assembled at the court of quarter sessions, *or* assembled at the petty sessions for the [*or* court of the burgh magistrates] [*as the case may be*], made an order, of which the following is a true copy:

[*Here give a copy of the presentment, Form I.*]

As witness my hand, this day of , in the year of our Lord 18 .

(Signed) (*A.B.*) Clerk of the Peace *or* Clerk of the Justices for
or Clerk of the Court of Burgh Magistrates.

To the Clerk of the
of

ARTIZANS' AND LABOURERS' DWELLINGS IMPROVEMENT ACT, 1879.

42 & 43 VICT. c. 63.

ARRANGEMENT OF SECTIONS.

Section.
1. Short title and construction of Act.
2. Amendment of schedule to principal Act.
3. As to assessment of compensation.
4. Amendment of 38 & 39 Vict. c. 36, s. 5, as to the provision of accommodation for the working classes.
5. Definition of "Acts relating to nuisances."

SCHEDULE.
1. Notice of appointment of arbitrator.
2. Power of arbitrator as to apportionment.
3. Amendment respecting severance of properties.
4. Omitted interests.

ARTIZANS' AND LABOURERS' DWELLINGS IMPROVEMENT ACT, 1879.

42 & 43 VICT. c. 63.

An Act to amend the Artizans' and Labourers' Dwellings Improvement Act, 1875.
[15*th August*, 1879.]

Secs. 1—4.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and construction of Act. 38 & 39 Vict. c. 36.

1. This Act may be cited as the Artizans' and Labourers' Dwellings Improvement Act, 1879.

This Act shall be construed as one with the Artizans' and Labourers' Dwellings Improvement Act, 1875 (in this Act referred to as the principal Act), and the principal Act and this Act may be cited together as the Artizans' and Labourers' Dwellings Improvement Acts, 1875 and 1879.

Amendment of schedule to principal Act.

2. The schedule to the principal Act shall be construed as if the schedule to this Act formed part thereof.

As to assessment of compensation.

3. On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area, evidence shall be receivable by the arbitrator to prove that at the date of the confirming Act authorising such scheme, or at some previous date not earlier than the date of the official representation in which the scheme originated, such house or premises was by reason of its unhealthy state, or by reason of overcrowding or otherwise, in such a condition as to have been a nuisance within the meaning of the Acts relating to nuisances; and if the arbitrator is satisfied that from either of such causes as aforesaid, such house or premises was, at such dates as aforesaid or either of them, a nuisance as aforesaid, he shall then determine what would have been the value of such house or premises supposing the nuisance to have been abated, and what would have been the expense of abating the nuisance; and the amount of compensation payable in respect of such house or premises shall be an amount equal to the estimated value of the house or premises after the nuisance was abated, and after deducting the estimated expense of abating the nuisance.

Amendment of 38 & 39 Vict. c. 36, s. 5, as to the provision of accommodation for the working classes.

4. Whereas by the fifth section of the principal Act it is provided, amongst other things, that an improvement scheme of a local authority shall provide for the accommodation of at least as many persons of the working classes as may be displaced in the area with respect to which the scheme is proposed in suitable dwellings which, unless there are special reasons to the contrary, shall be situate within the limits of the same area or in the vicinity thereof:

And whereas it not unfrequently happens that, having due regard to the requirements of persons of the working classes displaced by an improvement scheme, equally convenient accommodation at a much less cost can be furnished to such persons or some of them at some place other than within the area or the immediate vicinity of the area from which they have been displaced: Be it enacted that—

Where it is proved to the satisfaction of the confirming authority on an application to authorise or modify an improvement scheme that equally convenient accommodation can be provided for any persons of the working class displaced by an improvement scheme at some place other than within the area or the immediate vicinity of the area comprised in the improvement scheme, and it is also proved to the satisfaction of such authority that the required accommodation has been or is about to be forthwith provided, it shall be lawful for the confirming authority accordingly to authorise any such improvement scheme, or to permit a modification of any such scheme, and the requirements of the principal Act with respect to providing accommodation for persons of the working class shall, to the extent

Secs. 4, 5.

to which accommodation is provided in accordance with this section, be deemed to have been complied with.

A local authority may for purpose of providing accommodation for persons of the working classes displaced by any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

Definition of "Acts relating to nuisances." 41 & 42 Vict. c. 52. 38 & 39 Vict. c. 55. 29 & 30 Vict. c. 41. 38 & 39 Vict. c. 55.

5. The Acts relating to nuisances mean—

As respects any place in Ireland, the Public Health (Ireland) Act, 1878, and any local Act which contains any provisions with respect to nuisances in that place; and

As respects the metropolis, as defined by the Public Health Act, 1875, the Nuisances Removal Acts as defined by the Sanitary Act, 1866, or any Act amending the same, and any local Act which contains any provisions with respect to nuisances in that place; and

As respects any other place in England, the Public Health Act, 1875, and any local Act which contains any provisions with respect to nuisances in that place.

SCHEDULE.

Schedule.

Notice of appointment of arbitrator.

1. The publication by the local authority of the appointment of the arbitrator, and the other particulars mentioned in article six of the schedule to the principal Act, shall be made not only by advertisement, but also by placards and handbills affixed in conspicuous places on or near the lands to be taken, and also by leaving a notice thereof at each house proposed to be taken, and also by sending a notice thereof by post to the persons interested in such lands as owners or reputed owners, lessees or reputed lessees, so far as they can be reasonably ascertained.

Power of arbitrator as to apportionment.

2. The arbitrator shall have the same power of apportioning any rent-service, rent-charge, chief or other rent, payment, or incumbrance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845.

Amendment respecting severance of properties. 8 & 9 Vict. c. 18.

3. Notwithstanding anything in section ninety-two of the Lands Clauses Consolidation Act, 1845, the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and if he so determine may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part, without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory.

The local authority, or any person interested, if dissatisfied with a determination under this enactment, may, in manner provided by article twenty-six of the schedule to the principal Act, submit the question of whether the said part can be taken without material damage, as well as the question of the proper amount of compensation, to a jury; and the notice of intention to appeal shall be given within the same time as notice of intention to appeal against the amount of compensation awarded is required to be given.

Omitted interests.

4. The amount of purchase money or compensation to be paid in pursuance of section one hundred and twenty-four of the Lands Clauses Consolidation Act, 1845, in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have through mistake or inadvertence failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid, in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims; with this qualification, that the first award of the arbitrator shall be final, and not provisional.

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

ARTIZANS' DWELLINGS ACT, 1882.

45 & 46 VICT. c. 54.

ARRANGEMENT OF SECTIONS.

Preliminary.

Section.
1. Short title.

PART I.

Artizans' and Labourers' Dwellings Improvement Acts, 1875 *and* 1879.

2. Construction of Part I. of Act.
3. Amendment of 38 & 39 Vict. c. 36, s. 5, as to the provision of accommodation for the working classes.
4. Amendment of 38 & 39 Vict. c. 36, s. 19, as to the valuation of land.
5. Amendment of schedule to 38 & 39 Vict. c. 36.
6. Limit of area to be dealt with on official representation.

PART II.

7. Construction of Part II.
8. Power to local authority to purchase houses for opening alleys, &c.
9. Amendment of section 7 of 42 & 43 Vict. c. 64.
10. Expenses of local authority.
11. Amendment of 42 & 43 Vict. c. 64, s. 12, as to enforcement of Act by Metropolitan Board of Works.

SCHEDULE.

ARTIZANS' DWELLINGS ACT, 1882.

45 & 46 VICT. c. 54.

An Act to amend the Artizans' and Labourers' Dwellings Acts.
[18*th August*, 1882.]

Secs. 1—3.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as the Artizans' Dwellings Act, 1882.

PART I.

Artizans' and Labourers' Dwellings Improvement Acts, 1875 *and* 1879.

Construction of Part I. of Act. 38 & 39 Vict. c. 36, 42 & 43 Vict. c. 63.

2. This part of this Act shall be construed as one with the Artizans' and Labourers' Dwelling Improvement Acts, 1875 and 1879, and those Acts together with this part of this Act may be cited together as the Artizans' and Labourers' Dwellings Improvement Acts, 1875 to 1882.

Amendment of 38 & 39 Vict. c. 36, s. 5, as to the provision of accommodation for the working classes.

3. Whereas by section five of the Artizans' and Labourers' Dwellings Improvement Act, 1875, it is provided, amongst other things, that an improvement scheme of a local authority shall provide for the accommodation of at the least as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed in suitable dwellings which, unless there are special reasons to the contrary, shall be situate within the limits of the same area or in the vicinity thereof:

And whereas by section four of the Artizans' and Labourers' Dwellings Improvement Act, 1879, it is provided that the above requirements of section five of the Artizans' and Labourers' Dwellings Improvement Act, 1875, may, if the confirming authority so authorise, be complied with by the provision of equally convenient accommodation at some place other than within the area or the immediate vicinity of the area comprised in such scheme:

And whereas it is expedient to make further provision respecting such accommodation: Be it therefore enacted as follows:

Where an improvement scheme of a local authority comprises an area situate in the metropolis or the city of London, the confirming authority shall, without prejudice to the powers conferred on it by the said fourth section of the Artizans' and Labourers' Dwellings Improvement Act, 1879, be authorised (on the application of the local authority, and on a report being made by the officer conducting the local inquiry directed by the confirming authority that it is expedient having regard to the special circumstances of the locality and to the number of artizans and others belonging to the labouring class dwelling within the area, and being employed within a mile thereof, that a modification should be made) to dispense in the provisional order authorising the scheme altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by their scheme to such extent as he may think expedient, having regard to such special circumstances as aforesaid, but not exceeding one half of the persons so displaced, and where any such improvement scheme comprises an area situate elsewhere than in the metropolis or the city of London, it shall, if the confirming authority so require (but it shall not otherwise

be obligatory on the local authority so to frame their scheme), provide for the accommodation of such number of those persons of the working class displaced in the area with respect to which the scheme is proposed in suitable dwellings to be erected in such place or places either within or without the limits of the same area as the said authority on a report made by the officer conducting the local inquiry may require.

The twelfth section of the Artizans' and Labourers' Dwellings Improvement Act, 1875, and any other enactment relating to the requirement of the said Act as to the accommodation of the working classes, shall be construed with reference and subject to the modifications made by this Act.

The power by this section given to the confirming authority to dispense altogether with the obligation of the local authority to provide for the accommodation of the persons of the working class who may be displaced by their scheme to an extent not exceeding one half of the persons so displaced may (in the case of any scheme which has, before the passing of this Act, been authorised by a confirming Act) upon the application of the local authority be exercised by the confirming authority by an order made at any time within twelve months after the passing of this Act.

Amendment of 38 & 39 Vict. c. 36, s. 19, as to the valuation of land.

4. Whereas it is expedient to amend section nineteen of the Artizans' and Labourers' Dwellings Improvement Act, 1875: Be it therefore enacted as follows:

In the estimate of the value of the said lands or interests in the said section in that behalf mentioned any addition to or improvement of the property made after the date of the publication of an advertisement in pursuance of section six of the said Act stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repairs) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands, and the words "and all circumstances affecting such value" in the said section are hereby repealed.

Amendment of schedule to 38 & 39 Vict. c. 36.

5. There shall be repealed so much of the schedule to the Artizans' and Labourers' Dwellings Improvement Act, 1875, as is comprised under the heading "Proceedings on Arbitration," that is to say, articles numbered (5) to (13) both inclusive, and there shall be substituted therefor the articles contained in the schedule hereto: Provided that such repeal shall not affect anything duly done or suffered under any provision hereby repealed.

Limit of area to be dealt with on official representation.

31 & 32 Vict. c. 130.

6. Where an official representation made to the Metropolitan Board of Works in pursuance of the Artizans' and Labourers' Dwellings Improvement Act, 1875, relates to not more than ten houses, the Metropolitan Board of Works shall not take any proceedings on such representation, but shall direct the officer making the same to report the case to the local authority as defined by the Artizans' and Labourers' Dwellings Act, 1868, and it shall be the duty of the local authority to deal with such case in manner provided by the last-mentioned Act, and the Acts amending the same.

PART II.

Construction of Part II.

31 & 32 Vict. c. 130.

42 & 43 Vict. c. 64.

7. This part of this Act shall be construed as one with the Artizans' and Labourers' Dwellings Act, 1868, and the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879, and those Acts and this part of this Act may be cited together as the Artizans' Dwellings Acts, 1868 to 1882.

Power to local authority to purchase houses for opening alleys, &c.

8.—(1.) If in any place to which the Artizans' and Labourers' Dwellings Act, 1868 (1), applies the officer of health finds that any building, although not in itself unfit for human habitation, is so situate that by reason of its proximity to or contact with any other buildings it causes one of the following effects, that is to say,—

(1.) It stops ventilation, or otherwise makes or conduces to make such other buildings to be in a condition unfit for human habitation; or

(1) See *ante*, pp. 615, 616.

Section 8.

(2.) It prevents proper measures from being carried into effect for remedying the evils complained of in respect of such other buildings,

in any such case, the officer of health shall make a report to the local authority in writing of the particulars relating to such first-mentioned building (in this Act referred to as "an obstructive building"), stating that in his opinion it is expedient that the obstructive building should be pulled down, and shall deliver the report to the clerk of the local authority.

(2.) The local authority shall refer such report to a surveyor or engineer to report thereon, and to report as to the cost of acquiring the lands on which such obstructive building is erected and of pulling down such building.

(3.) The local authority shall take into consideration the reports of the officer of health and of the surveyor, and if they decide to adopt such reports shall cause copies to be given to the owner of the lands on which the obstructive building stands, with notice of the time and place appointed by the local authority for the consideration thereof; and such owner shall be at liberty to attend and state his objections, and after hearing such objections the local authority shall make an order in writing signed by their clerk either allowing the objections or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of the local authority under the Artizans' and Labourers' Dwellings Act, 1868.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and is not appealed against, or if appealed against is confirmed, the local authority shall be deemed to be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special Act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Consolidation Act, 1845, and the Acts amending the same with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this Act (1) (subject nevertheless to the provisions of this Act), and for the purpose of those provisions this Act shall be deemed to be the special Act and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

8 & 9 Vict. c. 18.

(5.) The owner of the lands may, within one month after notice to purchase the same is served upon him, declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall, in case of difference, be settled by arbitration in manner provided by section seven of the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879 (2), as amended by this part of this Act.

(7.) Where the owner retains the site or any part thereof, section twenty-three of the Artizans' and Labourers' Dwellings Act, 1868 (3), shall apply to such site.

(8.) Where the lands are purchased by the local authority, the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the evils caused by such obstructive building, and may, with the assent of the confirming authority and upon such terms as such authority thinks expedient, permit such portion of the site to be sold as is not required for the purpose of carrying this section into effect.

Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value

(1) See *post*. (2) See *ante*, p. 611. (3) See *ante*, p. 582.

of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Act, 1875, relating to private improvement expenses and to private improvement rates (1) shall, so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this Act, and the said provisions shall be deemed to extend to the city of London and to the metropolis, and in the construction of the said provisions, as respects the city of London the Commissioners of Sewers, and as respects the metropolis the Metropolitan Board of Works, shall be deemed to be the urban authority.

38 & 39 Vict. c. 55.

If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Consolidation Act, 1845, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

Amendment of s. 7 of 42 & 43 Vict. c. 64.

9. Section seven of the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879 (2), shall be construed as if the words "and all circumstances affecting such value" were omitted therefrom.

Expenses of local authority.

10. The expenses of the local authority under this part of this Act shall be defrayed in like manner as expenses incurred in pursuance of the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879 (3).

Amendment of 42 & 43 Vict. c. 64, s. 12, as to enforcement of Act by Metropolitan Board of Works.

11. Whereas by section twelve of the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879 (4), it is provided that in the event of a local authority within the metropolis declining or neglecting for the space of three months after receiving a notice from the Metropolitan Board of Works requiring such local authority to put in force the provisions of the said Act in respect of any premises described in such notice, the Metropolitan Board of Works shall have the powers therein mentioned: Be it therefore enacted as follows:

Where an officer of health, in pursuance of the Artizans' and Labourers' Dwellings Act, 1868, has reported any premises as unfit for human habitation (5), or in pursuance of this part of this Act has reported that the pulling down of any obstructive building would be expedient, the board of guardians in whose union or parish, or the owner of any property in the neighbourhood of which such premises or buildings are situate, may complain to the Metropolitan Board of Works that the local authority have failed to put in force the provisions of the said Acts in respect of such premises or buildings, and the Metropolitan Board of Works may, if they think it expedient so to do, thereupon proceed under section twelve of the Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879, and that section shall apply as if it were enacted in this part of this Act and in terms made applicable to the duties of local authorities under this part of this Act.

(1) See *ante*, pp. 163, 164. (2) See *ante*, p. 611. (3) See *ante*, p. 614.
(4) See *ante*, p. 612. (5) See *ante*, p. 579.

SCHEDULE.

AMENDMENT OF SCHEDULE TO 38 & 39 VICT. C. 36.

Schedule

(1.) In lieu of articles eight to thirteen (both inclusive) of the schedule to the Artizans' and Labourers' Dwellings Improvement Act, 1875, the following articles shall be substituted; that is to say,

Proceedings on Arbitration.

(*a.*) Before any arbitrator enters upon any inquiry he shall, in the presence of a justice of the peace, make and subscribe the following declaration; that is to say,

"I, *A. B.*, do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Artizans' and Labourers' Dwellings Improvement Act, 1875.

"*A. B.*

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator, having made such declaration, wilfully act contrary thereto, he shall be guilty of a misdemeanour.

(*b.*) As soon as an arbitrator has been appointed as aforesaid, the confirming authority shall deliver to him the maps and schedules deposited at their office, and the local authority shall publish once in each of three successive weeks the following particulars:—

(1.) The appointment of the arbitrator; and

(2.) The deposit at the office of the local authority of the copies of such maps and schedules as aforesaid, with a description of the situation of such office, and a statement of the time at which such copies may be inspected by any person desirous of inspecting the same.

(*c.*) In every case in which compensation is payable under the Artizans' and Labourers' Dwellings Improvement Act, 1875, by the local authority to any claimant, and which compensation has not been made the subject of agreement (in this Act referred to as "a disputed case"), the arbitrator shall ascertain in such manner as he thinks most convenient the amount of compensation demanded by the claimant, and the amount which the local authority may be willing to pay; and after hearing all such parties interested in each disputed case as may appear before him at a time and place of which notice has been given as in this Act mentioned, he shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

(*d.*) The arbitrator shall from time to time give notice to the claimants in disputed cases by causing such notice to be published or otherwise in such manner as he thinks advisable, of a time and place at which the difference between the claimants and the local authority in disputed cases as to the amount of compensation to be paid will be decided by the arbitrator.

(*e.*) After the arbitrator has arrived at a decision on all the disputed cases brought before him, he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (subject to the provisions concerning an appeal hereinafter contained) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form.

(*f.*) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority, and the local authority shall thereupon publish once in each of three successive weeks notice of the deposit having been made at the office of the local authority of a copy of the award, and a further notice requiring all persons claiming to have any right to or interest in the lands (the compensation to be paid in respect of which is ascertained by such award) to deliver to the local authority on or before a day to be named in such notice (such day not being earlier than

Schedule.

twenty-one days from the date of the last publication of the notice), a short statement in writing of the nature of such claim, and a short abstract of the title on which the same is founded; and such statement and abstract shall be paid for by the local authority. Such abstract of title, in the case of a person claiming a fee simple interest in the land, shall commence twenty years previous to the date of the claim, except there has been an absolute conveyance on sale within twenty years, and more than ten years, previous to the claim when the abstract shall commence with such conveyance.

(*g.*) Any person or local authority dissatisfied with the amount of compensation awarded may, where such amount exceeds one thousand pounds, but not otherwise, appeal in manner provided by article twenty-six of the schedule to the Artizans' and Labourers' Dwellings Improvement Act, 1875, and that article shall be construed as if one thousand pounds were therein substituted for five hundred pounds.

(*h.*) The costs, charges, and expenses payable by the local authority under article twenty-eight of the schedule to the Artizans' and Labourers' Dwellings Improvement Act, 1875, shall not be payable until the amount has been certified by the confirming authority.

(*i.*) Notwithstanding anything contained in article twenty-nine of the said schedule, the arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration in any case where he considers that such costs are not properly payable by the local authority.

THE

INFANT LIFE PROTECTION ACT, 1872.

35 & 36 VICT. c. 38.

An Act for the better Protection of Infant Life. [25*th July*, 1872.]

Secs. 1—4.

Whereas it is expedient to make better provision for the protection of infants intrusted to persons to be nursed or maintained for hire or reward in that behalf:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation clause.

1. The term "Summary Jurisdiction Acts" means as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same:

The term "Court of Summary Jurisdiction" means and includes any justice or justices of the peace, sheriff or sheriff substitute, metropolitan police magistrate, stipendiary or other magistrate or authority, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts, or any Acts therein referred to, or to proceedings before whom the provisions of the Summary Jurisdiction Acts are or may be made applicable:

In this Act the words "local rate," "local jurisdiction," and "local authority," mean, in reference to the districts mentioned in the first column of the First Schedule annexed hereto, the rate, jurisdiction, and authority mentioned in the second, third, and fourth columns of the said schedule, and such schedule and the notes thereto annexed shall be deemed to be part of this Act.

Houses of persons retaining or receiving for hire two or more infants for the purpose of nursing to be registered.

2. From and after the commencement of this Act it shall not be lawful for any person to retain or receive for hire or reward in that behalf more than one infant, and in case of twins more than two infants, under the age of one year for the purpose of nursing or maintaining such infants apart from their parents for a longer period than twenty-four hours, except in a house which has been registered as herein provided.

Register of names and houses to be kept by local authority.

3. The local authority shall cause a register to be kept in which shall be entered the name of every person applying to register any house for the purposes of this Act, and the situation of every such house, and the local authority shall from time to time make bye-laws for fixing the number of infants who may be received into each house so registered; the registration shall remain in force for one year; no fee shall be charged for registration. Every person who receives or retains any infant in contravention to the provisions of this Act shall be guilty of an offence against this Act.

Local authority may refuse to register.

4. The local authority may refuse to register any house, unless they are satisfied that such house is suitable for the purposes for which it is to be registered, and unless they are satisfied by the production of certificates that the person applying to be registered is of good character, and able to maintain such infants.

Persons whose names and houses are registered to keep a register of infants and to produce it when lawfully required.

5. The person registered as aforesaid shall immediately enter in a register to be kept by him the name, sex, and age of each infant under his care, and the date at which and the names and addresses of the persons from whom they were received, and shall also enter in the said register the time when and the names and adresses of the person by whom every such infant received and retained as aforesaid shall be removed immediately after the removal of such infant, and shall produce the said register when required to do so by the local authority; and in the event of his refusing so to produce the said register or neglecting to enter in a register the name, sex, and age of each of the said infants, and the date at which the names and addresses of the persons from whom they were received and by whom they were removed respectively, shall be liable to a penalty not exceeding five pounds. The person registered shall be entitled to receive gratuitously from the local authority a book of forms for the registration of infants; such register may be in the form contained in the second schedule to this Act.

Forgery of certificate and falsifying register.

6. If any person shall make false representations with a view to being registered under this Act, or shall forge any certificate for the purpose of this Act, or make use of any forged certificate, knowing it to be forged, or shall falsify any register kept in pursuance of this Act, he shall be guilty of an offence against this Act.

Local authority may strike name and house off register for neglect, &c.

7. If it shall be proved to the satisfaction of the local authority that any person whose house has been so registered as aforesaid has been guilty of serious neglect, or is incapable of providing the infants intrusted to his care with proper food and attention, or that the house specified in the register has become unfit for the reception of infants, it shall be lawful for the local authority to strike his name and house off the register.

Inquest to be held on death of infant.

8. The person registered as aforesaid shall within twenty-four hours after the death of every infant so retained or received cause notice thereof to be given to the coroner for the district within which the said infant died, and the said coroner shall hold an inquest on the body of every such infant unless a certificate under the hand of a registered medical practitioner shall be produced to him by the person so registered certifying that such registered medical practitioner has personally attended or examined such infant, and specifying the cause of its death, and the said coroner shall be satisfied by such certificate that there is no ground for holding such inquest. If the person so registered shall neglect to give notice as aforesaid he shall be guilty of an offence under this Act.

Punishment for offence under this Act.

9. Every person guilty of an offence under this Act shall be liable to imprisonment for not more than six months, with or without hard labour, or to a penalty not exceeding five pounds, as a court of summary jurisdiction may award, and shall in addition be liable to have his name and house struck off the register.

Payment of expenses out of local rate.

10. All expenses incurred in and about the execution of this Act shall be defrayed out of the local rate.

Offence how to be prosecuted.

11. Any offence under this Act may be prosecuted before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts: Provided as follows:

[The description of any offence under this Act in the words of such Act, or as near thereto as may be, shall be sufficient in law:

Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor (1):]

The Court of Summary Jurisdiction, when hearing, trying, determining, and adjudging an information or complaint in respect of any offence or matter arising under this Act, shall be constituted either of two or more justices of the peace in petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of

(1) The part within brackets is repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43, s. 4).

Secs. 11–16.

justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Application of penalties recovered under the Act.

12. Any moneys arising from fees or fines under this Act shall be paid to the account of the local rate, and be applied to the purposes to which that rate is applicable.

Exceptions from provisions of Act.

13. The provisions of this Act shall not extend to the relatives or guardians of any infant retained or received as aforesaid, nor to institutions established for the protection or care of infants, nor to any person receiving any infant for the purpose of nursing or maintaining such infant under the provisions of any Act for the relief of the poor.

14. [*Act subject to certain provisions in its application to Scotland.*]

Commencement of Act.

15. This Act shall commence on the first day of November one thousand eight hundred and seventy-two.

Short title.

16. This Act may be cited as "The Infant Life Protection Act, 1872."

SCHEDULES.

The First Schedule referred to in the foregoing Act.

ENGLAND.

District.	Local Rate.	Local Jurisdiction.	Local Authority.
Counties, except the metropolis and city of London.	The county rate or rate in the nature of a county rate.	Petty sessional division.	Justices in petty sessions.
The metropolis.	Rate or fund applicable to the payment of the general expenses of the board.	Area of the metropolis.	The Metropolitan Board of Works.
City of London and the liberties thereof.	Consolidated sewers rate.	Area of the city of London and the liberties thereof.	Common council.
Boroughs.	The borough fund or borough rate.	Area of borough.	Council.

"County" shall not include a county of a city or county of a town, but shall include any riding, division, parts, or liberty of a county having a sparate commission of the peace.

Where a county or liberty of a county having a separate commission of the peace is not divided into petty sessional divisions, such county or liberty of a county shall itself for the purposes of this Act be deemed to be a petty sessional division of the county by which it is constituted or in which it is geographically situate.

"The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, exclusive of the city of London and the liberties thereof.

"Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act made to provide for the Regulation of Municipal Corporations in England and Wales," and having a separate court of quarter sessions.

Every place that is not, according to the foregoing definitions, a borough, a county, or part of the metropolis, or city of London, or the liberties thereof, shall be deemed to form part of the county, as hereinbefore defined, to the county rate of which it is assessed, or, if not so assessed, of the county within which it is situate.

The Second Schedule referred to in the foregoing Act.

REGISTER OF INFANTS.

Date at which received.	Name.	Sex.	Age.	Name and Address of Person from whom received.	Date at which removed.	Name and Address of Person by whom removed.

THE

SALE OF FOOD AND DRUGS ACT, 1875.

38 & 39 VICT. c. 63.

An Act to repeal the Adulteration of Food Acts, and to make better provision for the Sale of Food and Drugs in a pure state (1). [11*th August*, 1875.]

Secs. 1, 2.

Whereas it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repeal of statutes.

1. From the commencement of this Act the statutes of the twenty-third and twenty-fourth of Victoria, chapter eighty-four (2), of the thirty-first and thirty-second of Victoria, chapter one hundred and twenty-one, section twenty-four (3), of the thirty-third and thirty-fourth of Victoria, chapter twenty-six, section three (4), and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four (5), shall be repealed except in regard to any appointment made under them and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.

Interpretation of words

2. The term "food" shall include every article used for food or drink by man, other than drugs or water:

The term "drug" shall include medicine for internal or external use.

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough:

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

(1) Amended by 42 & 43 Vict. c. 30, see *post*.

Generally as to the scope of the Act, see the Circular of the Local Government Board, dated 30th September, 1875, amongst the circulars of the Local Government Board, *post*.

(2) This Act was rendered difficult in its execution, as it involved the necessity of proving knowledge on the part of the vendor that the article sold was injurious to health.

(3) This section provides that any person registered under the provisions of "The Pharmacy Act, 1868," who sold any article of food or drink adulterated should, unless the contrary were proved, be deemed to have knowledge of such adulteration. It will be observed that by this Act the onus of proving want of knowledge rests upon the vendor.

(4) This section of "An Act to regulate the Sale of Poisons in Ireland," made the provisions of "The Adulteration of Food or Drink Act" (see *supra*) extend to medicines.

(5) This Act (section 3) again imposes the onus of proof of knowledge of the adulteration upon the purchaser.

Prohibition of the mixing of injurious ingredients, and of selling the same.

3. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food (1) with any ingredient or material so as to render the article injurious to health (2), with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanour, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.

Prohibition of the mixing of drugs with injurious ingredients, and of selling the same.

4. No person shall, except for the purpose of compounding as hereinafter described (3), mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

Exemption in case of proof of absence of knowledge.

5. Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act in respect of the sale of any article of food or of any drug, if he shows to the satisfaction of the justice or court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge (4).

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality

6. No person shall sell to the prejudice of the purchaser (5) any article of food or any drug which is not of the nature, substance, and quality (6) of the article demanded by such purchaser, under a penalty not exceeding twenty pounds; provided that an offence shall not be deemed to be committed under this section in the following cases; that is to say,

(1.) Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof;

(2.) Where the drug or food is a proprietary medicine, or is the subject of a patent in force, and is supplied in the state required by the specification of the patent;

(1) "Food" excludes drugs and water (see s. 2, *supra*).

(2) To sell an article which is unwholesome or injurious to health is an indictable offence at common law (see the observations of Lord Ellenborough, C.J., in *The King* v. *Southerton*, 6 East, 133. "At any rate the cheat was effected by means of bartering pretended port wine, which the indictment alleged was not wholesome or fit to drink; and the vending of such an article for drinking is clearly indictable." (*Reg.* v. *Mackarty and Fordenbourgh*, 2 Ld. Ray. 1179, and 3 Ld. Ray. 325).

(3) See s. 6.

(4) This throws the burthen of proving absence of knowledge on the vendor: (see footnotes (2), (3), and (5), section 1).

(5) *Hoyle* v. *Hitchman*, L. R. 4 Q. B. D. 233, 48 L. J. M. C. 97, 40 L. T. N. S. 252, 27 W. R. 487, decided that the purchase by an inspector duly appointed, under section 13, of an article for analysis, such article not being of the nature, substance, and quality of the article demanded by him, but an inferior article, though not known to be so at the time of the purchase, was "a sale to the prejudice of the purchaser" within this section: (*Davidson* v. *M'Cleod* in the Scotch Court of Justiciary dissented from). This question was afterwards settled by statute (see Sale of Food and Drugs Act Amendment Act, 1879, see *post*).

See also *Horder* v. *Scott*, L. R. 5 Q. B. D. 552, 49 L. J. M. C. 78, 42 L. T. N. S. 660, 28 W. R. 918, 44 J. P. 520.

(6) Section 2 of "The Sale of Food and Drugs Act Amendment Act, 1879," (see *post*), provides that it shall not be "a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all these respects."

Secs 6—10.

(3.) Where the food or drug is compounded as in this Act mentioned;

(4.) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Provision for the sale of compounded articles of food and compounded drugs.

7. No person shall sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding twenty pounds.

Protection from offences by giving of label.

8. Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended fraudulently to increase its bulk, weight, or measure (1), or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed (2).

Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

9. No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding twenty pounds.

Appointment and Duties of Analysts, and Proceedings to obtain Analysis.

Appointment of analysts.

10. In the city of London and the liberties thereof the Commissioners of Sewers in the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may, as soon as convenient after the passing of this Act, where no appointment has hitherto been made, and in all cases as and when vacancies in the office occur, or when required so to do by the Local Government Board, shall, for their respective city, districts, counties, or boroughs, appoint one or more persons possessing competent knowledge, skill, and experience (3), as analysts of all articles of food and drugs sold within the said city, metropolitan districts, counties, or boroughs, and shall pay to such analysts such remuneration as shall be mutually agreed upon, and may remove him or them as they shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Local Government Board, who may require satisfactory proof of competency to be supplied to them, and may give their approval absolutely or with

Section 6 of the Sale of Food and Drugs Act Amendment Act, 1879 (see *post*), provides that "In determining whether an offence has been committed under s. 6 of the said Act (*i.e.*, of this Act), by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whiskey, or rum, or thirty-five degrees under proof for gin": see *Pashler* v. *Stevenitt*, 35 L. T. N. S. 862, 41 J. P. 136; and *Webb* v. *Knight*, 2 L. R. Q. B. D. 530, 46 L. J. M. C. 264, 36 L. T. N. S. 791, 26 W. R. 14, C. A., 41 J. P. 726.

See also *Sandys* v. *Small*, L. R. 3 Q. B. D. 449, 47 L. J. M. C. 115, 26 W. R. 814.

(1) *Horder* v. *Meddings*, 44 J. P. 234.

(2) In an unreported case before one of the metropolitan police magistrates, in which one of the authors was engaged, a sample of coffee had been purchased which was sought to be protected from the penalties of adulteration because it was labelled "This is a mixture of coffee and chicory." The mixture upon analysis showed that it consisted of ninety-five parts of chicory to five parts of coffee. The magistrate held the label to be misleading inasmuch as it should have said "This is a mixture of chicory and coffee," and convicted. He further added that it appeared to him to be a case of chicory adulterated with coffee: see *Liddiard* v. *Reece*, 44 J. P. 233; *Pope* v. *Tearle*, 43 L. J. M. C. 129, 30 L. T. N. S. 789, 22 W. R. 950; *Horder* v. *Meddings*, *supra*.

(3) Sect. 5 of the repealed Act, 35 & 36 Vict. c. 74, provided that the person appointed an analyst should possess "competent medical, chemical, and microscopical knowledge."

modifications as to the period of the appointment and removal, or otherwise: Provided, that no person shall hereafter be appointed an analyst for any place under this section who shall be engaged directly or indirectly in any trade or business connected with the sale of food or drugs in such place.

In Scotland the like powers shall be conferred and the like duties shall be imposed upon the commissioners of supply at their ordinary meetings for counties, and the commissioners or boards of police, or where there are no such commissioners or boards, upon the town councils, for boroughs within their several jurisdictions; provided that one of Her Majesty's principal Secretaries of State in Scotland shall be substituted for the Local Government Board of England.

In Ireland the like powers and duties shall be conferred and imposed respectively upon the grand jury of every county and town council of every borough; provided that the Local Government Board of Ireland shall be substituted for the Local Government Board of England.

Town council of a borough may engage the analyst of another borough or of the county.

11. The town council of any borough may agree that the analyst appointed by any neighbouring borough or for the county in which the borough is situated, shall act for their borough during such time as the said council shall think proper, and shall make due provision for the payment of his remuneration, and if such analyst shall consent, he shall during such time be the analyst for such borough for the purposes of this Act.

Power to purchaser of an article of food to have it analysed.

12. Any purchaser of an article of food or of a drug in any place being a district, county, city, or borough where there is any analyst appointed under this or any Act hereby repealed shall be entitled, on payment to such analyst of a sum not exceeding ten shillings and sixpence, or if there be no such analyst then acting for such place, to the analyst of another place, of such sum as may be agreed upon between such person and the analyst, to have such article analysed by such analyst, and to receive from him a certificate of the result of his analysis (1).

Officer named to obtain a sample of food or drug to submit to analyst.

13. Any medical officer of health, inspector of nuisances, or inspector (2) of weights and measures, or any inspector (2) of a market, or any police constable (3) under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution of this Act, may procure any sample of food or drugs, and if he suspects the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the analyst of the district or place for which he acts, or if there be no such analyst then acting for such place to the analyst of another place, and such analyst shall, upon receiving payment as is provided in the last section, with all convenient speed, analyse the same and give a certificate to such officer, wherein he shall specify the result of the analysis.

Provision for dealing with the sample when purchased.

14. The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify (4) to the seller or his agent selling the article his intention to have the

(1) Section 9 of the repealed Act (35 & 36 Vict. c. 74) provided that the certificate should specify whether, in the opinion of the analyst, such article was adulterated, and also whether, if it were an article of food or drink, it was so adulterated as to be injurious to the health of persons eating or drinking the same. (See footnote to the schedule to this Act upon "observations.")

(2) *Horder* v. *Scott*, 5 Q. B. D. 552, 49 L. J. M. C. 78, 42 L. T. 660, 28 W. R. 918, 44 J. P. 520; *Stace* v. *Smith*, 45 J. P. 141.

(3) This section is now wider than the corresponding section of the repealed Act (*i.e*, s. 6, 35 & 36 Vict. c. 74), inasmuch as, in addition to the various inspectors named in the repealed Act, it includes medical officers of health and police constables.

(4) In *Barnes* v. *Chipp*, L. R. 3 Ex. D. 176, 47 L. J. M. C. 85, 38 L. T. N. S. 570, 26 W. R. 635, it was held that the notification required by this section was a condition precedent to a prosecution under this Act, and the conviction was quashed upon the ground that this condition had not been complied with. And *Parsons* v. *Birmingham Dairy Co.*, 9 Q. B. D. 172, 51 L. J. M. C. 111, 30 W. R. 748, 46 J. P. 727, decided that such notification was equally a condition precedent to the right of a private purchaser to take proceedings for a penalty under this Act, as it is to the right of one of the officers named in the Act.

Secs. 14–19.

same analysed by the public analyst, and shall offer to divide the article into three parts to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly, and shall deliver one of the parts to the seller or his agent (1).

He shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the article analysed, to the analyst.

Provision when sample is not divided.

15. If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter (2).

Provision for sending article to the analyst through the post office.

16. If the analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the analyst through the post office as a registered letter, subject to any regulations which the Postmaster-General may make in reference to the carrying and delivery of such article (3), and the charge for the postage of such article shall be deemed one of the charges of this Act or of the prosecution, as the case may be.

Person refusing to sell any article to any officer liable to penalty.

17. If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed to sale (4), or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding ten pounds.

Form of the certificate.

18. The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect.

Quarterly report of the analyst.

19. Every analyst appointed under any Act hereby repealed or this Act shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst, and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report (5).

(1) H., a farmer in the country, had contracted to supply milk to a dealer in London, and sent cans to a London railway terminus free of charge. The appellant was an nspector, and had demanded a sample from a railway porter, who had allowed him to take it. It contained 16 per cent. of water. Held that the offer to divide the sample as required by this section was not a condition precedent to the proceedings being taken against the consignor, as it was not applicable to section 3 of 42 & 43 Vict. c. 30, and that H. should have been convicted. *Rouch* v. *Hall*, L. R. 6 Q. B. D. 17, 50 L. J. M. C. 6, 29 W. R. 304, 44 L. T. N. S. 183, 45 J. P. 220, and 44 J. P. 748.

(2) This and the preceding section are entirely new provisions.

(3) See the circular of 30th September, 1875, amongst the circulars, &c., of Local Government Board, *post*, as to this section; and see the regulations of the Postmaster-General, printed at the end of the circular.

(4) Section 3 of the Sale of Food and Drugs Act Amendment Act, 1879, empowers the officer or inspector or constable to obtain a sample of milk at the place of delivery to submit to the analyst, and section 5 enacts that "any street or open place of public resort shall be held to come within the meaning of section 17 of the principal Act."

(5) The latter part of the section providing for the transmission of the analyst's quarterly report to the Local Government Board is new.

Proceedings against offenders.

20. When the analyst having analysed any article shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence, before any justices in petty sessions assembled having jurisdiction in the place where the article or drug sold was actually delivered to the purchaser, in a summary manner (1).

Every penalty imposed by this Act shall be recovered in England in the manner prescribed by the eleventh and twelfth of Victoria, chapter forty-three. In Ireland such penalties and proceedings shall be recoverable, and may be taken with respect to the police district of Dublin metropolis, subject and according to the provisions of any Act regulating the powers and duties of justices of the peace for such district, or of the police of such district; and with respect to other parts of Ireland, before a justice or justices of the peace sitting in petty sessions, subject and according to the provisions of "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same (2).

Every penalty herein imposed may be reduced or mitigated according to the judgment of the justices.

Certificate of analyst primâ facie evidence for the prosecution, but analyst to be called if required. Defendant and his wife may be examined.

21. At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced, and the defendant may, if he think fit, tender himself and his wife, to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly (3).

Power to justices to have articles of food and drug analysed.

22. The justices before whom any complaint may be made, or the court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion, cause any article of food or drug to be sent to the Commissioners of Inland Revenue (4), who shall thereupon direct the chemical officers of their department at Somerset House to make the analysis, and give a certificate

(1) Section 10 of the Sale of Food and Drugs Act Amendment Act, 1879, provides that "In all prosecutions under the principal Act, and notwithstanding the provisions of section 20 of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonable time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned."

(2) See the corresponding section of the repealed Act (35 & 36 Vict. c. 74, s. 11).

(3) In section 9 of the repealed Act (35 & 36 Vict. c. 74) there was no reservation enabling the defendant to require the analyst to be called as a witness.

R. sold milk to H., which was stated to be purchased for analysis, and the milk was duly divided into parts as required by the statute; and on analysis the certificate of the analyst, after stating the constituents, said the milk was adulterated with 20 per cent. of water. R., being charged with selling adulterated milk, the analyst's certificate was given in evidence, and H. gave no evidence to contradict it, but the magistrate, thinking that the state of the milk might be explained by its standing several hours in a large can, and the best milk at the top ladled out before the purchaser, dismissed the summons. Held, the magistrate was wrong, and as there was no evidence to contradict the certificate of the analyst, he ought to have acted on it, and convicted R.: *Harrison* v. *Richards*, 45 J. P. 552.

(4) See the regulations to be observed in transmitting articles for analysis to the Commissioners of Inland Revenue, printed at end of circular of 30th September, 1875, amongst the circulars, &c., of the Local Government Board, *post*.

Secs. 22–26.

to such justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the justices may by order direct.

Appeal to quarter sessions.

23. Any person who has been convicted of any offence punishable by any Act hereby repealed or by this Act by any justices may appeal in England to the next general or quarter sessions of the peace [which shall be held for the city, county, town, or place wherein such conviction shall have been made, provided that such person enter into a recognizance within three days next after such conviction, with two sufficient sureties, conditioned to try such appeal, and to be forthcoming to abide the judgment and determination of the court at such general or quarter sessions, and to pay such costs as shall be by such court awarded; and the justices before whom such conviction shall be had are hereby empowered and required to take such recognizance; and the court at such general or quarter sessions are hereby required to hear and determine the matter of such appeal, and may award such costs to the party appealing or appealed against as they or he shall think proper (1).]

In Ireland any person who has been convicted of any offence punishable by this Act may appeal to the next court of quarter sessions to be held in the same division of the county where the conviction shall be made by any justice or justices in any petty sessions district, or to the recorder at his next sessions where the conviction shall be made by the divisional justices in the police district of Dublin metropolis, or to the recorder of any corporate or borough town when the conviction shall be made by any justice or justices in such corporate or borough town (unless when any such sessions shall commence within ten days from the date of any such conviction, in which case, if the appellant sees fit, the appeal may be made to the next succeeding sessions to be held for such division or town), and it shall be lawful for such court of quarter sessions or recorder (as the case may be) to decide such appeal, if made in such form and manner and with such notices as are required by the said Petty Sessions Acts respectively hereinbefore mentioned as to appeals against orders made by justices at petty sessions, and all the provisions of the said Petty Sessions Acts respectively as to making appeals and as to executing the orders made on appeal, or the original orders where the appeals shall not be duly prosecuted, shall also apply to any appeal made under this Act.

In any prosecution defendant to prove that he is protected by exception or provision.

24. In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exception or provision contained in this Act, it shall be incumbent upon him to prove the same.

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty.

25. If the defendant in any prosecution under this Act prove to the satisfaction of the justices or court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor, and with a written warranty to that effect (2), that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

No costs except on issues proved against him.

26. Every penalty imposed and recovered under this Act shall be paid in the case of a prosecution by any officer, inspector, or constable of the authority who

Application of penalties.(3)

(1) The part within brackets is repealed by the Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43, s. 4).

(2) In *Rook* v. *Hopley*, L. R. 3 Ex. D. 209, 38 L. T. N. S. 649, 26 W. R. 663, on a prosecution under this Act for selling as lard a substance which was lard adulterated with upwards of 15 per cent. of water, the defendant proved that he sold the substance in the same condition as it was in when he bought it, and that when he purchased it he received an invoice in which it was described as lard, but it was held that the invoice was not a written warranty within this section, so as to discharge the defendant. See also *Harris* v. *May*, L. R. 12 Q. B. D. 97.

(3) There was no special provision for the application of penalties in the repealed Act of 1872.

shall have appointed an analyst or agreed to the acting of an analyst within their district, to such officer, inspector, or constable, and shall be by him paid to the authority for whom he acts, and be applied towards the expenses of executing this Act, any Statute to the contrary notwithstanding; but in the case of any other prosecution the same shall be paid and applied in England according to the law regulating the application of penalties for offences punishable in a summary manner, and in Ireland in the manner directed by the Fines Act, Ireland, 1851, and the Acts amending the same.

Punishment for forging certificate or warranty;

27. Any person who shall forge, or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor and be punishable on conviction by imprisonment for a term of not exceeding two years with hard labour;

for wilful misapplication of warranty;

Every person who shall wilfully apply to an article of food, or a drug, in any proceedings under this Act, a certificate or warranty given in relation to any other article or drug, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

for false warranty;

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds;

for false label.

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding twenty pounds.

Proceedings by indictment and contracts not to be affected.

28. Nothing in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug the subject of such conviction was sold to him as and for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable (1).

Expenses of executing the Act.

Expenses of executing Act.

29. The expenses of executing this Act shall be borne, in the city of London and the liberties thereof, by the consolidated rates raised by the Commissioners of Sewers of the city of London and the liberties thereof, and in the rest of the metropolis by any rates or funds applicable to the purposes of the Act for the better local management of the metropolis (2), and otherwise as regards England, in counties by the county rate, and in boroughs by the borough fund or rate (3);

and as regards Ireland, in counties by the grand jury cess, and in boroughs by the borough fund or rate; all such expenses payable in any county out of grand jury cess shall be paid by the treasurer of such county; and

The grand jury of any such county shall, at any assizes at which it is proved that any such expenses have been incurred or paid without previous application to presentment sessions, present to be raised off and paid by such county the moneys required to defray the same.

(1) This proviso was not introduced into the corresponding section of the repealed Act of 1872 (section 12).

(2) See sections 170, *et seq.*, 18 & 19 Vict. c. 120, as to the rates leviable by the Metropolitan Board of Works.

(3) See section 9 of the Sale of Food and Drugs Act Amendment Act, 1879.

Secs. 30–36.

Special Provisions as to Tea.

Tea to be examined by the Customs on importation.

30. From and after the first day of January one thousand eight hundred and seventy-six all tea imported as merchandise into and landed at any port in Great Britain or Ireland shall be subject to examination by persons to be appointed by the Commissioners of Customs, subject to the approval of the Treasury, for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such inspectors, be taken and with all convenient speed be examined by the analysts to be so appointed; and if upon such analysis the same shall be found to be mixed with other substances or exhausted tea (1), the same shall not be delivered unless with the sanction of the said commissioners, and on such terms and conditions as they shall see fit to direct, either for home consumption or for use as ships stores or for exportation; but if on such inspection and analysis it shall appear that such tea is in the opinion of the analyst unfit for human food, the same shall be forfeited and destroyed or otherwise disposed of in such manner as the said commissioner may direct (2).

Interpretation of Act.

31. Tea to which the term "exhausted" is applied in this Act shall mean and include any tea which has been deprived of its proper quality, strength, or virtue by steeping, infusion, decoction, or other means.

Provision for the liberty of a cinque port.

32. For the purposes of this Act every liberty of a cinque port not comprised within the jurisdiction of a borough shall be part of the county in which it is situated, and subject to the jurisdiction of the justices of such county (3).

33. [*Application of the Act to Scotland.*]

34. [*Interpretation of terms in application of Act to Ireland.*]

Commencement of the Act.

35. This Act shall commence on the first day of October one thousand eight hundred and seventy-five.

Title of the Act.

36. This Act may be cited as "The Sale of Food and Drugs Act, 1875."

(1) For interpretation of "exhausted tea," see section 31.

(2) These special provisions for the protection of tea did not exist in the repealed Act of 1872.

(3) Section 7 of the Sale of Food and Drugs Act Amendment Act, 1879, provides that "Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act."

SCHEDULE.

FORM OF CERTIFICATE.

To*

I, the undersigned, public analyst for the , do hereby certify that I received on the day of , 18 , from† , a sample of , for analysis (which then weighed‡), and have analysed the same, and declare the result of my analysis to be as follows:—

I am of opinion that the same is a sample of genuine

or,

I am of opinion that the said sample contained the parts as under, or the per-centages of foreign ingredients as under.

Observations.§

As witness my hand this day of .

A.B.,

at .

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* Here insert the name of the person submitting the article for analysis.

† Here insert the name of the person delivering the sample.

‡ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

§ Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article portable or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary, or otherwise, and whether the ingredients or materials mixed are or are not injurious to health (1).

In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis (2).

(1) See note to section 12, *ante*. (2) Note (3) section 21, *ante*.

THE

SALE OF FOOD AND DRUGS AMENDMENT ACT, 1879.

42 & 43 VICT. c. 30.

An Act to amend the Sale of Food and Drugs Act, 1875. [21*st July*, 1879].

Secs. 1—5.

38 & 39 Vict. c. 63.

Whereas conflicting decisions have been given in England and in Scotland (1) in regard to the meaning and effect of section six of the Sale of Food and Drugs Act, 1875, in this Act referred to as the principal Act, and it is expedient, in this respect and otherwise, to amend the said Act: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Sale of Food and Drugs Amendment Act, 1879.

In sale of adulterated articles no defence to allege purchase for analysis.

2. In any prosecution under the provisions of the principal Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality (2) of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature or in substance or in quality, was not defective in all three respects.

Officer, inspector, or constable may obtain a sample of milk at the place of delivery to submit to analyst.

3. Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction and at the cost of the local authority appointing such officer, inspector, or constable, or charged with the execution or this Act, may procure at the place of delivery any sample of any milk in course of delivery (3) to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of the principal Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under section thirteen of the principal Act.

Penalty for refusal to give milk for analysis.

4. The seller or consignor or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding ten pounds.

Extension of Act as to sale in streets, &c.

5. Any street or open place of public resort shall be held to come within the meaning of section seventeen of the principal Act.

(1) These are *Hoyle* v. *Hitchman* and *Davidson* v. *McLeod*, cited *ante*, note (5), p. 633.
(2) See notes to s. 6 of the Act of 1875, *ante*, pp. 633, 634.
(3) See *Rouch* v. *Hall*, *ante*, p. 636.

Secs. 6—10.

Reduction allowed to the extent of 25 degrees under proof for brandy, whisky, or rum, and 35 degrees for gin.

6. In determining whether an offence has been committed under section six of the said Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin (1).

Extension of meaning of "county."

7. Every liberty having a separate court of quarter sessions, except a liberty of a cinque port, shall be deemed to be a county within the meaning of the said Act (2).

Quarter sessions boroughs not to contribute to county analyst.

8. The town council of any borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses incurred in the execution of the principal Act in respect of the county within which such borough is situate, and the treasurer of the county shall exclude the expenses so incurred from the account required by section one hundred and seventeen of the Municipal Corporation Act, 1835, to be sent by him to such town council.

5 & 6 W. 4, c. 76.

Provision for boroughs with separate police.

9. The town council of any borough having under any general or local Act of Parliament, or otherwise, a separate police establishment, and being liable to be assessed to the county rate of the county within which the borough is situate, shall be paid by the justices of such county the proportionate amount contributed towards the expenses incurred by the county in the execution of the principal Act by the several parishes and parts of parishes within such borough in respect of the rateable value of the property assessable therein, as ascertained by the valuation lists for the time being in force.

Special provision as to time for proceedings.

10. In all prosecutions under the principal Act, and notwithstanding the provisions of section twenty of the said Act, the summons to appear before the magistrates shall be served upon the person charged with violating the provisions of the said Act within a reasonhble time, and in the case of a perishable article not exceeding twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of the principal Act the seller is rendered liable to prosecution, and particulars of the offence or offences against the said Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than seven days from the day it is served upon the person summoned.

(1) See *Pashler* v. *Stevenitt* and *Webb* v. *Knight*, *ante*, p. 634.
(2) See s. 32 of the Act of 1875, *ante*, p. 640.

ALKALI, ETC., WORKS REGULATION ACT, 1881.

44 & 45 VICT. c. 37.

An Act to consolidate the Alkali Acts, 1863 *and* 1874, *and to make further provision for regulating Alkali and certain other works in which noxious or offensive gases are evolved.* [11*th August,* 1881.]

PRELIMINARY.

Secs. 1—5.

Short title.

1. This Act may be cited as the Alkali, &c., Works Regulation Act, 1881.

Commencement of Act.

2. This Act shall (save as otherwise provided in this Act) come into operation on the first day of January, 1882, which date is hereinafter referred to as the commencement of this Act.

PART I.

Alkali Works and Alkali Waste.

Condensation of muriatic and other acid gases in alkali works.

3. Every alkali work shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination, or from that of some other inspector—

(*a.*) Of the muriatic acid gas evolved in such work, to the extent of ninety-five per centum, and to such an extent that in each cubic foot of air, smoke, or chimney gases, escaping from the works into the atmosphere, there is not contained more than one-fifth part of a grain of muriatic acid.

(*b.*) Of the acid gases of sulphur and nitrogen which are evolved in the process of manufacturing sulphuric acid or sulphates in the work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases, escaping into the chimney or into the atmosphere, does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner of any alkali work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

Best practicable means to be used for preventing discharge of noxious and offensive gases in alkali works.

4. In addition to the condensation of acid gases as aforesaid, the owner of every alkali work shall use the best practicable means for preventing the discharge into the atmosphere of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when discharged, subject to the qualification that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section.

If the owner of any alkali work fails, in the opinion of the court having cognisance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Acid drainage and alkali waste to be kept apart.

5. Every work in which acid is produced or used shall be carried on in such manner that the acid shall not come in contact with alkali waste, or with drainage therefrom, so as to cause a nuisance.

The owner of any work which is carried on in contravention of this section shall

be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

On the request of the owner of any such work as is mentioned in this section the sanitary authority of the district in which such work is situate shall, at the expense of such owner, provide and maintain a drain or channel for carrying off the acid produced in such work into the sea or into any river or watercourse into which such acid can be carried without contravention of the Rivers Pollution Prevention Act, 1876; and the sanitary authority shall for the purpose of providing any such drain or channel have the like powers as they have for providing sewers, whether within or without their district, under the Public Health Act.

39 & 40 Vict. c. 75.

Compensation shall be made to any person for any damage sustained by him by reason of the exercise by a sanitary authority of the powers conferred by this section, and such compensation shall be deemed part of the expenses to be paid by the owner making the request to the sanitary authority under this section.

Deposit or discharge of alkali waste.

6. Alkali waste shall not be deposited or discharged without the best practicable means being used for effectually preventing any nuisance arising therefrom.

Any person who causes or knowingly permits any alkali waste to be deposited or discharged in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Prevention of nuisance from alkali waste already deposited or discharged.

7. Where alkali waste has been deposited or discharged, either before or after the commencement of this Act, and complaint is made to the chief inspector that a nuisance is occasioned thereby, the chief inspector, if satisfied of the existence of the nuisance, and that it is within the power of the owner or occupier of the land to abate it, shall serve a notice on such owner or occupier requiring him to abate the nuisance; and if such owner or occupier fails to use the best practicable and reasonably available means for the abatement thereof he shall be liable to a fine not exceeding twenty pounds, and if he does not proceed to use such means within such time as shall be limited by the court inflicting such fine then he shall be liable to a further penalty of five pounds per day from the expiration of the time so limited.

PART II.

Sulphuric Acid Works and other specified Works.

Condensation of acid gases in sulphuric acid works.

8. Every sulphuric acid work as defined in the schedule to this Act shall be carried on in such manner as to secure the condensation, to the satisfaction of the chief inspector, derived from his own examination or from that of some other inspector, of the acid gases of sulphur and nitrogen which are evolved in the process of the manufacture of sulphuric acid in such work, to such an extent that the total acidity of such gases in each cubic foot of air, smoke, or gases, escaping into the chimney or into the atmosphere does not exceed what is equivalent to four grains of sulphuric anhydride.

The owner of any sulphuric acid work which is carried on in contravention of this section shall be liable to a fine not exceeding, in the case of the first offence, fifty pounds, and in the case of every subsequent offence, one hundred pounds.

Best practicable means to be used for preventing discharge of noxious and offensive gases in scheduled works.

9. The owner of any work specified in the schedule to this Act (hereinafter referred to as a scheduled work) shall use the best practicable means for preventing the discharge into the atmosphere of all noxious gases and of all offensive gases evolved in such work, or for rendering such gases harmless and inoffensive when discharged, subject to the qualification, in the case of sulphuric acid works, that no objection shall be taken under this section by an inspector to any discharge of gas by a chimney or flue, on the basis of the amount of acid gas per cubic foot of air, smoke, or gases, where that amount does not exceed the amount limited by the last preceding section.

Secs. 9—11.

If the owner of any such work fails, in the opinion of the court having cognizance of the matter, to use such means, he shall be liable to a fine not exceeding, in the case of the first offence, twenty pounds, and in the case of every subsequent offence, fifty pounds, with a further sum not exceeding five pounds for every day during which any such subsequent offence has continued.

Provisional Order to prevent discharge of certain gases in salt works.

10. An inspector may from time to time inquire whether, in any works in which the extraction of salt from brine is carried on, hereinafter called salt works, means can be adopted at a reasonable expense for preventing the discharge from the furnaces or chimneys of such works into the atmosphere of sulphurous and muriatic acid gases evolved in such works, or either of such gases, or for rendering such gases, or either of them, harmless or inoffensive when discharged; also whether in any works in which aluminous deposits are treated for the purpose of making cement, hereinafter called cement works, such means as aforesaid can be adopted with respect to the noxious or offensive gases evolved from such works.

Where it appears to the Local Government Board that such means can be adopted at a reasonable expense the Board may from time to time by order require the owners of such works to adopt the best practicable means for the purpose, and may by the order limit the amount or proportion, in the case of salt works, of sulphurous or muriatic acid gas, and in the case of cement works of any noxious or offensive gas, which is to be permitted to escape from such works into the chimney or into the atmosphere, and may also by the order extend to such works such provisions of this Act relating to scheduled works as they see fit.

An order made under this section shall be provisional only and shall not be of any validity until confirmed by Parliament, but when so confirmed shall have full effect, with such modifications as may be made therein by Parliament; and the expression "this Act," when used in this Act, shall be deemed to include an order so confirmed, so far as is consistent with the tenor of that order.

The Board shall take such steps as they may think fit for giving notice to persons interested of the provisions of any order made by them under this section before any Bill for confirming the same is introduced into Parliament.

An order made under this section may impose fines for a breach of its provisions of like amount as any fines imposed by this Act for offences against this Act.

Part III.

(i.) *Registration of Works.*

Registration of works, and stamp duty.

11.—(1.) An alkali work or a work to which Part II. of this Act applies shall not, after the first day of April, 1882, be carried on unless it is certified to be registered.

(2.) The work shall be registered in a register containing the prescribed particulars, and the register shall be conducted and the certificates issued in the prescribed manner.

(3.) The owner of an alkali work or of a work required to be registered shall, in the month of January or February in every year, apply for a certificate of registration in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued, and shall be in force for one year from the first day of April following the said application.

(4.) The owner of an alkali work or of a work required to be registered erected after the commencement of this Act shall, before commencing any manufacture or process in such work, apply for such certificate in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued as soon as may be, and shall be in force until the next first day of April.

There shall be charged in respect of every such certificate, in the case of an alkali work, the duty of five pounds; and in the case of a work required to be registered, not being an alkali work, the duty of three pounds.

(5.) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall within one month after such change be sent by the owner to an inspector, and the register and the certificate shall be altered accordingly in the prescribed manner without charge and without the issue of a new certificate. If such notice is not sent as so required, the work shall not be deemed to be certified to be registered.

(6.) The owner of a work which is carried on in contravention of this section shall be deemed guilty of an offence against this Act, and shall be liable to a fine not exceeding five pounds for every day during which it is so carried on.

Certificate of inspector prior to registration of new works.

12. An alkali work or a scheduled work, erected after the commencement of this Act, or which has been closed for a period of twelve months, shall not be registered under this Act unless the work is furnished with such appliances as at the time of registration appear to the chief inspector after his own examination, or that of an inspector, or in case of difference to the central authority, to be necessary in order to enable the work to be carried on in accordance with such requirements of this Act as for the time being apply to such work.

Supplemental provisions as to duties.

13. The duties charged in respect of a certificate of registration under this Act shall be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connexion with stamp duties, shall apply accordingly; and for the purpose of the said duties the Commissioners of Inland Revenue shall issue stamped forms of certificate, and the Commissioners may issue the same at any time after the passing of this Act.

(ii.) *Inspection.*

Appointment of inspectors.

14. The Local Government Board shall at any time after the passing of this Act, and from time to time, with the approval of the Commissioners of Her Majesty's Treasury as to numbers and salaries or remuneration, appoint such inspectors (under whatever title they from time to time fix) as the Board think necessary for the execution of this Act, and may assign them their duties and award them their salaries or remuneration, and shall constitute a chief inspector, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors.

Notice of the appointment of every such inspector shall be published in the *London Gazette*, and a copy of the *Gazette* shall be evidence of the appointment.

The salaries or remuneration of the inspectors, and such expenses of the execution of this Act as the Commissioners of Her Majesty's Treasury may sanction, shall be paid out of moneys provided by Parliament.

26 & 27 Vict. c. 124. 37 & 38 Vict. c. 43.

The inspector appointed before the commencement of this Act under the Alkali Acts, 1863 and 1874, shall be deemed to be the first chief inspector under this Act, and the sub-inspectors appointed under those Acts before the commencement of this Act shall be deemed to be inspectors appointed under this Act. A person holding the office of chief inspector (other than the person at the commencement of this Act discharging the duties thereof) or inspector shall not be employed in any other work except by or with the sanction of the authority appointing him to such office.

Disqualification of certain persons for inspectors.

15. A person who acts or practices as a land agent, or who is engaged or interested directly or indirectly in any work to which this Act applies, or in any patent for any process or apparatus carried on or used in any such work, or in any process or apparatus connected with the condensation of acid gases, or with the treatment of alkali waste, or with preventing the discharge into the atmosphere or rendering harmless or inoffensive any noxious or offensive gas, or otherwise with any of the matters dealt with by this Act, or who is employed in or about or in connexion with any work to which this Act applies, or in any other chemical work for gain, shall be disqualified to act as an inspector under this Act.

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Secs. 16–20.

Powers of inspectors.

16. For the purpose of the execution of this Act, an inspector may at all reasonable times by day and night, without giving previous notice, but so as not to interrupt the process of the manufacture, enter and inspect any work to which this Act applies, and examine any process causing the evolution of any noxious or offensive gas, and any apparatus for condensing any such gas, or otherwise preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, and may ascertain the quantity of gas discharged into the atmosphere, condensed, or otherwise dealt with; and may enter and inspect any place where alkali waste is treated or deposited, or where any liquid containing acid is likely to come into contact with alkali waste; and generally may inquire into all matters and processes which tend to show compliance or non-compliance with such of the provisions of this Act as are for the time being applicable to the work or place entered, or which seem necessary or proper for the execution of his duties under this Act.

An inspector may, but so as not to interrupt the process of the manufacture, apply any tests and make any experiments he may think proper for the purpose of the execution of his duties under this Act.

Facilities for inspection.

17. The owner of any work to which this Act applies shall, on the demand of the chief inspector, furnish him within a reasonable time with a plan, to be kept secret, of those parts of such work in which any process causing the evolution of any noxious or offensive gas, or any process for the condensation of such gas or preventing the discharge thereof into the atmosphere, or for rendering any such gas harmless or inoffensive when discharged, is carried on.

The owner of every such work and his agents shall render to every inspector all necessary facilities for an entry inspection examination and testing in pursuance of this Act.

Every owner of a work in which such facilities are not afforded to an inspector as are required by this Act, or in which an inspector is obstructed in the execution of his duty under this Act, and every person wilfully obstructing an inspector in the execution of his duty under this Act, shall be deemed guilty of an offence against this Act, and shall be liable to a fine not exceeding ten pounds.

Annual report to Local Government Board.

18. The chief inspector shall, on or before the first day of March in every year, make a report in writing to the Local Government Board of the proceedings of himself and of the other inspectors under this Act, who shall furnish him with a detailed account of the number of inspections of works in their districts, and the recorded escapes of acid gases from such works during the preceding year, and a copy of such report shall be laid before both Houses of Parliament.

Additional inspector on application of sanitary authorities.

19. If any sanitary authority or authorities apply to the central authority for an additional inspector under this Act, and undertake to pay a proportion of his salary or remuneration, not being less than one half, out of any rate or rates leviable by such authority or authorities (which undertaking such authority or authorities are hereby authorised to give and to carry into effect), the Local Government Board may (if they see fit) from time to time, with the sanction of the Commissioners of Her Majesty's Treasury, appoint an additional inspector under this Act, to reside within a convenient distance of the works he is required to inspect; and such inspector shall have the same powers and be subject to the same power of removal and the same regulations and liabilities as other inspectors under this Act.

The proportion of salary or remuneration aforesaid shall be paid at the prescribed time or times into Her Majesty's Exchequer, and in the case of failure on the part of any sanitary authority to pay any sum payable by them in pursuance of this section, the same may be recovered by action in any court of competent jurisdiction.

(iii.) *Special Rules.*

Power of owners of works to make special rules.

20. The owner of an alkali work or of a scheduled work may, with the sanction of the central authority, make, and when made, alter add to and repeal special rules for the guidance of his workmen who are employed in any process causing the evolution of any noxious or offensive gas, or whose duty it is to attend to the apparatus used in the condensation of that gas, or for preventing the discharge

thereof into the atmosphere, or for rendering any such gas harmless and inoffensive when discharged, and may annex fines to any violation of such rules, so that the fine for any offence do not exceed two pounds.

Secs. 20–23.

A printed copy of the special rules in force under this section in any work shall be given by the owner of that work to every person working or employed in or about that work who is affected thereby.

Any fine incurred under this Act in respect of an offence against a special rule may be recovered summarily.

(iv.) *Procedure.*

Provision as to calculation of acid.

21. In calculating the proportion of acid to a cubic foot of air, smoke, or gases, for the purposes of this Act, such air, smoke, or gases, shall be calculated at the temperature of sixty degrees of Fahrenheit's thermometer, and at a barometric pressure of thirty inches.

Recovery of fines for offences against Act in county court.

22. The following regulations are hereby enacted with respect to the recovery of fines for offences other than offences against a special rule:

Every such fine shall be recovered by action in the county court having jurisdiction in the district in which the offence is alleged to have been committed:

The action shall be brought, with the sanction of the central authority, by the chief inspector, or by such other inspector as the Local Government Board may in any particular case direct, within three months after the commission of the offence, and for the purposes of such action the fine shall be deemed to be a debt due to such inspector:

The plaintiff in any action for a fine under this Act shall be presumed to be an inspector authorised under this Act to bring the action, until the contrary is proved by the defendant:

The court may, on the application of either party, appoint a person to take down in writing the evidence of the witnesses, and may award to that person such remuneration as the court thinks just; and the amount so awarded shall be deemed to be costs in the action:

If either party in any action under this Act feels aggrieved by the decision of the court in point of law, or on the merits or in respect of the admission or rejection of any evidence, he may appeal from that decision to the High Court of Justice:

The appeal shall be in the form of a special case to be agreed on by both parties or their solicitors, and if they cannot agree, to be settled by the judge of the county court on the application of the parties or their solicitors:

The court of appeal may draw any inference from the facts stated in the case that a jury might draw from facts stated by witnesses:

Subject to the provisions of this section, all the enactments, rules, and orders relating to proceedings in actions in county courts, and to enforcing judgments in county courts, and appeals from decisions of the county court judges, and to the conditions of such appeals, and to the power of the High Court of Justice, or any division or judge thereof, on such appeals, shall apply to an action for a fine under this Act, and to an appeal from such action, in the same manner as if such action and appeal related to a matter within the ordinary jurisdiction of the court: (1)

Further provisions as to recovery of fines in county court.

23. In any proceeding under this Act in relation to a fine for an offence other than an offence against a special rule—

(*a.*) It shall be sufficient to allege that any work is a work to which this Act applies, without more; and

(*b.*) It shall be sufficient to state the name of the registered or ostensible owner of the work, or the title of the firm by which the employer of persons in such work is usually known.

A person shall not be subject to a fine under this Act for more than one offence in respect of the same work or place in respect of any one day.

Not less than twenty-one days before the hearing of any proceeding against an

(1) Special provisions as to the City of London, Scotland and Ireland are omitted.

Secs. 23–27.

owner to recover a fine under this Act for failing to secure the condensation of any gas to the satisfaction of the chief inspector, or for failing to use the best practicable means as required by this Act, an inspector shall serve on the owner proceeded against a notice in writing stating, as the case requires, either the facts on which such chief inspector founds his opinion, or the means which such owner has failed to use, and the means which, in the chief inspector's opinion, would suffice, and shall produce a copy of such notice before the court having cognisance of the matter.

A person shall not be liable under this Act to an increased fine in respect of a second offence, or in respect of a third or any subsequent offence, unless a fine has been recovered within the preceding twelve months against such person for the first offence, or for the second or other offence, as the case may be.

Application of fines.

24. All fines recovered under this Act, except in respect of offences against a special rule, shall be paid into the receipt of Her Majesty's Exchequer.

Discharge of owner on conviction of actual offender.

25. The owner of a work in which an offence under this Act other than an offence against a special rule has been proved to have been committed shall in every case be deemed to have committed the offence, and shall be liable to pay the fine, unless he prove to the satisfaction of the court before which any proceeding is instituted to recover such fine, that he has used due diligence to comply with and to enforce the execution of this Act, and that the offence in question was committed by some agent servant or workman, whom he shall charge by name as the actual offender, without his knowledge consent or connivance; in which case such agent servant or workman shall be liable to pay the fine, and proceedings may be taken against him for the recovery thereof and of the costs of all proceedings which may be taken either against himself or against the owner under this Act:

Provided that it shall be lawful for the inspector to proceed in the first instance against the person whom he believes to be the actual offender, without first proceeding against the owner, in any case in which it is made to appear to the satisfaction of such inspector that the owner has used all due diligence to comply with and to enforce the execution of this Act, and that the offence has been committed by the person whom he may charge therewith without the knowledge consent or connivance of the owner, and in contravention of his orders.

Service of notices.

26. Any notice summons or other document under this Act, may be in writing or print, or partly in writing and partly in print.

Any notice summons or document required or authorised for the purposes of this Act to be delivered to or served on or sent to the owner of any work, may be served by delivering the same to the owner, or at his residence or works; it may also be served or sent by post by a prepaid letter, and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that it was properly addressed and put into the post; and the same shall be deemed to be properly addressed if addressed to the registered address of an owner, or, when required to be served on or sent to the owner of any works, if addressed to the owner of the works at the works, with the addition of the proper postal address, but without naming the person who is the owner.

Complaint by sanitary authority in cases of nuisance.

27. Where it appears to any sanitary authority, on the written representation of any of their officers, or of any ten inhabitants of their district, that any work (either within or without the district) to which this Act applies is carried on in contravention of this Act, or that any alkali waste is deposited (either within or without the district) in contravention of this Act, and that a nuisance is occasioned by such contravention to any of the inhabitants of their district, such authority may complain to the central authority, who shall make such inquiry into the matters complained of, and after the inquiry may direct such proceedings to be taken by an inspector as they think just.

The sanitary authority complaining shall, if so required by the central authority, pay the expense of any such inquiry, and may pay the same out of the fund or rate applicable to the general expenses of such authority.

The expression "sanitary authority" in this section includes as regards the

metropolis, except the City of London, any vestry or district board elected under the Metropolis Management Act, 1855, also any local board of health, not being an urban sanitary authority within the meaning of the Public Health Act, 1875, and as regards the City of London shall mean the Commissioners of Sewers of the said city.

Secs. 27–31.

18 & 19 Vict. c. 120.
38 & 39 Vict. c. 55.

28. Where a nuisance arising from any noxious or offensive gas or gases is wholly or partially caused by the acts or defaults of several persons, any person injured by such nuisance may proceed against any one or more of such persons, and may recover damages from each person made a defendant in proportion to the extent of the contribution of such defendant to the nuisance, notwithstanding that the act or default of such defendant would not separately have caused a nuisance. This section shall not apply to any defendant who can produce a certificate from the chief inspector that in the works of such defendant the requirements of this Act have been complied with and were complied with when the nuisance arose.

Actions in case of contributory nuisance.

(v.) *Definitions; Repeal; Saving.*

29. In this Act, unless the context otherwise requires—

Interpretation of terms.

"Alkali work" means every work for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved, and for the purpose of this definition the formation of any sulphate in the treatment of copper ores by common salt or other chlorides shall be deemed to be a manufacture of sulphate of soda.

"Noxious or offensive gas" does not include sulphurous acid arising from the combustion of coal.

"Owner" means the lessee, occupier, or any other person carrying on any work to which this Act applies.

"Prescribed" means prescribed from time to time by the Local Government Board, and "the Local Government Board" means the Local Government Board established by the Local Government Board Act, 1871.

34 & 35 Vict. c. 70.

"Central authority" means as regards England the said Local Government Board.

"Sanitary authority" means any local authority entrusted with the execution of the Public Health Act.

"The Public Health Act" means, as regards England, the Public Health Act, 1875.

38 & 39 Vict. c. 55.

"Person" includes a corporation.

30. [Repeal of the Alkali Act, 1863 (26 & 27 Vict. c. 124); the Act to make perpetual the Alkali Act, 1863 (31 & 32 Vict. c. 36); and the Alkali Act, 1874 (37 & 38 Vict. c. 43)].

31. Nothing in this Act shall legalise any act or default that would, but for this Act, be deemed to be a nuisance, or otherwise be contrary to law, or deprive any person of any remedy by action, indictment, or otherwise, to which he would have been entitled if this Act had not passed.

Saving as to general law.

SCHEDULE.

List of Works.

(1.) Sulphuric acid works, that is to say, any works in which the manufacture of sulphuric acid is carried on (not being alkali works within the meaning of the foregoing Act, and not being works in which the manufacture of sulphuric acid is carried on in conjunction with the extraction of copper or other metals from ore):

(2.) Chemical manure works, that is to say, any works in which the manufacture of chemical manure is carried on;

(3.) Gas liquor works, that is to say, any works in which gas liquor is used in any manufacturing process;

(4.) Nitric acid works, that is to say, any works in which the manufacture of nitric acid is carried on;

(5.) Sulphate of ammonia works and muriate of ammonia works, that is to say, any works in which the manufacture of sulphate of ammonia or of muriate of ammonia is carried on; and

(6.) Chlorine works or works in which chlorine, bleaching powder, or bleaching liquor is made.

Secs. 4—8.

travention of any bye-law for the time being in force under this Act in any harbour, the owner and master of such ship, or the owner of such cargo, as the case may be, shall each incur a penalty not exceeding fifty pounds (1) for each day during which such contravention continues; and it shall be lawful for the harbour master, or any other person acting under the orders of the harbour authority of such harbour, to cause such ship or cargo to be removed, at the expense of the owner thereof, to such place as may be in conformity with the said bye-law, and all expenses incurred in such removal may be recovered in the same manner in which penalties are by this Act made recoverable.

Notice by owner or master of ship carrying petroleum.

5. The owner or master of every ship carrying a cargo, any part of which consists of petroleum to which this Act applies, on entering any harbour within the United Kingdom, shall give notice of the nature of such cargo to the harbour authority having jurisdiction over such harbour.

If such notice is not given, the owner and master of such ship shall each incur a penalty not exceeding the sum of five hundred pounds, unless it is shown to the satisfaction of the Court before which the case is tried that neither the owner nor the master knew the nature of the goods to which the proceedings relate, nor could with reasonable diligence have obtained such knowledge.

Label on vessels containing petroleum.

6. Where any petroleum to which this Act applies (2)—

(*a.*) Is kept at any place except during the seven days next after it has been imported; or,

(*b.*) Is sent or conveyed by land or water between any two places in the United Kingdom; or,

(*c.*) Is sold or exposed for sale;

the vessel containing such petroleum shall have attached thereto a label in conspicuous characters, stating the description of the petroleum, with the addition of the words "highly inflammable," and with the addition—

(*a.*) In the case of a vessel kept, of the name and address of the consignee or owner:

(*b.*) In the case of a vessel sent or conveyed, of the name and address of the sender:

(*c.*) In the case of a vessel sold or exposed for sale, of the name and address of the vendor.

All petroleum to which this Act applies which is kept, sent, conveyed, sold, or exposed for sale, in contravention of this section, shall, together with the vessel containing the same, be forfeited, and in addition thereto the person keeping, sending, selling, or exposing for sale the same, shall for each offence be liable to a penalty not exceeding five pounds.

Regulations as to storage of petroleum.

7. Save as hereinafter mentioned, after the passing of this Act, petroleum to which this Act applies shall not be kept, except in pursuance of a license (3) given by such local authority (4) as is in this Act mentioned.

All petroleum kept in contravention of this section shall, together with the vessel containing the same, be forfeited, and in addition thereto, the occupier of the place in which such petroleum is so kept shall be liable to a penalty not exceeding twenty pounds a day for each day during which such petroleum is so kept.

This section shall not apply to any petroleum kept either for private use or for sale, provided the following conditions are complied with:

(1.) That it is kept in separate glass, earthenware, or metal vessels, each of which contains not more than a pint, and is securely stopped:

(2.) That the aggregate amount kept, supposing the whole contents of the vessels to be in bulk, does not exceed three gallons.

Definition of local authority.

8. The following bodies shall respectively be the local authority to grant licenses under this Act in the districts hereinafter mentioned; (that is to say,)

(1.) In the City of London, except as hereafter in this section mentioned, the Court of the Lord Mayor and aldermen of the said city:

(2.) In the metropolis, (that is, in places for the time being within the jurisdiction of the Metropolitan Board of Works under the Metropolis Manage-

(1) See section 15.
(2) See section 3 and foot notes.
(3) See section 9.
(4) See section 8.

ment Act, 1855,) except the City of London, and except as hereafter in this section mentioned, the Metropolitan Board of Works:

(3.) In any borough in England or Ireland, except as hereafter in this section mentioned, the mayor, aldermen, and burgesses acting by the council:

(4.) In any place in England or Ireland, except as hereafter in this section mentioned, within the jurisdiction of any trustees or improvement commissioners appointed under the provisions of any local or general Act of Parliament, and not being a borough or comprising any part of a borough, the trustees or commissioners:

(5.) In any place in England, except as hereafter in this section mentioned, within the jurisdiction of a local board constituted under the Local Government Act, 1858, and not being any of the districts before mentioned or comprising any part of any such district, the local board:

(6.) In any borough in Scotland, except as hereafter in this section mentioned, the town council:

(7.) In any place in Scotland, except as hereafter in this section mentioned, within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act, and not being a borough or comprising any part of a borough, the police commissioners or trustees:

(8.) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority.

(9.) In any place in which there is no local authority as before in this section defined, in England or Ireland, the justices in petty sessions assembled, and in Scotland any two or more justices of the peace for the county sitting as judges in the justice of the peace court.

Mode of granting licenses.

9. Licenses in pursuance of this Act shall be valid if signed by two or more of the persons constituting the local authority, or executed in any other way in which other licenses, if any, granted by such authority are executed. Licenses may be granted for a limited time and may be subject to renewal or not in such manner as the local authority think necessary.

There may be annexed to any such licence such conditions as to the mode of storage, the nature and situation of the premises in which, and the nature of the goods with which petroleum to which this Act applies is to be stored [1], the facilities for the testing of such petroleum from time to time, the mode of carrying such petroleum within the district of the licensing authority, and generally as to the safe keeping of such petroleum as may seem expedient to the local authority.

Any licensee violating any of the conditions of his license shall be deemed to be an unlicensed person. There may be charged in respect of each license five shillings, as the local authority may think fit to charge.

In case of refusal of license the applicant may memorialise Secretary of State or Lord Lieutenant.

10. If on any application for a license under this Act the local authority refuse the license, or grant the same only on conditions with which the applicant is dissatisfied, the local authority shall, if required by the applicant, deliver to him in writing under the hand or hands of one or more of the persons constituting the local authority, a certificate of the grounds on which they refused the license or annexed conditions to the grant thereof.

The applicant, within ten days from the time of the delivery of the certificate, may transmit the same to a Secretary of State if the application is for a license in England or Scotland, and to the Lord Lieutenant if the application is for a license in Ireland, together with a memorial, praying that notwithstanding such refusal the license may be granted, or that the conditions may not be imposed, or may be

[1] In *Jones* v. *Cook*, *ante*, p. 651, it was held that all petroleum proper, whether giving off an inflammable vapour at under 100 degrees or not, was within the Acts, and that therefore the keeping of any petroleum proper, otherwise than for private use, within fifty yards of a dwelling or storehouse, without a license, was prohibited by section 4 of the Act of 1868.

Secs. 10–13.

altered or modified in such manner and to such extent as may be set forth in such memorial.

It shall be lawful for the Secretary of State, or the Lord Lieutenant, if he think fit, on consideration of such memorial and certificate, and, if he think it necessary or desirable after due inquiry and a report by such person as he may appoint for that purpose, to grant the license prayed for, either absolutely or with such conditions as he thinks fit, or to alter or modify the conditions imposed by the local authority; and the license so granted, or altered and modified, as the case may be, when certified under the hand of a Secretary of State, or the Lord Lieutenant, shall be to all intents as valid as if granted by the local authority.

Testing of petroleum by officer of local authority.

11. Any officer authorised by the local authority may purchase any petroleum from any dealer in it, or may, on producing a copy of his appointment, purporting to be certified by the clerk or some member of the local authority, or producing some other sufficient authority, require the dealer to show him every or any place, and all or any of the vessels in which any petroleum in his possession is kept, and to give him samples of such petroleum on payment of the value of such samples.

When the officer has by either of the means aforesaid taken samples of petroleum, he may declare in writing to the dealer that he is about to test the same, or cause the same to be tested, in manner set forth in Schedule I. to this Act ([1]), and it shall be lawful for him to test the same or cause the same to be tested, at any convenient place at such reasonable time as he may appoint, and the dealer or any person appointed by him may be present at the testing, and if it appear to the officer or other person so testing that the petroleum from which such samples have been taken is petroleum to which this Act applies, such officer or other person may certify such fact and the certificate so given shall be receivable as evidence in any proceedings that may be taken against a dealer in petroleum in pursuance of this Act; but it shall be lawful for a dealer proceeded against to give evidence in proof that such certificate is incorrect, and thereupon the court before which any such proceedings may be taken may, if such court think fit, appoint some person skilled in testing petroleum to examine the samples to which such certificate relates, and to declare whether such certificate is correct or incorrect.

Any expenses incurred in testing any petroleum of such dealer in pursuance of this section shall, if such dealer be convicted of keeping, sending, conveying, selling, or exposing for sale, petroleum in contravention of this Act, be deemed to be a portion of the costs of the proceedings against him, and shall be paid by him accordingly. In any other event such expenses shall be paid by the local authority out of any funds for the time being in their hands, and in case the local authority are the justices, out of the county rate.

Penalty for refusing information and obstructing officer.

12. Any dealer who refuses to show to any officer authorised by the local authority every or any place or all or any of the vessels in which petroleum in his possession is kept, or to give him such assistance as he may require for examining the same, or to give to such officer samples of such petroleum on payment of the value of such samples, or who wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, shall incur a penalty not exceeding twenty pounds.

Search for petroleum. See 23 & 24 Vict. c. 139, s. 25.

13. Where any court of summary jurisdiction is satisfied by information on oath that there is reasonable ground to believe that any petroleum to which this Act applies is being kept, sent, conveyed, or exposed for sale within the jurisdiction of such court in contravention of this Act, at any place, whether a building or not, or in any ship or vehicle, such court shall grant a warrant by virtue whereof it shall be lawful for any person named in such warrant to enter the place, ship, or vehicle named in such warrant, and every part thereof, and examine the same and search for petroleum therein, and take samples of any petroleum found therein, and if any petroleum to which this Act applies be found therein, which is kept, sent, conveyed, or exposed for sale, in contravention of this Act, to seize and remove such petroleum, and the vessel containing the same, and to detain such petroleum and

([1]) Section 2 of the Petroleum Act, 1879, provides "Every reference in the Petroleum Act, 1871, to Schedule 1 to that Act shall be construed to refer to Schedule 1 to this Act."

vessel until some court of summary jurisdiction has dedermined whether the same are or not forfeited, the proceedings for which forfeiture shall be commenced forthwith after the seizure. Secs. 13–15.

Any person seizing any petroleum to which this Act applies in pursuance of this section shall not be liable to any suit for detaining the same, or for any loss or damage incurred in respect of such petroleum, otherwise than by any wilful act or neglect while the same is so detained.

If any petroleum to which this Act applies is seized in pursuance of this section in any ship or vehicle, the person seizing the same may use for the purposes of the removal thereof, during twenty-four hours after the seizure, the said ship or vehicle, with the tackle, beasts, and accoutrements belonging thereto, and if he do so shall pay to the owner thereof a reasonable recompense for the use thereof, and the amount of such recompense shall, in case of dispute, be settled by the court of summary jurisdiction before whom proceedings for the forfeiture are taken, and may be recovered in like manner as penalties under this Act may be recovered.

Any person who, by himself or by any one in his employ or acting by his direction or with his consent, refuses or fails to admit into any place occupied by or under the control of such person, any person demanding to enter in pursuance of this section, or in any way obstructs or prevents any person in or from making any such search, examination, or seizure, or taking any such samples as authorised by this section, shall be liable to pay a penalty not exceeding twenty pounds, and to forfeit all petroleum to which this Act applies which is found in his possession or under his control.

Application of Act to other substances.

14. Her Majesty may from time to time make, revoke, and vary orders in council directing this Act or any part thereof to apply to any substance, and this Act, or the part thereof specified in the order shall, during the continuance of the order, apply to such substance, and shall be construed and have effect as if throughout it such substance had been included in the definition of petroleum to which this Act applies, subject to the following qualifications:

(1.) The quantity of any substance to which this Act is directed by order in council to apply, which may be kept without a license, shall be such quantity only as is specified in that behalf in such order, or if no such quantity is specified no quantity may be kept without a license:

(2.) The label on the vessel containing such substance shall be such as may be specified in that behalf in the order.

Summary proceedings for offences, penalties, &c.

15. In England and Ireland all offences and penalties under this Act, and all money and costs directed by this Act to be recovered as penalties, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Acts.

In Scotland all offences and penalties under this Act, and all money and expenses by this Act directed to be recovered as penalties, shall, save as hereinafter provided, be prosecuted and recovered at the instance of the procurator fiscal or of any officer authorised in that behalf by the harbour authority or local authority under the provisions of the Summary Jurisdiction Acts before a court of summary jurisdiction, and all necessary powers and jurisdictions are hereby conferred on such court in Scotland.

Provided as follows:

1. A court of summary jurisdiction shall not impose a penalty exceeding fifty pounds, but any such court may impose that or any less penalty for any one offence, notwithstanding the offence involves a penalty of higher amount.

2. In Scotland any penalty exceeding fifty pounds shall be recovered and enforced in the same manner in which any penalty due to Her Majesty under any Act of Parliament may be recovered and enforced.

3. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners; (that is to say,)

(*a.*) In England, either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of one of the magistrates hereinafter mentioned, sitting alone or with others at some court or other place appointed for the administration of justice; that is to say, the Lord Mayor, or any alderman of the City of London, a

Secs. 15-17.

metropolitan police magistrate, a stipendiary magistrate, or some other officer or officers for the time being empowered by law to do alone or with others any act authorised to be done by more than one justice of the peace:

(*b.*) In Scotland, of two or more justices of the peace sitting as judges in a justice of the peace court, or of one of the magistrates hereinafter mentioned sitting alone or with others at some court or other place appointed for the administration of justice; that is to say, the sheriff of the county or his substitute, or the provost or other magistrate of a royal burgh, or some other officer or officers for the time being empowered by law to do alone or with others any act authorised to be done by more than one justice of the peace:

(*c.*) In Ireland, within the police district of Dublin metropolis, of one of the divisional justices of the police district of Dublin metropolis, sitting at a police court within the said district; and elsewhere, of a stipendiary magistrate, sitting alone or with others, or of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty sessions.

4. [The description of any offence under this Act in the words of such Act shall be sufficient in law.

5. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor (1).]

6. No conviction or order made in pursuance of this Act shall be quashed for want of form or be removed by certiorari or otherwise, either at the instance of the Crown or of any private party, into any superior court. Moreover, no warrant of commitment shall be held void by reason of any defect therein, provided that there is a valid conviction to maintain such warrant, and it is alleged in the warrant that the party has been convicted.

7. All forfeitures may be sold or otherwise disposed of in such manner as the court may direct.

8. In Scotland all penalties imposed under the provisions of this Act by a court of summary jurisdiction may be enforced in default of payment by imprisonment for a term not exceeding three calendar months; and all such penalties recovered and the proceeds of all forfeitures sold under this Act shall be paid to the clerk of the court of summary jurisdiction, and by him accounted for and paid to the persons and for the purposes under stated; (that is to say,)

(*a.*) To the Queen's and Lord Treasurer's Remembrancer, on behalf of Her Majesty, when the court is the sheriff's court:

(*b.*) To the collector of county rates in aid of the general county assessment, when the court is the justice of the peace court:

(*c.*) To the treasurer of the burgh in aid of the funds of the burgh when the court is a burgh court.

9. In Ireland all penalties recovered under the provisions of this Act shall be applied according to the Fines, Ireland, Act, 1851, or any Act amending the same.

Reservation of previous powers with respect to inflammable substances.

16. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local or harbour authority by Act of Parliament, law, or custom, and every local authority and harbour authority may exercise such other powers in the same manner as if this Act had not passed and nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would otherwise be subject in respect of a nuisance.

Repeal of Acts.

17. The Acts mentioned in schedule two to this Act are hereby repealed to the extent in that schedule mentioned.

(1) The words between brackets are repealed by the Summary Jurisdiction Act, 188[illegible] (47 & 48 Vict. c. 43, s. 4).

Provided that such repeal shall not affect any order in council made, or any license granted, under any Act hereby repealed or any liability or penalty incurred in respect of any offence committed before the passing of this Act, or any remedy or proceeding for enforcing such liability or penalty, and every such order, so far as relates to the matters provided for by this Act, and every such license, shall have effect as if it had been made or granted under this Act. Secs. 17, 18.

18. This Act shall continue in force until the first day of October, one thousand eight hundred and seventy two, and no longer [1]. Duration of Act.

SCHEDULES.

Schedule 1.

SCHEDULE ONE.

Directions for testing Petroleum to ascertain the Temperature at which it gives off Inflammable Vapour.

The vessel which is to hold the oil shall be of thin sheet iron; it shall be two inches deep and two inches wide at the opening, tapering slightly towards the bottom; it shall have a flat rim, with a raised edge one quarter of an inch high round the top; it shall be supported by this rim in a tin vessel four inches and a half deep and four and a half inches in diameter; it shall also have a thin wire stretched across the opening, which wire shall be so fixed to the edge of the vessel that it shall be a quarter of an inch above the surface of the flat rim. The thermometer to be used shall have a round bulb about half an inch in diameter, and is to be graduated upon the scale of Fahrenheit, every ten degrees occupying not less than half an inch upon the scale.

The inner vessel shall be filled with the petroleum to be tested, but care must be taken that the liquid does not cover the flat rim. The outer vessel shall be filled with cold, or nearly cold, water; a small flame shall be applied to the bottom of the outer vessel, and the thermometer shall be inserted into the oil so that the bulb shall be immersed about one and a half inches beneath the surface. A screen of pasteboard or wood shall be placed round the apparatus, and shall be of such dimensions as to surround it about two-thirds, and to reach several inches above the level of the vessels.

When heat has been applied to the water until the thermometer has risen to about ninety degrees Fahrenheit, a very small flame shall be quickly passed across the surface of the oil on a level with the wire. If no pale blue flicker or flash is produced, the application of the flame is to be repeated for every rise of two or three degrees in the thermometer. When the flashing point has been noted, the test shall be repeated with a fresh sample of the oil, using cold, or nearly cold, water as before, withdrawing the source of heat from the outer vessel when the temperature approaches that noted in the first experiment, and applying the flame test at every rise of two degrees in the thermometer.

SCHEDULE TWO.

Schedule 2.

Year and Chapter.	Title.	Extent of Repeal.
25 & 26 Vict. c. 66.	An Act for the safe keeping of Petroleum.	The whole Act.
29 & 30 Vict. c. 69.	The Carriage and Deposit of dangerous Goods Act, 1866.	Sections eight and nine.
31 & 32 Vict. c. 56.	The Petroleum Act, 1868 - - -	The whole Act.

[1] This section is repealed by section 6 of the Petroleum Act, 1879, which also provides (section 1) that this Act shall be construed as one with that Act (see *post*, p. 659) and section 4 provides for the continuance of this Act in force until otherwise directed by Parliament.

THE

PETROLEUM ACT, 1879.

ARRANGEMENT OF SECTIONS.

Sections.
1. Short title, and construction of Act.
2. Alteration of test.
3. Verification of test apparatus.
4. Continuance of 34 & 35 Vict. c. 105.
5. Commencement of Act.
6. Repeal of part of 34 & 35 Vict. c. 105.

First Schedule.—Mode of testing petroleum so as to ascertain the temperature at which it will give off inflammable vapour.

Second Schedule.—Act repealed.

THE PETROLEUM ACT, 1879.

42 & 43 VICT. c. 47.

An Act to continue and amend the Petroleum Act, 1871. [11*th August*, 1879.]

Secs. 1—6.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title, and construction of Act.

1. This Act may be cited as the Petroleum Act, 1879.

This Act shall be construed as one with the Petroleum Act, 1871, and together with that Act may be cited as the Petroleum Acts, 1871 and 1879.

34 & 35 Vict. c. 105.

Alteration of test.

2. Whereas by the Petroleum Act, 1871, it is enacted that the term "petroleum to which this Act applies" means such of the petroleum defined by that Act as, when tested in manner set forth in Schedule One to that Act, gives off an inflammable vapour at a temperature of less than one hundred degrees of Fahrenheit's thermometer, and it is expedient to alter the said test: Be it therefore enacted that—

34 & 35 Vict. c. 105.

34 & 35 Vict. c. 105.

In the Petroleum Act, 1871, the term "petroleum to which this Act applies" shall mean such of the petroleum defined by section three of that Act as, when tested in manner set forth in Schedule One to this Act, gives off an inflammable vapour at a temperature of less than seventy-three degrees of Fahrenheit's thermometer (1).

34 & 35 Vict. c. 105.

Every reference in the Petroleum Act, 1871, to Schedule One to that Act shall be construed to refer to Schedule One to this Act.

Verification of test apparatus.

3. A model of the apparatus for testing petroleum, as described in Schedule One to this Act, shall be deposited with the Board of Trade, and the Board of Trade shall, on payment of such fee, not exceeding five shillings, as they from time to time prescribe, cause to be compared with such model and verified every apparatus constructed in accordance with Schedule One to this Act which is submitted to them for the purpose, and if the same is found correct shall stamp the same with a mark approved of by the Board and notified in the *London Gazette*.

An apparatus for testing petroleum purporting to be stamped with the said mark shall, until the contrary is proved, be deemed to have been verified by the Board of Trade.

All fees under this section shall be paid into the Exchequer.

Continuance of 34 & 35 Vict. c. 105.

4. The Petroleum Act, 1871, shall continue in force until otherwise directed by Parliament.

Commencement of Act.

5. This Act shall come into operation on the thirty-first day of December one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Repeal of part of 34 & 35 Vict. c. 105.

6. The Petroleum Act, 1871, shall be repealed after the commencement of this Act to the extent in the third column of the Second Schedule to this Act mentioned.

34 & 35 Vict. c. 105.

Provided that any sample of petroleum taken before the commencement of this Act shall be tested in manner set forth in Schedule One to the Petroleum Act, 1871, and any offence committed before the commencement of this Act shall be prosecuted, and any investigation, legal proceeding, or remedy in relation to such offence, or to any act done before the commencement of this Act, shall be instituted, carried on, and have effect as if the provisions of this Act, other than those continuing the Petroleum Act, 1871, had not been passed.

34 & 35 Vict. c. 105.

34 & 35 Vict. c. 105.

(1) See section 3 of the Petroleum Act, 1871, *ante*.

Schedule 1.

SCHEDULES.

FIRST SCHEDULE.

Mode of testing Petroleum so as to ascertain the Temperature at which it will give off Inflammable Vapour.

Specification of the Test Apparatus.

The following is a description of the details of the apparatus:

The oil cup consists of a cylindrical vessel 2″ diameter, $2\frac{2}{10}$″ height (internal), with outward projecting rim $\frac{5}{10}$″ wide, $\frac{3}{8}$″ from the top, and $1\frac{7}{8}$″ from the bottom of the cup. It is made of gun metal or brass (17 B.W.G.) tinned inside. A bracket, consisting of a short stout piece of wire bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$″. The cup is provided with a close-fitting overlapping cover made of brass (22 B.W.G.) which carries the thermometer and test lamp. The latter is suspended from two supports from the side by means of trunnions upon which it may be made to oscillate, it is provided with a spout, the mouth of which is one-sixteenth of an inch in diameter. The socket which is to hold the thermometer is fixed at such an angle and its length is so adjusted that the bulb of the thermometer when inserted to its full depth shall be $1\frac{1}{2}$″ below the centre of the lid.

The cover is provided with three square holes, one in the centre, $\frac{5}{10}$″ by $\frac{4}{10}$″, and two smaller ones, $\frac{3}{10}$″ by $\frac{2}{10}$″, close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front and in line with the mouth of the lamp, is fixed a white bead, the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B.W.G.), an inner one of 3″ diameter and $2\frac{1}{2}$″ height, and an outer one of $5\frac{1}{2}$″ diameter and $5\frac{3}{4}$″ height; they are soldered to a circular copper plate (20 B.W.G.) perforated in the centre, which forms the top of the bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$″; that is, its diameter is about $\frac{6}{8}$″ greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite, to avoid metallic contact between the bath and the oil cup. The exact distance between the sides and bottom of the bath and of the oil lamp is one-half of an inch. A split socket similar to that on the cover of the oil cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B.W.G.) flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$″. One of the three legs of the stand serves as support for the spirit lamp attached to it by means of a small swing bracket. The distance of the wick holder from the bottom of the bath is 1″.

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is

marked on an ivory back fastened to the tube in the usual way. It is fitted with a metal collar, fitting the socket, and the part of the tube below the scale should have a length of about 3½" measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb 2¼". Schedule 1.

NOTE.—A model apparatus is deposited at the Weights and Measures Department of the Board of Trade.

DIRECTIONS FOR APPLYING THE FLASHING TEST (1).

1. The test apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test lamp is prepared for use by fitting it with a piece of flat plaited candle wick, and filling it with colza or rape oil up to the lower edge of the opening of the spout or wick tube. The lamp is trimmed so that when lighted it gives a flame of about 0·15 of an inch diameter, and this size of flame which is represented by the projecting white bead on the cover of the oil cup is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and if it exceeds 65° the samples to be tested should be cooled down (to about 60°) by immersing the bottles containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is placed into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test lamp is then placed in position upon the lid of the cup, the lead line or pendulum, which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When

(1) *Beck* v. *Stringer*, *ante*, p. 651, decided that whether the test had been properly applied or not was a question in the discretion of the magistrates, and the Court would not interfere.

Schedule 1. the temperature has reached about 66° the operation of testing is to be commenced, the tast-flame being applied once for every rise of one degree, in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test apparatus to determine the flashing points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water, to a depth of 1½ inches, and the heating vessel or water bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

Schedule 2.

SECOND SCHEDULE.

ACT REPEALED.

Year and Chapter.	Title.	Extent of repeal.
34 & 35 Vict. c. 105.	The Petroleum Act, 1871.	Section three, from "and the term petroleum to which this Act applies" inclusive to the end of the section. Section eighteen.

THE

PETROLEUM (HAWKERS) ACT, 1881.

44 & 45 Vict. c. 67.

An Act to regulate the hawking of Petroleum and other substances of a like nature.
[27*th August*, 1881.]

Secs. 1, 2.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power to hawk petroleum. 34 & 35 Vict. c. 105.

1. Any person who is licensed in pursuance of the Petroleum Act, 1871, to keep petroleum to which that Act applies may, subject to the enactments for the time being in force with respect to hawkers and pedlars, hawk such petroleum by himself or his servants.

Regulations for hawking petroleum.

2. With respect to the hawking of petroleum to which the Petroleum Act, 1871, applies, the following regulations shall be observed:

(1.) The amount of petroleum conveyed at one time in any one carriage shall not exceed twenty gallons:

(2.) The petroleum shall be conveyed in a closed vessel so constructed as to be free from leakage:

(3.) The carriage in which the vessels containing the petroleum are conveyed shall be so ventilated as to prevent any evaporation from the petroleum mixing with the air in or about the carriage in such proportion as to produce or be liable to produce an explosive mixture:

(4.) Any fire or light or any article of an explosive or highly inflammable nature shall not be brought into or dangerously near to the carriage in which the vessels containing the petroleum are conveyed:

(5.) The carriage in which the vessels containing the petroleum are conveyed shall be so constructed or fitted that the petroleum cannot escape therefrom in the form of liquid, whether ignited or otherwise:

(6.) Proper care shall be taken to prevent any petroleum escaping into any part of a house or building, or of the curtilage thereof, or into a drain or sewer:

(7.) The petroleum shall be stored in some premises licensed for keeping of petroleum and in accordance with the license for such premises both every night and also when the petroleum is not in the course of being hawked:

(8.) All due precautions shall be taken for the prevention of accidents by fire or explosion, and for preventing unauthorised persons having access to the vessels containing the petroleum, and every person concerned in hawking the petroleum shall abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of such hawking:

(9.) No article or substance of an explosive or inflammable character other than petroleum, nor any article liable to cause or communicate fire or explosion, shall be in the carriage while such carriage is being used for the purpose of hawking petroleum:

Secs. 2—7.

In the event of any contravention of this section with reference to any petroleum, the petroleum, together with the vessels containing and the carriage conveying the same, shall be liable to be forfeited, and in addition thereto the licensee by whom or by whose servants the petroleum was being hawked shall be liable on summary conviction to a penalty not exceeding twenty pounds.

Provided that—

(1.) When some servant of the licensee or other person has in fact committed the offence, such servant or other person shall be liable to the same penalty as if he were the licensee:

(2.) Where the licensee is charged with a contravention of this section, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge, and if the licensee proves to the satisfaction of the Court that he had used due dilligence to enforce the execution of this section, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the licensee shall be exempt trom any penalty.

Any petroleum other than that to which the Petroleum Act, 1871, applies while in any carriage used for the hawking of petroleum to which the Petroleum Act, 1871, applies, shall for the purposes of this section be deemed to be petroleum to which the Petroleum Act, 1871, applies.

Modification of conditions of license under 34 & 35 Vict. c. 105.

3. Any conditions annexed to a license granted in pursuance of the Petroleum Act, 1871, either before or after the passing of this Act, shall, so far as they are inconsistent with this Act, be void, but save as aforesaid nothing in this Act shall affect the application to a licensee of the provisions of the Petroleum Act, 1871, or of any license granted thereunder.

Power of constable as to prevention of offences.

4. Where a constable or any officer authorised by the local authority has reasonable cause to believe that a contravention of this Act is being committed in relation to any petroleum, he may seize and detain such petroleum and the vessels and carriage containing the same, until some court of summary jurisdiction has determined whether there was or not a contravention of this Act, and section thirteen of the Petroleum Act, 1871, shall apply to such constable and officer as if he were the person named in the warrant mentioned in that section, and as if the seizure were a seizure in pursuance of that section.

Saving of rights of municipal boroughs.

5. Nothing in this Act contained shall extend to authorise the hawking of petroleum within the limits of any municipal borough in which, by any lawful authority, such hawking shall have been or may hereafter be forbidden.

Definitions.

6. For the purposes of this Act—

The expression "carriage" includes any carriage, waggon, cart, truck, vehicle, or other means of conveyance by land, in whatever manner the same may be drawn or propelled; and

A person shall be deemed for the purposes of this Act to hawk petroleum if by himself or his servants he goes about carrying petroleum to sell, whether going from town to town or to other men's houses, or selling it in the streets of the place of his residence or otherwise, and whether with or without any horse or other beast bearing or drawing burden.

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34 & 35 Vict. c. 105.
42 & 43 Vict. c. 47.

7. This Act may be cited as the Petroleum (Hawkers) Act, 1881.

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THE

EXPLOSIVES ACT, 1875.

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THE EXPLOSIVES ACT, 1875.

38 VICT. c. 17.

An Act to amend the Law with respect to manufacturing, keeping, selling, carrying, and importing Gunpowder, Nitro-glycerine, and other explosive substances.
[14*th June*, 1875.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Secs. 1—4.

Preliminary.

Short title.

1. This Act may be cited as the Explosives Act, 1875.

Commencement of Act.

2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-six, in this Act referred to as the commencement of this Act; but any Order in Council, order (1), general rules, and bye-laws, and any appointment to an office, may be made under this Act at any time after the passing thereof, but shall not take effect until the commencement of this Act.

Substances to which this Act applies.

3. This Act shall apply to gunpowder and other explosives as defined by this section.

The term "explosive" in this Act (2)—

(1.) Means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and

(2.) Includes fog-signals (3), fireworks, fuzes, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

PART I.

Law relating to Gunpowder.

General Law as to Manufacture and Keeping of Gunpowder.

Gunpowder to be manufactured only at factory lawfully existing or licensed under this Act.

4. The manufacture of gunpowder shall not, nor shall any process of such manufacture, be carried on except at a factory for gunpowder either lawfully existing (4) or licensed for the same under this Act.

Provided that nothing in this section shall apply to the making of a small quantity of gunpowder for the purpose of chemical experiment and not for practical use or for sale.

(1) For Orders in Council and orders of Secretary of State under this Act, see Appendix to the Guide Book to the Explosives Act, 1875, by Major Majendie, her Majesty's inspector of explosives.

(2) See definition in Explosive Substances Act, 1883, section 9, *post*.

(3) See *Bliss* v. *Lilley*, 3 B. & S. 128, 32 L. J. M. C. 3, 7 L. T. N. S. 319, 9 Jur. N. S. 410. Held, by Wightman, J., that fog signals came within the term fireworks.

(4) Section 108, *post*, provides "the expression 'existing' means existing at the passing of this Act."

Secs. 4—6.

If any person manufactures gunpowder or carries on any process of such manufacture at any place at which he is not allowed by this section so to do, he shall be deemed to manufacture gunpowder at an unauthorised place.

Where gunpowder is manufactured at an unauthorised place—

1. All or any part of the gunpowder or the ingredients of gunpowder which may be found either in or about such place or in the possession or under the control of any person convicted under this section, may be forfeited; and
2. The person so manufacturing shall be liable to a penalty [1] not exceeding one hundred pounds a day for every day during which he so manufactures.

Gunpowder (except for private use) to be kept only in existing or new magazine or store, or in registered premises.

5. Gunpowder shall not be kept at any place except as follows; that is to say,—

(1.) Except in the factory (either lawfully existing or licensed for the same under this Act) in which it is manufactured; or

(2.) Except in a magazine or store for gunpowder either lawfully existing or licensed under this Act for keeping gunpowder; or

(3.) Except in premises registered under this Act for keeping gunpowder.

Provided that this section shall not apply—

(1.) To a person keeping for his private use and not for sale gunpowder to an amount not exceeding on the same premises thirty pounds; or

(2.) To the keeping of any gunpowder by a carrier or other person for the purpose of conveyance, when the same is being conveyed or kept in accordance with the provisions of this Act with respect to the conveyance of gunpowder.

Any gunpowder kept in any place other than as above in this section mentioned shall be deemed to be kept in an unauthorised place.

Where any gunpowder is kept in an unauthorised place—

(1.) All or any part of the gunpowder found in such place may be forfeited; and

(2.) The occupier of such place, and also the owner of, or other person guilty of keeping the gunpowder, shall each be liable to a penalty not exceeding two shillings for every pound of gunpowder so kept.

Licensing of Factories and Magazines for Gunpowder.

Application for license for new factory or magazine.

6. A new factory or magazine for gunpowder shall not be established except on the site and in the manner specified in a license for the same granted under this Act.

An applicant for such a license shall submit to the Secretary of State the draft of a license accompanied by a plan (drawn to scale) of the proposed factory or magazine, and the site thereof (which plan shall be deemed to form part of and to be in this Act included in the expression "the license").

The draft license shall contain the terms which the applicant proposes to have inserted in the license, and shall specify such of the following matters as are applicable; namely,

(*a.*) The boundaries of the land forming the site of the factory or magazine and either any belt of land surrounding the site which is to be kept clear, and the buildings and works from which it is to be kept clear, or the distances to be maintained between the factory or magazine, or any part thereof, and other buildings and works; and

(*b.*) The situation, character, and construction of all the mounds, buildings, and works on or connected with the factory or magazine, and the distances thereof from each other; and

(*c.*) The nature of the processes to be carried on in the factory and in each part thereof, and the place at which each process of the manufacture, and each description of work connected with the factory or magazine, is to be carried on, and the places in the factory or magazine at which gun-

[1] See sections 91, *et seq.*, as to the recovery of penalties.

powder and any ingredients of gunpowder, and any articles liable to spontaneous ignition, or inflammable or otherwise dangerous, are to be kept; and

(*d.*) The amount of gunpowder and of ingredients thereof wholly or partly mixed to be allowed at the same time in any building or machine or any process of the manufacture or within a limited distance from such building or machine, having regard to the situation and construction of such building, and to the distance thereof from any other building or any works; and

(*e.*) The situation, in the case of a factory, of each factory magazine, and in the case of another magazine, of each building forming part of such magazine in which gunpowder is to be kept, and the maximum amount of gunpowder to be kept in each factory magazine, and in each such building as aforesaid; and

(*f.*) The maximum number of persons to be employed in each building in the factory; and

(*g.*) Any special terms which the applicant may propose by reason of any special circumstances arising from the locality, the situation or construction of any buildings or works, or the nature of any process, or otherwise.

The Secretary of State, after examination of the proposal, may reject the application altogether or may approve of the draft license, with or without modification or addition, and grant to the applicant permission to apply to the local authority for their assent to the establishment of the factory or magazine on the proposed site.

Application for assent of local authority to site of new factory or magazine.

7. The local authority, upon application being made for their assent to the establishment of a new factory or magazine on the proposed site, shall cause notice to be published by the applicant in manner directed by this Act of the application and of the time and place at which they will be prepared to hear the applicant, and any persons objecting to such establishment who have not less than seven clear days before the day of hearing sent to the clerk of the local authority and to the applicant notice of their intention to appear and object, with their name, address, and calling, and a short statement of the grounds of their objection.

Upon the hearing of the application or any adjournment thereof, the local authority may dissent altogether from the establishment of such new factory or magazine on the proposed site, or assent thereto, either absolutely or on any conditions requiring additional restrictions or precautions.

Where the site of the proposed factory or magazine is situate within or within one mile of the limits of the jurisdiction of any urban sanitary authority, or of any harbour authority, the applicant shall serve on such authority, if they are not the local authority, notice of the application and of the time and place of hearing fixed by the local authority.

The said notices shall be published and served by the applicant not less than one month before the hearing.

The local authority shall fix the time and place of hearing as soon as practicable after application made to them, and the time so fixed shall be as soon as practicable after the expiration of the said month from the publication and service of the notices by the applicant, and their final decision shall be given as soon as practicable after the expiration of the said month.

The place so fixed shall be situate within the jurisdiction of the local authority, or within a convenient distance of the limits of that jurisdiction.

The costs of any objections which the local authority may deem to be frivolous shall be ascertained by an order made by the local authority, and shall be a debt due from the objector to the applicant, of which such order shall be conclusive evidence.

Where the site of the proposed factory or magazine is situate partly within the jurisdiction of one local authority and partly within the jurisdiction of another, the assent of both local authorities shall be applied for in manner provided by this Act.

Grant and confirmation of license.

8. If on the hearing of the application for the establishment of a factory or magazine the local authority assent thereto either absolutely or on conditions

Secs. 8—10.

submitted to by the applicant, the applicant shall be entitled to the license applied for in accordance with the draft approved by the Secretary of State, with the addition (if the assent was on conditions) of the additional restrictions and precautions required by those conditions.

If the local authority assent on any conditions not submitted to by the applicant, or dissent, the applicant may appeal to the Secretary of State, giving notice of such appeal to the local authority, and requiring them to state in writing their reasons for such conditions or dissent; and the Secretary of State, after considering the reasons (if any) so stated, and after such inquiry, local or other, as he may think necessary, may if the local authority dissented, refuse the license, or may in either case grant the license applied for in accordance with the draft license either as previously approved by him, or with such modifications and additions as he may consider required to meet the reasons (if any) so stated by the local authority.

The Secretary of State, when satisfied that the factory or magazine is sufficiently completed according to the license to justify the use thereof, shall confirm the license, but until so confirmed the license shall not come into force.

The land forming the site bounded as described in the license shall, with every mound, building, and work thereon for whatever purpose, be deemed, for the purposes of this Act, to be the factory or magazine referred to in the license.

Regulation of Factories and Magazines for Gunpowder.

Regulation of factories and magazines for gunpowder.

9. In every gunpowder factory and magazine—

(1.) The factory or magazine, or any part thereof, shall not be used for any purpose not in accordance with the license; and

(2.) The terms of the license shall be duly observed, and the manufacture or keeping or any process in or work connected with the manufacture or keeping of gunpowder shall not be carried on except in accordance with those terms; and

(3.) The factory or magazine and every part thereof shall be maintained in accordance with the license; and any material alteration in the factory or magazine by enlarging or adding to the site, or by externally enlarging or adding to any building, or by altering any mound otherwise than by enlargement, or by making any new work, shall not be made except in pursuance of an amending license granted under this Act.

In the event of any breach (by any act or default) of this section in any factory or magazine,

(*a.*) All or any part of the gunpowder or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and

(*b.*) The occupier shall be liable to a penalty not exceeding in the case of the first offence fifty pounds, and in the case of a second or any subsequent offence one hundred pounds, and in addition fifty pounds for every day during which such breach continues.

The occupier of a factory shall not be deemed guilty of a breach of this section for using in a case of emergency, or temporarily, one building or part of a building in which any process of the manufacture is, under the terms of the license, carried on, for another process of the manufacture, if he do not carry on in such building or part more than one process at the same time, and if the quantity of gunpowder or ingredients thereof in such building or part do not exceed the quantity allowed to be therein, or any less quantity allowed to be in the building or part of a building in which such other process is usually carried on; and if upon such use being continued after the lapse of twenty-eight days from the first beginning of such use he send notice of such use to a Government inspector, and the Government inspector do not require the discontinuance of such use.

General rules for factories and magazines.

10. In every gunpowder factory and magazine the following general rules shall be observed:

(1.) In a factory every factory magazine, and in any other magazine every building in which gunpowder is kept, shall be used only for the keeping of

gunpowder, and receptacles for or tools or implements for work connected with the keeping of such gunpowder; and

(2.) The interior of every building in which any process of the manufacture is carried on or in which gunpowder or any ingredients thereof, either mixed or partially mixed, are kept, or in the course of manufacture are liable to be (in this Act referred to as a danger building), and the benches, shelves, and fittings in such building (other than machinery), shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel in such manner, and the detaching of any grit, iron, steel, or similar substance in such manner, as to come into contact with the gunpowder or ingredients thereof in such building, and such interior, benches, shelves, and fittings shall, so far as is reasonably practicable, be kept free from grit and otherwise clean; and

(3.) Every factory magazine and expense magazine in a factory, and every danger building in a magazine, shall have attached thereto a sufficient lightning conductor, unless, by reason of the construction by excavation or the position of such magazine or building, or otherwise, the Secretary of State considers a conductor unnecessary, and every danger building in a factory shall, if so required by the Secretary of State, have attached thereto a sufficient lightning conductor; and

(4.) Charcoal, whether ground or otherwise, and oiled cotton, oiled rags, and oiled waste, and any articles whatever liable to spontaneous ignition, shall not be taken into any danger building, except for the purpose of immediate supply and work or immediate use in such building, and upon the cessation of such work or use shall be forthwith removed; and

(5.) Before repairs are done to or in any room in or other part of a danger building, that room or part shall, so far as practicable, be cleaned by the removal of all gunpowder, and wholly or partly mixed ingredients thereof, and the thorough washing out of such room or part; and such room or part of the building after being so cleaned shall not be deemed to be a danger building within the meaning of these rules until gunpowder or the wholly or partly mixed ingredients thereof are again taken into it; and

(6.) There shall be constantly kept affixed in every danger building, either outside or inside, in such manner as to be easily read, a statement of the quantities of gunpowder or ingredients allowed to be in the building, and a copy of these rules, and of any other part of this Act required by the Secretary of State to be affixed, and of such part of the license and special rules made under this Act as apply to the building; and with the addition in a factory of the name of the building, or words indicating the purpose for which it is used; and

(7.) All tools and implements used in any repairs to or in a danger building shall be made only of wood or copper or brass or some soft metal or material, or shall be covered with some safe and suitable material; and

(8.) Due provision shall be made, by the use of suitable working clothes, without pockets, suitable shoes, searching, and otherwise, or by some of such means, for preventing the introduction into any danger building of fire, lucifer matches, or any substance or article likely to cause explosion or fire, and for preventing the introduction of any iron, steel, or grit into any part of a danger building where it would be likely to come into contact with gunpowder or the wholly or partly mixed ingredients thereof; but this rule shall not prevent the introduction of an artificial light of such construction, position, or character as not to cause any danger of fire or explosion; and

(9.) No person shall smoke in any part of the factory or magazine, except in such part (if any) as may be allowed by the special rules; and

(10.) Any carriage, boat, or other receptacle in which gunpowder, or the wholly or partly mixed ingredients thereof, are conveyed from one building to

Secs. 10–12.

another in a factory or magazine, or from any such building to any place outside of such factory or magazine, shall be constructed without any exposed iron or steel in the interior thereof, and shall contain only the gunpowder and ingredients, and shall be closed or otherwise properly covered over; and the gunpowder and ingredients shall be so conveyed with all due diligence, and with such precautions and in such manner as will sufficiently guard against any accidental ignition; and

(11.) A person under the age of sixteen years shall not be employed in or enter any danger building, except in the presence and under the supervision of some grown-up person; and

(12.) In a factory the ingredients in course of manufacture into gunpowder shall be removed with all due diligence from each working building so soon as the process connected with those ingredients which is carried on in such building is completed, and all finished gunpowder shall with all due diligence either be removed to a factory magazine, or sent away immediately from the factory, and such ingredients and gunpowder shall be loaded and unloaded with all due diligence; and

(13.) In a factory all ingredients to be made or mixed into gunpowder shall, before being so made or mixed, be carefully sifted, for the purpose of removing therefrom, so far as practicable, all dangerous foreign matter.

The Secretary of State may, from time to time, by order, make, and when made rescind and alter, such modifications in the foregoing general rules as may appear to him to be necessary for adapting the same to floating magazines, and such modifications shall have effect as if they were contained in this section.

In the event of any breach (by any act or default) of the general rules in any factory or magazine—

(*a.*) All or any part of the gunpowder or ingredients thereof in respect to which, or being in any building or machine in respect to which, the offence was committed, may be forfeited; and

(*b.*) The occupier shall be liable to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues.

Special rules for regulation of workmen in factory or magazine.

11. Every occupier of a gunpowder factory or magazine shall, with the sanction of the Secretary of State, make special rules for the regulation of the persons managing or employed in or about such factory or magazine, with a view to secure the observance of this Act therein, and the safety and proper discipline of the said persons and the safety of the public.

There may be annexed to any breach of special rules made in pursuance of this section such penalties, not exceeding forty shillings for each offence, as may be deemed just.

The occupier may, and if required by the Secretary of State shall, with the sanction of the Secretary of State, repeal, alter, or add to any rules made in pursuance of this section.

If an occupier is required by the Secretary of State to make, repeal, alter, or add to any rules under this section, and fail within three months after such requisition to comply therewith to the satisfaction of the Secretary of State, the Secretary of State may make, repeal, alter, or add to the special rules, and anything so done by the Secretary of State shall have effect as if done by the occupier with the sanction of the Secretary of State.

If the occupier feel aggrieved by any such requisition, or by anything so done by the Secretary of State, he may, after receiving such requisition or notice of the same being so done, require the matter to be referred to arbitration in manner provided by this Act.

Supplemental as to Factories and Magazines for Gunpowder.

Alteration of terms of license and enlargement of factory or magazine.

12. Where the occupier of any gunpowder factory or magazine desires that any alteration should be made in the terms of his license, or any material alteration made in the factory or magazine by enlarging or adding to the site or by externally enlarging or adding to any building, or by altering any mound otherwise than

by enlargement, or by making any new work, he may apply for an amending license.

If he satisfy the Secretary of State that the alteration may be properly permitted, having regard to the safety of the persons employed in the factory or magazine, and will not materially either increase the danger to the public from fire or explosion, or diminish the distance of any danger building in the factory or magazine from any building or work outside and in the neighbourhood of the factory or magazine, or increase the amount of gunpowder allowed to be kept in the factory magazine, or in any building in the magazine, the Secretary of State may grant the amending license of his own authority, but save as aforesaid, the provisions of this Act with respect to the application for and grant of a new license shall apply to such amending license.

Devolution and determination of license.

13. A gunpowder factory or magazine license shall not be avoided by any change in the occupier of the factory or magazine; but notice of the name, address, and calling of the new occupier shall be sent to the Secretary of State within three months after the change, and in default such new occupier shall be liable to a penalty not exceeding twenty shillings for every week during which such default continues.

A factory or magazine license shall be determined by a discontinuance of the business carried on in pursuance of any such license if such discontinuance continues for a period of two years or more, or if the factory or magazine is used for any purpose not authorised by the license:

Provided that if the occupier sends to the Secretary of State, and publishes in manner directed by the Secretary of State, a notice to the effect that the right to the factory or magazine license is not intended to be surrendered, the license shall not be determined until after the expiration of five years after the first discontinuance of the business, whether the factory or magazine has or has not been used for any purpose not authorised by the license.

Application of Act to existing Factories and Magazines for Gunpowder.

Continuing certificate for existing factories and magazines.

14. A factory or magazine for gunpowder used at the time of the passing of this Act shall not be deemed to be a lawfully existing factory or magazine within the meaning of this Act unless the occupier thereof apply for and obtain in manner provided by this Act a certificate (in this Act referred to as a continuing certificate) in respect of such factory or magazine.

The occupier desirous of obtaining such certificate shall, before the expiration of three months after the commencement of this Act, send to the Secretary of State an application for such certificate, stating his name and address, and calling, and the situation of his factory or magazine, and accompanied with such particulars respecting the factory or magazine and the site thereof, and the mounds, buildings, and works thereon or connected therewith, and such copies of any plans in the possession of the occupier, as the Secretary of State may deem necessary for enabling him to make out the certificate.

The Secretary of State upon receiving such application shall grant the continuing certificate for the factory or magazine to which the application relates, and shall insert therein, by reference to a plan (which shall be deemed part of the certificate) or otherwise, such particulars as he may consider sufficient to identify the factory or magazine and indicate the site and all the existing mounds, buildings, and works thereon or connected therewith: the plan so referred to may be either the plan sent by the occupier or such other plan as the Secretary of State may cause to be made for the purpose.

The continuing certificate shall specify the maximum amount of gunpowder to be kept if the certificate is for a factory in each factory magazine, or in all the factory magazines of the factory, and if for a magazine in each building in the magazine, or in all the buildings of the magazine, and the amount so specified, where the maximum amount so to be kept is at the passing of this Act limited by any Act or by license or otherwise, shall be that amount, and where there is no such limitation, shall be the maximum amount which the factory magazine, or all the factory magazines of the factory, or the building or all the buildings of the

Secs. 14–16. magazine, was or were capable of holding on the first day of January, one thousand eight hundred and seventy-five.

The regulations in Part One of the first schedule to this Act shall be deemed to form part of the terms of a continuing certificate for a factory.

The land forming the site bounded as described in the certificate shall, with every mound, building, and work thereon, for whatever purpose, be deemed, for the purpose of this Act, to be the factory or magazine referred to in the certificate.

Where a license has been obtained before the twenty-fifth day of February, one thousand eight hundred and seventy-five, for a factory or magazine for gunpowder, and such factory or magazine has not been completed before the passing of this Act, such factory or magazine shall be deemed to be, for the purposes of this section, a factory or magazine for gunpowder used at the time of the passing of this Act:

Provided that—

(1.) The particulars to be stated in the continuing certificate shall, as regards such mounds, buildings, and works as are not completed at the date of the certificate, relate to the same as designed on the commencement of the construction of the factory or magazine; and

(2.) The maximum amount of gunpowder to be specified in the continuing certificate as being allowed to be kept in any building shall, subject to the provisions of any Act or license, be the maximum amount which such building was designed on the commencement of the building thereof to hold, or such less amount as it is completed for holding at the time of the passing of this Act.

For the purposes of this Act, a continuing certificate shall (save as otherwise expressly provided) be deemed to be a license, and the factory or magazine, as the case may be, mentioned therein to be a factory or magazine licensed under this Act, and the provisions of this Act shall be construed accordingly.

Provided that—

(1.) It shall not be necessary in any case to apply for the assent of the local authority to an amending license for an alteration in the terms of such certificate, or for an alteration in the factory or magazine; and

(2.) Such factory or magazine, if the certificate is determined by the discontinuance of the business carried on therein, shall cease to be deemed an existing factory or magazine.

The occupier of any lawfully existing factory or magazine may, until the expiration of the time within which he is required by this section to send to the Secretary of State an application for a continuing certificate, and if he has sent such an application as is required by this section may, until he obtains such certificate, carry on his business in such factory or magazine in like manner as if this Act had not passed.

Consumers Stores for Gunpowder.

Licensing and Regulation of Stores.

Store license to be obtained from local authority.

15. Any person may apply for a license for a gunpowder store to the local authority at the time and place appointed by such authority, stating his name, address, and calling, the proposed site and construction of the store and the amount of gunpowder he proposes to store therein; and the local authority shall, as soon as practicable, if the proposed site, construction of the store, and amount of gunpowder are in accordance with the Order in Council hereinafter mentioned, grant to the applicant, on payment of such fee, not exceeding five shillings, as may be fixed by that authority, the license applied for.

Order in Council prescribing situation and construction of stores.

16. Her Majesty may from time to time, by Order in Council made on the recommendation of the Secretary of State—

(1.) Regulate the construction and materials and fittings on gunpowder stores; and

(2.) Prescribe the buildings and works from which gunpowder stores are to be separated, and the distances bywhich they are to be separated; and

(3.) Prescribe the maximum amount of gunpowder, not exceeding two tons, to be kept in stores, graduated according to their constructien and situation and their distance from the said buildings and works.

Provided that an Order under this section shall not require the removal of any building lawfully in use at the date of the making of such Order.

General rules for stores.

17. In every gunpowder store the following general rules shall be observed; that is to say,

(1.) The provisions of an Order in Council relating to stores, so far as they apply to such store, shall be duly observed:

(2.) There shall not be at the same time in the store an amount of gunpowder exceeding the amount specified in the license; and

(3.) The store shall be used only for the keeping of gunpowder, and receptacles for or tools or implements for work connected with the keeping of such gunpowder; and

(4.) The interior of the store, and the benches, shelves, and fittings therein, shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel and the detaching of any grit, iron, steel, or similar substance, in such manner as to come into contact with the gunpowder, and such interior, benches, shelves, and fittings shall, so far as is reasonably practicable, be kept free from grit, and otherwise clean; and

(5.) The store shall have attached thereto a sufficient lightning conductor [1], unless it is made by excavation or is licensed for less than one thousand pounds of gunpowder; and

(6.) Before repairs are done to or in any part of a store, the store shall, so far as practicable, be cleaned by the removal of all gunpowder and the thorough washing out of the store; and after such cleansing, these rules shall cease to apply to the store until gunpowder is again taken there; and

(7.) Except after such cleaning, all tools and implements used in or in any repairs to the store shall be made only of wood, copper, or brass, or some soft metal or material, or shall be covered with some safe and suitable material; and

(8.) Due provision shall be made, by the use of suitable working clothes without pockets, suitable shoes, searching, and otherwise, or by some of such means, for preventing the introduction into the store of fire, lucifer matches, or any substance or article likely to cause explosion or fire, or any iron, steel, or grit; but this rule shall not prevent the introduction of an artificial light of such construction, position, or character as not to cause any danger of fire or explosion; and

(9.) No person shall smoke in any part of the store; and

(10.) A person under the age of sixteen years shall not be employed in or enter the store, except in the presence and under the supervision of some grown-up person.

In the event of any breach (by any act or default) of the general rules in any store,—

(*a.*) All or any part of the gunpowder in respect to which or being in the store when the offence was committed may be forfeited; and

(*b.*) The occupier shall be liable to a penalty not exceeding ten pounds, and in addition (in the case of a second offence) ten pounds for every day during which such breach continues.

Non-transferability, renewal, and forms of store licences.

18. A store license shall be valid only for the person named in it, and shall annually, unless the circumstances have so changed that the grant of a new license would not be authorised by this Act, on application by post or otherwise, and payment of such fee, not exceeding one shilling, as may be from time to time fixed by

[1] *Elliott* v. *Majendie*, L. R. 7 Q. B. 429, 41 L. J. M. C. 147, 26 L. T. N. S. 504, 20 W. R. 721, decided that, under 23 & 24 Vict. c. 139, s. 2, par. 9 (repealed), gunpowder manufacturers who kept gunpowder in a store magazine without having provided lightning conductors could not be proceeded against under section 4 for keeping gunpowder contrary to the provisions of the Act; but see section 10, sub-section 3, and concluding paragraph and the last paragraph of this section, *supra*.

Secs. 18–20.

the local authority, be renewed by that authority, by endorsement or otherwise, for that year, and unless so renewed shall expire.

Store licenses shall be in the form from time to time directed by the Secretary of State.

Special rules for regulation of workmen in stores.

19. Every occupier of a gunpowder store may, with the sanction of the Secretary of State, make, and when made, may, with the like sanction, repeal, alter, or add to, special rules for the regulation of the persons managing or employed in or about such store, with a view to secure the observance of this Act therein, and the safety and proper discipline of the said persons and the safety of the public.

There may be annexed to any breach of special rules made in pursuance of this section such penalties, not exceeding forty shillings for each offence, as may be deemed just.

Application of Act to existing Stores for Gunpowder.

Definition of and continuing certificate for existing stores which are to be subject to this Act.

20. Any magazine established without a license from a local authority in pursuance of the Gunpowder Act, 1860, or of any enactment repealed by that Act, for the use of any mine, quarry, colliery, or factory of safety-fuzes, and in use at the passing of this Act, is in this Act referred to as an existing gunpowder store.

An existing gunpowder store shall not require a continuing certificate as a magazine from the Secretary of State, but shall require a continuing certificate from the local authority, and if such certificate is not applied for and obtained in manner provided by this Act, shall not be deemed to be a lawfully existing store.

The occupier of the store desirous of obtaining a continuing certificate shall, before the expiration of three months after the commencement of this Act, send an application for such certificate to the local authority, stating his name, address, and calling, and the situation and construction of the store, and accompanied by such particulars respecting the store as may be necessary to enable the local authority to make out the certificate.

The local authority upon receiving such application shall, as soon as practicable, on payment of such fee, not exceeding half-a-crown, as may be fixed by that authority, grant the continuing certificate, inserting therein such particulars as appear to them to be sufficient to identify the store, and inserting the maximum amount of gunpowder which the store is to be limited to hold, and such amount shall be the maximum amount which the store was capable of holding on the first day of January one thousand eight hundred and seventy-five, or such less amount as is limited by the regulations below in this section mentioned.

The regulations in Part II. of the first schedule of this Act shall apply to every store to which a continuing certificate is granted, as if they were contained in an Order in Council under this Act relating to stores.

For the purposes of this Act a continuing certificate for a store shall, save as otherwise expressly provided, be deemed to be a license, and the store a store licensed under this Act, and the provisions of this Act shall be construed accordingly.

Provided that—

(1.) The store shall not be enlarged, or added to, or so altered as to be of a less secure construction, and any breach of this proviso shall be deemed to be a breach of the general rules relating to stores; and

(2.) The continuing certificate shall not be limited in duration, but if the business carried on in the store is discontinued, and either such discontinuance continues for a period of twelve months or more, or the store is used for another purpose, such store shall cease to be deemed an existing gunpowder store.

Nothing in this section shall prevent the obtaining for any existing gunpowder store of a license from the local authority under this Act, as in the case of a new store, and a store for which such license is obtained shall, whether a continuing certificate has or has not been previously obtained for the same, cease to be deemed an existing gunpowder store.

The occupier of an existing gunpowder store may, until the expiration of the time within which he is required by this section to send to the local authority an application for a continuing certificate, and if he has sent such an application as

is required by this section, may, until the expiration of six months after the expiration of the said time, or any earlier date at which he obtains such certificate, carry on his business in such store in like manner as if this Act had not passed.

Retail Dealing with Gunpowder.

Registration and Regulation of Registered Premises.

Registration of premises with local authority.

21. A person desirous of registering with the local authority any premises for the keeping of gunpowder shall register his name and calling, and the said premises (in this Act referred to as his registered premises) in such manner and on payment of such fee, not exceeding one shilling, as may be directed by the local authority.

Such registration shall be valid only for the person registered, and shall be annually renewed by sending by post or otherwise notice of such renewal to the local authority, together with such fee, not exceeding one shilling, as may be fixed by that authority.

General rules for registered premises.

22. The following general rules shall be observed with respect to registered premises:

(1.) The gunpowder shall be kept in a house or building, or in a fireproof safe, such safe, if not within a house or building, to be at a safe distance from any highway, street, public thoroughfare, or public place; and

(2.) The amount of gunpowder on the same registered premises shall not—

(*a.*) If it is kept in a substantially constructed building exclusively appropriated for the purpose and detached from a dwelling-house, or in a fire-proof safe outside a dwelling-house, and detached therefrom, and at a safe distance from any highway, street, public thoroughfare, or public place, exceed two hundred pounds; and

(*b.*) If it is kept inside a dwelling-house, or in any building other than as last aforesaid, exceed fifty pounds, unless it is kept in a fire-proof safe within such house or building, in which case the amount shall not exceed one hundred pounds;

(3.) An article or substance of an explosive or highly inflammable nature shall not be kept in a fire-proof safe with the gunpowder, and in every case shall be kept a safe distance from the gunpowder or the case containing the same; and

(4.) Neither the building exclusively appropriated for the purpose of keeping the gunpowder nor the fire-proof safe shall have any exposed iron or steel in the interior thereof; and

(5.) All gunpowder exceeding one pound in amount shall be kept in a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping.

In the event of any breach (by any act or default) of such general rules in any registered premises,—

(*a.*) All or any part of the gunpowder in respect to which, or being in any house, building, place, safe, or receptacle in respect to which, the offence was commitied may be forfeited; and

(*b.*) The occupier shall be liable to a penalty not exceeding two shillings for every pound of gunpowder in respect of which or being on the premises in which the offence was committed.

Supplemental Provisions.

Precautions against fire or explosion to be taken by occupier

23. The occupier of every factory, magazine, store, and registered premises for gunpowder, and every person employed in or about the same, shall take all due precaution for the prevention of accidents by fire or explosion in the same, and for preventing unauthorised persons having access to the factory, magazine or store, or to the gunpowder therein or in the registered premises, and shall abstain from any act whatever which tends to cause fire or explosion, and is not reasonably necessary for the purpose of the work in such factory, magazine, store, or premises.

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Any breach (by any act or default) of this section in any factory magazine, store, or registered premises shall be deemed to be a breach of the general rules applying thereto.

Explanation as to quantities of gunpowder allowed in in buildings.

24. Where any provisions of this Act limits the quantity of gunpowder or ingredients of gunpowder to be allowed in any building at any one time, all gunpowder and ingredients within the radius of twenty yards from the building and in course either of removal from the building, or of removal to the building for the supply and work thereof, shall be deemed to be in the building:

Provided that, if while the gunpowder or ingredients so in course of removal are within the radius, every machine and manufacturing process in the building is wholly stopped, there may, in addition to the quantity so allowed as aforesaid to be in the building, be within the radius a further quantity of gunpowder and ingredients so in course of removal as aforesaid, not exceeding the quantity specified in that behalf in the license, or in the case of an existing building in a lawfully existing factory for gunpowder ten hundredweight, or any less quantity so allowed as aforesaid to be in the building.

Where any provision of this Act limits the quantity of gunpowder or ingredients of gunpowder to be allowed in any machine at any one time, but does not limit the quantity to be in the building containing such machine, the foregoing provisions of this section shall apply, so far as circumstances admit, as if such machine were a building.

Where the quantity to be allowed in any building is limited to what is required for the immediate supply and work of such building, or by words not specifying the exact quantity, a Government inspector who considers that the quantity in any such building is in excess, may, after hearing the explanation of the occupier, require the occupier to diminish such quantity to the maximum named in the requisition.

The occupier, if he feel aggrieved by such requisition, may require the matter to be referred to arbitration in manner provided by this Act.

The exact quantity to be allowed in such building shall be determined by the requisition, or if the matter is referred to arbitration, by the award.

Regulations as to arbitration.

25. An occupier authorised by this Act to require any matter to be referred to arbitration may, within one month after receiving the requisition, notice, or document relating to the matter to be so referred, send an objection thereto to the Secretary of State; and if the cause of such objection is not, within one month after such objection is received by the Secretary of State removed by the Secretary of State waiving or varying the said requisition, notice, document, or matter, or otherwise (which the Secretary of State is hereby authorised to do), such occupier may, by notice sent within seven days after the expiration of the said month to the Secretary of State, require the matter to be referred to arbitration, and the date of the receipt by the Secretary of State of the last-mentioned notice shall be deemed to be the date of the reference.

Arbitrations under this Act shall be conducted in manner provided by the second schedule to this Act.

Fees for licenses.

26. There shall be payable in respect of licenses and continuing certificates granted by the Secretary of State such fees as may be from time to time fixed by him with the consent of the Treasury, not exceeding the fees in the third schedule to this Act, and if no fee is fixed the fees mentioned in the said schedule.

Such fees shall be taken and paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct, and shall be carried to the Consolidated Fund.

The Secretary of State may also require any applicant for a new license to pay such sum as the Secretary of State may think reasonable for expenses incurred upon any inquiry made by order of the Secretary of State with respect to the grant of such license.

When the local authority do not fix any fee which they are authorised by this Act to fix, the fee payable shall be the maximum fee which such authority are authorised to fix.

The fees payable to the local authority in respect of any license, certificate, or

otherwise in pursuance of this Act, shall, where the clerk of the local authority is not wholly paid by fees, be carried to the credit of the local rate, or otherwise disposed of as such local authority may direct, and where such clerk is wholly paid by fees shall, unless the local authority otherwise direct, be paid to such clerk.

Adjoining places occupied together to be one place.

27. For the purposes of the provisions of this Act with respect to the manufacture and keeping of gunpowder, all buildings and places adjoining each other and occupied together shall be deemed to be the same factory, magazine, store, or premises, and shall accordingly be included in one license or one registration.

Register of store licenses and registered premises to be kept by local authority.

28. The local authority shall cause registers of all store licenses granted by and of all premises registered with them under this Act to be kept in such form and with such particulars as they may direct.

The local authority shall, when so required by the Secretary of State, send to him, within the time fixed by such requisition, a copy of such register or any part thereof, and in default the clerk of such authority, and also the authority if they are in fault, shall be liable to a penalty not exceeding one pound for every day during which such default continues.

A ratepayer within the area of the local authority, and a licensee or person registered under this Act, upon payment of a fee of one shilling, and a Government inspector, and an officer appointed by any local authority for the purposes of this Act, and an officer of police, without payment, shall be entitled at all reasonable times to inspect and take copies of or extracts from any register kept in pursuance of this section; and the clerk of the local authority and every other person who fails to allow such inspection or taking copies of or extracts from the same, or demands any unauthorised fee therefor, shall be liable to a penalty not exceeding one pound for each offence.

Provision in case of death, &c., of occupier of store or registered premises.

29. If the occupier of a store or registered premises dies or becomes bankrupt, or has his affairs liquidated by arrangement, or becomes mentally incapable or otherwise disabled, the person carrying on the business of such occupier shall not be liable to any penalty or forfeiture under this Act for carrying on the business and acting under the license or registration during such reasonable time as may be necessary to allow him to obtain a store license from or to register with the local authority, so that he otherwise conform with the provisions of this Act.

Sale of Gunpowder.

Restriction on sale of gunpowder in highways, &c.

30. Gunpowder shall not be hawked, sold, or exposed for sale upon any highway, street, public thoroughfare, or public place.

If any gunpowder is hawked, sold, or exposed for sale in contravention of this section—

(1.) The person hawking, selling, or exposing for sale the same, shall be liable to a penalty not exceeding forty shillings; and

(2.) All or any part of the gunpowder which is so hawked or exposed for sale, or is found in the possession of any person convicted under this section, may be forfeited.

Penalty for sale of gunpowder to children.

31. Gunpowder shall not be sold to any child apparently under the age of thirteen years; and any person selling gunpowder in contravention of this section shall be liable to a penalty not exceeding five pounds.

Sale of gunpowder to be in closed packages, labelled.

32. All gunpowder exceeding one pound in weight, when publicly exposed for sale or sold, shall be in a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping, and (except when the same is sold to any person employed by or on the property occupied by the vendor for immediate use in the service of the vendor or on such property,) the outermost receptacle containing such gunpowder shall have affixed the word "gunpowder" in conspicuous characters by means of a brand or securely attached label, or other mark.

If any gunpowder is sold or exposed for sale in contravention of this section—

1. The person selling or exposing for sale the same shall be liable to a penalty not exceeding forty shillings; and
2. All or any part of the gunpowder so exposed for sale may be forfeited.

Secs. 33, 34.

Conveyance of Gunpowder.

General rules as to packing of gunpowder for conveyance.

33. The following general rules shall be observed with respect to the packing of gunpowder for conveyance:

1. The gunpowder, if not exceeding five pounds in amount, shall be contained in a substantial case, bag, canister, or other receptacle, made and closed so as to prevent the gunpowder from escaping; and
2. The gunpowder, if not exceeding five pounds in amount, shall be contained either in a single package or a double package. A single package shall be a box, barrel, or case of such strength, construction, and character as may be for the time being approved by the Government inspector as being of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape. If the gunpowder is packed in a double package the inner package shall be a substantial case, bag, canister, or other receptacle made and closed so as to prevent the gunpowder from escaping, and the outer package shall be in a box, barrel, or case of wood or metal or other solid material, and shall be of such strength, construction, and character that it will not be broken or accidentally opened, or become defective or insecure whilst being conveyed, and will not allow the gunpowder to escape; and
3. The interior of every package, whether single or double, shall be kept free from grit and otherwise clean; and
4. Every package, whether single or double, when actually used for the package of gunpowder, shall not be used for any other purpose; and
5. There shall not be any iron or steel in the construction of any such single package or inner or outer package, unless the same is effectually covered with tin, zinc, or other material; and
6. The amount of gunpowder in any single package, or if there is a double package in any one outer package, shall not exceed one hundred pounds, except with the consent of and under conditions approved by a Government inspector; and
7. On the outermost package there shall be affixed the word "gunpowder" in conspicuous characters by means of a brand or securely attached label or other mark.

In the event of any breach (by any act or default) of any general rule in this section, the gunpowder in respect of which the breach is committed may be forfeited, and the person guilty of such breach shall be liable to a penalty not exceeding twenty pounds.

The Secretary of State may from time to time make, and when made, repeal, alter, and add to, rules for the purpose of rescinding, altering, or adding to the general rules contained in this section, and the rules so made by the Secretary of State shall have the same effect as if they were enacted in this section.

Bye-laws by harbour authority as to conveyance, loading, &c., of gunpowder.

34. Every harbour authority shall, with the sanction of the Board of Trade, make bye-laws for regulating the conveyance, loading, and unloading of gunpowder within the jurisdiction of the said authority, and in particular for declaring or regulating all or any of the following matters within the jurisdiction of the said authority; namely,

1. Determining the notice to be given by ships and boats conveying, loading, or unloading gunpowder as merchandise within the said jurisdiction; and
2. Regulating the navigation and place of mooring of such ships and boats; and
3. Regulating, subject to the general rules with respect to packing in this Act contained, the mode of stowing and keeping gunpowder on board any such ship or boat, and of giving notice by brands, labels, or otherwise of the nature of the package containing the gunpowder; and
4. Regulating the description, construction, fitting up, and licensing of the ships, boats, or carriages to be used for the conveyance of gunpowder, and the licensing and dress of the persons having charge thereof; and
5. Prohibiting or subjecting to conditions and restrictions the conveyance of

gunpowder with any explosive or any articles or substances, or in passenger ships, boats, trains, or carriages; and

6. Prohibiting in cases where the loading or unloading of gunpowder within the jurisdiction of such authority appears to be specially dangerous to the public such loading or unloading, and fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one ship, boat, or carriage; and
7. Regulating the mode of and the precautions to be observed in conveying any gunpowder, and in the loading or unloading any ship, boat, or carriage conveying gunpowder as merchandise, and the time during which gunpowder may be kept during such conveyance, loading, or unloading; and
8. Fixing the times at which lights or fires are to be allowed or not allowed on board such ships or boats, as before mentioned, or at which a constable or officer of the harbour authority is to be on board them; and
9. Providing for the publication and supply of copies of the bye-laws; and
10. Enforcing the observance of this Act both by their own servants and agents and also by other persons when within the said jurisdiction; and
11. Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first or second or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the gunpowder in respect of which, or found in the ship, boat, or carriage in respect of which, the breach of bye-law has taken place.

In the event of any breach of a bye-law under this section in the case of any ship, boat, carriage. or gunpowder, whether there has or has not been any conviction for such breach, it shall be lawful for the harbour-master, or other officer named in the bye-laws, or any person acting under the orders of the harbour authority, to cause such ship, boat, carriage, or gunpowder, at the expense of the owner thereof, to be removed to such place or otherwise dealt with in such manner as may be in conformity with the bye-laws, and all expenses incurred in such removal may be recovered in the same manner as a penalty under this section, and any person resisting such harbour-master or officer or other person in such removal shall be liable to the same penalties as a person is liable to for obstructing the harbour-master in the execution of his duty.

On any part of the coast of the United Kingdom or in any tidal water for which there is no harbour authority, the Board of Trade may, if they think it expedient, make bye-laws under this section for that part or water as if it were a harbour and they were the harbour authority, and such bye-laws shall be deemed to have been made by a harbour authority with the sanction of the Board of Trade; and they may by such bye-laws define the area within which such bye-laws are to be observed, and the authorities and officers by whom such bye-laws are to be enforced and carried into effect within such area, and every such authority and officer shall for the purposes of this Act, other than making bye-laws or assenting to a site for a new factory or magazine, have the same power within the said area as a harbour authority and an officer of a harbour authority have respectively under this Act in a harbour.

Bye-laws by railway and canal company as to conveyance, loading, &c., of gunpowder.

35. Every railway company and every canal company over whose railway or canal any gunpowder is carried, or intended to be carried, shall, with the sanction of the Board of Trade, make bye-laws for regulating the conveyance, loading, and unloading of such gunpowder on the railway or canal of the company making the bye-laws, and in particular for declaring and regulating all or any of the following matters in the case of such railway or canal; that is to say,

1. Determining the notice to be given of the intention to send gunpowder for conveyance as merchandise on the railway or canal; and
2. Regulating, subject to the general rules with respect to packing in this Act

Secs. 35, 36.

contained, the mode of stowing and keeping gunpowder for conveyance and of giving notice by brands, labels, or otherwise of the nature of the package containing the gunpowder; and

3. Regulating the description and construction of carriages, ships, or boats to be used in the conveyance of gunpowder; and
4. Prohibiting, or subjecting to conditions and restrictions, the conveyance of gunpowder with any explosive, or with any articles or substances, or in passenger trains, carriages, ships, or boats; and
5. Fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time, or in one carriage, ship, or boat; and
6. Determining the precautions to be observed in conveying gunpowder, and in loading and unloading the carriages, ships, and boats used in such conveyance, and the time during which the gunpowder may be kept during such conveyance, loading, and unloading; and
7. Providing for the publication and supply of copies of the bye-laws; and
8. Enforcing the observance of this Act both by their servants and agents, and also by other persons when on the canal or railway of such company; and
9. Generally for protecting, whether by means similar to those above mentioned or not, persons and property from danger.

Such bye-laws, when confirmed by the Board of Trade, shall apply to the railway, canal, agents, and servants of the company making the same, and to the persons using such railway or canal, or the premises connected therewith and occupied by or under the control of the company.

The penalties to be annexed to any breach or attempt to commit any breach of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence, that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the gunpowder in respect of which, or being in the carriage, ship, or boat or train of carriages, ships, or boats in respect of which the breach of bye-law has taken place.

Bye-laws as to wharves in which gunpowder is loaded or unloaded.

36. The occupier of every wharf or dock on or in which gunpowder is loaded or unloaded (if such loading or unloading is not otherwise subject to any bye-laws under this Act) may, and if so required by the Secretary of State shall, from time to time, with the sanction of the Secretary of State, make bye-laws for regulating the loading and unloading of gunpowder on or in such wharf or dock, and in particular for declaring or regulating all or any of the matters which can be declared or regulated in the case of any wharf or dock within the jurisdiction of a harbour authority by bye-laws made by such authority in pursuance of this Act.

The penalties to be annexed to any breach, or attempt to commit any breach, of any such bye-laws, may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first or second or other subsequent offence; that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the offence continues, and forfeiture of all or any part of the gunpowder in respect of which, or found on the wharf or in the dock or part of the wharf or dock in respect of which, the breach of bye-law has taken place.

Any bye-laws made in pursuance of this section may, and if required by the Secretary of State shall, be rescinded, altered, or added to by bye-laws made by the occupier, with the sanction of the Secretary of State.

If an occupier is required by the Secretary of State to make bye-laws under this section for any matter, and fail within three months after such requisition to comply therewith to the satisfaction of the Secretary of State, the Secretary of State may make such bye-laws, which shall have effect as if made by the occupier with the sanction of the Secretary of State.

Where by reason of a wharf being a public wharf or otherwise, there is no occupier thereof, or the occupier thereof is unknown, the Secretary of State may make bye-laws with respect to such wharf in like manner as if the occupier had failed to comply with his requisition: Provided that where such wharf abuts on any harbour, canal, or railway, the harbour authority or canal or railway company shall have the same power, and, if so required by the Secretary of State, shall be under the same obligation to make bye-laws under this section for such wharf as if they were the occupiers thereof.

Bye-laws as to conveyance by road or otherwise, or loading of gunpowder.

37. The Secretary of State may from time to time make, and when made, rescind, alter, or add to, bye-laws for regulating the conveyance, loading, and unloading of gunpowder in any case in which bye-laws made under any other provision of this Act do not apply, and in particular for declaring or regulating all or any of the following matters; that is to say,

1. Regulating the description and construction of carriages to be used in the conveyance of gunpowder or merchandise; and
2. Prohibiting or subjecting to conditions and restrictions the conveyance of gunpowder with any explosive, or with any articles or substances, or in passenger carriages; and
3. Fixing the places and times at which the gunpowder is to be loaded or unloaded, and the quantity to be loaded or unloaded or conveyed at one time or in one carriage; and
4. Determining the precautions to be observed in conveying gunpowder, and in loading and unloading the carriages used in such conveyance, and the time during which the gunpowder may be kept during such conveyance, loading and unloading; and
5. Providing for the publication and supply of copies of the bye-laws; and
6. Generally for protecting, whether by means similar to those above mentioned or not, persons or property from danger; and
7. Adapting, on good cause being shown, the bye-laws in force under this section to the circumstances of any particular locality.

The penalties to be annexed to any breach, or attempt to commit any breach, of any such bye-laws may be all or any of the following penalties, and may be imposed on such persons and graduated in such manner as may be deemed just, according to the gravity of the offence, and according as it may be a first, second, or other subsequent offence; that is to say, pecuniary penalties not exceeding twenty pounds for each offence, and ten pounds for each day during which the breach continues, and forfeiture of all or any part of the gunpowder in respect of which, or being in the carriage in respect of which, the breach of bye-law has taken place.

For the purpose of any mode of conveyance which is not a conveyance by land, this section shall be construed as if ship and boat were included in the term carriage.

Confirmation and publication of bye-laws.

38. Any recommendation to Her Majesty in Council, any general rules with respect to packing, and any bye-laws which is or are proposed to be made under this Act by a Secretary of State or the Board of Trade shall, before being so made, be published in such manner as the Secretary of State or the Board of Trade, as the case may be, may direct as being in his or their opinion sufficient for giving information thereof to all local authorities, corporations, and persons interested.

The bye-laws framed by any railway company, canal company, or harbour authority under this Act shall, before being sanctioned by the Board of Trade, be published in such manner as may be directed by the Board of Trade, with a notice of the intention of such company or authority to apply for the confirmation thereof, and may be sanctioned by the Board of Trade with or without any omission, addition, or alteration, or may be disallowed.

Every such bye-law may be from time to time added to, altered, or rescinded by a bye-law made in like manner and with the like sanction as the original bye-law.

The Secretary of State or the Board of Trade, as the case may be, shall receive and consider any objections or suggestions made by any local authority, corporation, or persons interested with respect to any recommendation, general rules, or

Secs. 38–40. bye-laws published in pursuance of this section, and may, if it seem fit, amend such recommendation, general rules, or bye-laws with a view of meeting such objections or suggestions without again publishing the same.

PART II.

Law relating to other Explosives.

Application of Part I. to other Explosives.

Part I. relating to gunpowder applied to other explosives.

39. Subject to the provisions hereafter in this part of this Act contained, Part One of this Act relating to gunpowder shall apply to every other description of explosive, in like manner as if those provisions were herein re-enacted with the substitution of that description of explosive for gunpowder.

Modification of Part I. as applied to explosives other than gunpowder.

40. The following modifications and additions shall be made in and to Part One of this Act as applied to explosives other than gunpowder:

(1.) The draft license for a factory or magazine submitted by an applicant to the Secretary of State shall specify such particulars as the Secretary of State may require; and

(2.) The prescribed general rules shall be substituted for the general rules in Part One of this Act relating to factories, magazines, stores, and registered premises respectively; but no such general rule shall require the removal of any building or work in use at the date of the Order in Council by which such rule is made;

(3.) The Secretary of State may from time to time alter the general rules relating to packing contained in Part One of this Act for the purpose of adapting the same to the packing of any explosive other than gunpowder; and

(4.) For the maximum amount limited by Part One of this Act to be kept for private use and not for sale, or in a store, and for the minimum amount limited by Part One of this Act to be exposed for sale or sold otherwise than in a substantial case, box, canister, or other receptacle as therein mentioned, there shall be substituted in the case of explosives other than gunpowder the following amounts, namely:

(*a.*) Where such explosive consists of safety cartridges ([1]) made with gunpowder, an amount containing not more than five times the maximum or minimum amount of gunpowder, as the case may be, above mentioned; and

(*b.*) In the case of any other explosive, the prescribed amount; and

(5.) Two or more descriptions of explosives shall not be kept in the same store or registered premises, except such descriptions as may be prescribed in that behalf ([2]), and when so kept, shall be subject to the prescribed conditions and restrictions; and

(6.) Where any explosive, other than gunpowder, is allowed to be kept in the same store or registered premises with gunpowder, the maximum amount of gunpowder to be kept therein shall be the prescribed amount in lieu of the amount fixed by Part One of this Act; and

(7.) Where any explosive, other than gunpowder, is allowed to be kept in the same magazine, store, or registered premises with gunpowder, the prescribed general rules shall be observed instead of the general rules in Part One of this Act; and

(8.) There shall be on the outermost package containing the explosive in lieu of the word "gunpowder" the name of the explosive, with the addition

([1]) See interpretation, section 108.

([2]) *Newby* v. *Sharpe*, L. R. 8 Ch. Div. 39, 47 L. J. Ch. 617, 38 L. T. N. S. 583, 26 W. R. 685.

of the word "explosive," and if such name is materially false the person selling or exposing for sale such explosive, and also the owner of the explosive, shall be liable to a penalty not exceeding fifty pounds:

(9.) With respect to the importation from any place out of the United Kingdom of either dynamite or gun cotton, or any explosive (other than gunpowder, cartridges made with gunpowder, percussion caps, fireworks, and any prescribed explosive), the following provisions shall have effect; that is to say,

(*a.*) The owner and master of any ship having on board any such explosive shall not permit the same to be unloaded and delivered to any person who does not hold a license to import the same (in this Act called an importation license) from the Secretary of State, and any transhipment shall for the purpose of this section be deemed to be delivery; and

(*b.*) The Secretary of State may grant an importation license for any such explosive, and may annex thereto any prohibitions and restrictions with respect to the composition and quality of the explosive, and the unloading, landing, delivery, and conveyance thereof, and such further provisions and restrictions as he may think fit, for the protection of the public from danger; and

(*c.*) The license shall be of such duration as the Secretary of State may fix, and shall be available only for the person named in the license; and

(*d.*) In the event of any breach by any act or default of the provisions of this section with respect to the importation of an explosive, or of the provisions of any importation license, all or any part of the explosive with respect to which such breach is committed, or being in any ship or boat in connection with which such breach is committed, may be forfeited, and the owner or master of such ship or boat, and the licensee or person to whom the explosive is delivered, shall each be liable to a penalty not exceeding one hundred pounds, and to a further penalty not exceeding two shillings for every pound of such explosive; and

(*e.*) The Commissioners of Customs and their officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article on the importation of which restrictions are for the time being imposed by the law relating to the customs, and the ship containing the same, and the enactments for the time being in force relating to the customs, or any such article or ship shall apply accordingly.

Exemption of making and carrying safety cartridges for private use.

41. Nothing in this Act shall apply to the filling or conveying, for private use and not for sale, of any safety cartridges to the amount allowed by this Act to be kept for private use.

Extension of 18 & 19 Vict. c. 119, s. 29, and 36 & 37 Vict. c. 85, ss. 23-27, to all explosives.

42. Section twenty-nine of the Passengers Act, 1855, and section twenty-three to twenty-seven, both inclusive, of the Merchant Shipping Act, 1873, shall apply to every explosive within the meaning of this Act in like manner as they apply to gunpowder.

Specially dangerous Explosives.

Power to prohibit manufacture, importation, storage, and carriage of specially dangerous explosives.

43. Notwithstanding anything in this Act, Her Majesty from time to time, by Order in Council, may prohibit, either absolutely, or except in pursuance of a license of the Secretary of State under this Act, or may subject to conditions or restrictions the manufacture, keeping, importation from any place out of the United Kingdom, conveyance, and sale, or any of them, of any explosive which is of so dangerous a character that, in the judgment of Her Majesty, it is expedient for the public safety to make such Order.

Provided that such Order shall not actually prohibit anything which may be lawfully done in pursuance of any continuing certificate under this Act.

Any explosive manufactured or kept in contravention of any such Order shall be deemed to be manufactured or kept, as the case may be, in an unauthorised place.

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Any explosive conveyed in contravention of any such Order shall be deemed to be conveyed in contravention of a bye-law made under this Act with respect to the conveyance of explosives.

If any explosive is imported or sold in contravention of any such Order,—

1. All or any part of such explosives may be forfeited; and
2. The owner or master of the ship in which it was imported shall be liable to a penalty not exceeding ten shillings for every pound of such explosive brought in the ship; and
3. The person to whom it was delivered and the person selling the same shall be liable to a penalty not exceeding ten shillings for every pound of such explosive delivered or sold or found in his possession.

The Commissioners of Customs and their officers shall have the same power with respect to any such explosive, and the ship containing the same, as they have for the time being with respect to any article prohibited to be imported by the law relating to the customs, and the ship containing the same, and the enactments for the time being in force relating to the customs and any such article or ship shall apply accordingly.

Provisions in favour of certain Manufactures and Dealers.

Provision in favour of makers, &c., of blasting cartridges.

44. The occupier of a factory for any explosive shall not be required by this Act to take out a factory license for making up on such factory the explosive made thereon into cartridges or charges for cannon or blasting not containing within themselves their own means of ignition.

The occupier of any magazine, store, or registered premises for keeping any explosive may keep that explosive when made up into such cartridges or charges as above in this section mentioned, as if it were not so made up, and the provisions of this Act with respect to the keeping of any explosive shall apply to the keeping of that explosive when made up into the said cartridges or charges, in like manner as if the explosive were not so made up.

Provision in favour of makers of new explosive for experiment.

45. The occupier of a factory for any explosive who manufactures a new explosive or new form of explosive similar to the one specified in his license, shall not be deemed to have manufactured the same in an unauthorised place if he manufacture the same on a small scale, and exclusively for the purpose of trial and not for sale, and he send notice of the same, as soon as he has manufactured it, to the Secretary of State, and if he observe the provisions of this Act, so far as they are applicable.

Provision in favour of gunmakers, &c., making cartridges.

46. The occupier of a magazine, store, or registered premises for any explosive shall not be required by this Act to take out a factory license by reason that in connection with such magazine, store, or premises he fills for sale or otherwise any cartridge for small arms with the said explosive, so that he observe the following regulations; namely,

(1.) There shall not be in the room in which such filling is being carried on more than five pounds of gunpowder, or the prescribed amount of any other explosive, except it is made up into safety cartridges; and

(2.) Any work unconnected with the making of the cartridges shall not be carried on in the room while such filling is being carried on; and

(3.) There shall not be in the room while such filling is being carried on any fire nor any artificial light, except a light of such construction, position, or character as not to cause any danger of fire or explosion; and

(4.) In the case of a magazine or store, the room in which the filling is carried on shall be detached from the magazine or store, but in the immediate neighbourhood thereof, and at such distance therefrom as may be specified in the case of a magazine by the license, and in the case of a store by an Order in Council relating to stores; and

(5.) The occupier shall give notice in the case of a magazine to the Secretary of State, and in the case of a store or registered premises to the local authority, that he intends to carry on such filling of cartridges as is allowed by this section.

Provided that this section shall not, except with the consent of the Secretary of State, apply to any magazine or store for which a continuing certificate has been obtained under this Act, which consent the Secretary of State, if satisfied that the filling of cartridges in accordance with this section ought (due regard being had to the safety of the public) to be allowed, may grant either absolutely or upon such conditions as he may, under the special circumstances of the case, think expedient to secure the safety of the public.

The regulations in this section and any conditions so made by the Secretary of State as last aforesaid, shall be deemed to be general rules under this Act relating to the magazine, store, and registered premises respectively, and the breach of them shall be punished accordingly.

Provision in favour of owners of mines and quarries, as to making charges, &c. for blasting.

47. The occupier of any magazine or store for any explosive shall not be required by this Act to take out a factory license by reason that, in connection with such magazine or store, he, by filling cartridges, making charges, drying, sifting, fitting, or otherwise, adapts or prepares the said explosive for use exclusively in his mine or quarry, or in some excavation or work carried on by him or under his control, so that he observe the following regulations; namely,

(1.) There shall not be in the workshop in which such adaptation or preparation is carried on more than one hundred pounds of gunpowder or the prescribed amount of any other explosive; and

(2.) Any work unconnected with such adaptation or preparation shall not be carried on in the said workshop while such adaptation or preparation is being carried on; and

(3.) The said workshop shall be detached from the magazine or store, but in the immediate neighbourhood thereof, and at such distance therefrom as may be specified, in the case of a magazine by the license, and in the case of a store by an Order in Council relating to stores; and

(4.) An explosive of one description shall not be converted into an explosive of another description, and shall not be unmade or resolved into its ingredients; and

(5.) The occupier shall give notice in the case of a magazine to the Secretary of State, and in the case of a store to the local authority, that he intends to carry on such adaptation or preparation as is allowed by this section.

Provided that this section shall not, except with the consent of the Secretary of State, apply to any magazine or store for which a continuing certificate has been obtained under this Act, which consent the Secretary of State, if satisfied that the adaptation or preparation in accordance with this section ought (due regard being had to the safety of the public) to be allowed, may grant either absolutely or upon such conditions as he may, under the special circumstances of the case, think expedient to secure the safety of the public.

The regulations in this section, and any conditions so made by the Secretary of State as last aforesaid, shall be deemed to be general rules under this Act relating to the magazine and store respectively, and the breach of them shall be punished accordingly.

The following general rules shall apply as if the said workshop were a danger building, that is to say, if the adaptation or preparation carried on is of gunpowder only, the general rules with respect to a factory in Part One of this Act, and in any other case the prescribed general rules; and the breach of such general rules shall be punished in like manner as the breach of general rules with respect to a factory.

Provision in favour of small firework manufacturer who may obtain a license from the local authority.

48. A firework factory shall not be deemed to be a small firework factory for the purposes of this Act if there is upon the same factory at the same time—

(*a.*) More than one hundred pounds of any explosive other than manufactured fireworks and coloured fires and stars; or

(*b.*) More than five hundred pounds of manufactured fireworks, either finished or partly finished; or

(*c.*) More than twenty-five pounds of coloured fires or stars, not made up into manufactured fireworks.

The occupier of a small firework factory shall not be required to obtain a license

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under Part One of this Act for such factory if he has obtained a license from the local authority under this part of this Act.

A person having such license from the local authority who manufactures an explosive (other than nitro-glycerine or any prescribed explosive) for the purpose only of the manufacture of coloured fires or a manufactured firework in accordance with this Act, and does not sell the same except in the form of coloured fires packed in the manner required by this Act, or of a manufactured firework, shall not be deemed to manufacture an explosive in an unauthorised place.

Licensing by local authority and regulation of small firework factories.

49. Any person may apply for a small firework factory license to the local authority at the time and place appointed by such authority, stating his name, address, and calling, and the proposed site and construction of the factory, and the amount and description of explosive he proposes to have therein, and in any building therein; and the local authority shall, as soon as practicable, if the proposed site, construction of the factory, and amount of explosive is in accordance with the Order in Council regulating small firework factories, grant to the applicant, on payment of such fee, not exceeding five shillings, as may be fixed by that authority, the license applied for.

The powers of this Act of making Orders in Council with respect to stores and of prescribing general rules with respect to stores shall extend to making Orders in Council and prescribing general rules with respect to small firework factories and the buildings thereon; and any breach (by any act or default) of any such general rule shall involve the same penalties and forfeitures as a breach of a general rule relating to stores.

A small firework factory license shall be valid only for the person named in it, and the provisions of this Act with respect to the renewal, expiration, and form of store licenses, and fees for such renewal, and to special rules for the regulation of persons managing or employed in or about stores, shall apply in like manner as if they were herein enacted, and in terms made applicable to small firework factory licenses and small firework factories respectively.

Keeping without a license and conveyance of percussion caps, &c.

50. A person shall not be required by this Act to take out a license or to register any premises for the keeping of percussion caps, or safety-fuzes for blasting, or fog-signals kept by any railway company for use on the railway of such company, or any prescribed explosive.

It shall not be obligatory on any harbour authority, railway company, canal company, or occupier of a wharf, to make any bye-laws with respect to the conveyance, loading, or unloading of any explosives to which this section applies.

It shall be lawful for Her Majesty, by Order in Council, to exempt any explosive to which this section applies, or any description thereof, from any other of the provisions of this Act, or to declare that a license shall be required for the keeping of any explosive to which this section applies, or any description thereof, or that bye-laws shall be made with respect to the loading, unloading, and conveyance thereof.

Existing Factories, Magazines, and Stores.

Application of Part I. of the Act to existing factories and magazines.

51. In any continuing certificate for a lawfully existing factory or magazine for any explosive other than gunpowder, the regulations set out in the first schedule to this Act shall not form part of the terms of such certificate, but in lieu thereof the Secretary of State shall insert in the certificate as the terms thereof,—

(1.) If the factory or magazine is for dynamite or any substance having nitro-glycerine as one of its component parts or ingredients, the conditions contained in the existing license, with such modifications (if any) as the Secretary of State may think necessary in order to bring the same into conformity with this Act, and also any limitation of time for the expiration of the license contained in the existing license, and also the existing power of the Secretary of State to revoke the license; and

(2.) In any other case, such terms as the Secretary of State may think expedient, having regard to the conditions (if any) contained in the license under which the factory or magazine is established; and such terms shall

include any limitation of time contained in such license, but shall not require the removal of any lawfully existing building or work.

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If a new license under this Act is obtained for keeping in an existing gunpowder store any explosive other than gunpowder, the continuing certificate of such store shall be determined, and the store shall cease to be deemed to be an existing gunpowder store within the meaning of this Act.

Continuing certificate not required for factory, magazine, or importation license expiring within twelve months, or for stores licensed under Nitro-glycerine Act, 1869.

52. Where the license of a factory or magazine for any explosive other than gunpowder will expire within twelve months after the commencement of this Act, the occupier of such factory or magazine shall not require a continuing certificate under this Act, but until such license expires shall be entitled to use such factory or magazine in like manner as if this Act had not passed, without prejudice nevertheless to any application by him for a license under this Act for such factory or magazine, but after a license under this Act is obtained for the same, or after the expiration of the old license, such factory or magazine shall not be deemed to be a lawfully existing factory or magazine within the meaning of this Act.

The occupier of any magazine licensed at the time of the passing of this Act by a general magazine license under the Nitro-glycerine Act, 1869, shall not require a continuing certificate under this Act, but until the expiration of six months after the commencement of this Act shall be entitled to use such magazine in like manner as if this Act had not passed, without prejudice nevertheless to a license under this Act being obtained for the same; but after a license under this Act is obtained for the same, or after the expiration of the said six months, such license shall determine, and such magazine shall not be deemed to be a lawfully existing magazine or store within the meaning of this Act.

The holder of any importation license under the Nitro-glycerine Act, 1869, shall, until the expiration of six months after the commencement of this Act, be entitled to act under such license in like manner as if this Act had not passed, without prejudice nevertheless to any application by him for an importation license under this Act; but after such license under this Act is obtained, or after the expiration of the said six months, such existing license shall determine.

PART III.

Administration of Law.

Government Supervision.

Inspection.

Appointment of Government inspectors.

53. The Secretary of State may from time to time by order appoint any fit persons to be inspectors for the purposes of this Act, and assign them their duties, and award them such salaries as the Commissioners of Her Majesty's Treasury may approve and remove such inspectors, and any such inspector is referred to in this Act as a Government inspector.

Every order appointing an inspector shall be published in the *London Gazette*.

Disqualification of persons as inspectors.

54. Any person who practises or acts, or is a partner with any person who practises or acts, as a manufacturer, storer, carrier, importer or exporter of or trader or dealer in an explosive, or holds any patent connected with an explosive, or is otherwise directly or indirectly engaged or interested in any such manufacture, storage, conveyance, importation, exportation, trade, dealing, or patent, shall not act as an inspector under this Act.

Powers of Government inspectors.

55. A Government inspector shall have power to make such examination and inquiry as may be necessary to ascertain whether this Act is complied with, and for that purpose,—

(1.) He may enter, inspect, and examine any factory, magazine, or store of any explosive, and every part thereof, at all times by day and night, but so as not to unnecessarily impede or obstruct the work in such factory,

Secs. 55–58.

magazine, or store, and may make inquiries as to the observance of this Act, and all matters and things relating to the safety of the public or of the persons employed in or about such factory, magazine, or store; and

(2.) He may enter, inspect, and examine any premises registered under this Act, and every part thereof, in which any explosive is kept, or is reasonably supposed by him to be kept, at all reasonable times by day; and

(3.) He may require the occupier of any factory, magazine, store, or premises which he is entitled, under this section, to enter, or a person employed by such occupier therein, to give him samples of any explosive or ingredients of an explosive therein, or of any substance therein, the keeping of which is restricted or regulated by this Act, or of any substance therein which the inspector believes to be an explosive, or such ingredients or substance.

The occupier of every such factory, magazine, store, and registered premises, his agents and servants, shall furnish the means required by the inspector as necessary for every such entry, inspection, examination, and inquiry.

Any person who fails to permit a Government inspector to enter, inspect, examine, or make inquiries in pursuance of this section, or to comply with any requisition of such inspector in pursuance of this section, or who in any manner obstructs such inspector in the execution of his duties under this Act shall be liable to a penalty not exceeding one hundred pounds for each offence.

Notice by Government inspector to remedy dangerous practices, &c., and penalty for non-compliance.

56. If in any matter (which is not provided for by any express provision of this Act) an inspector find any factory, magazine, or store for an explosive, or any part thereof, or any thing or practice therein or connected therewith, to be unnecessarily dangerous or defective, so as, in his opinion, to tend to endanger the public safety, or the bodily safety of any person, such inspector may require the occupier of such factory, magazine, or store to remedy the same.

Where the occupier objects to comply with the requisition, he may require the matter to be referred to arbitration in manner provided by this Act.

No person shall be precluded by any contract from doing such acts as may be necessary to comply with a requisition or award under this section; and no person shall be liable under any contract to any penalty or forfeiture for doing those acts if he gave notice of such contract to the inspector at or before the time at which the inspector made the requisition or to the arbitrators before the award was made.

If the occupier fail to comply with the requisition or award within twenty days after the expiration of the time for requiring the matter to be referred to arbitration if there is no reference to arbitration, or if there is such a reference after the date of the award, he shall be liable to a penalty not exceeding twenty pounds for every day during which he so fails to comply.

Provided that the Court, if satisfied that the occupier has taken active measures for complying with the requisition or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before them for punishing such failure, and if the works are completed within a reasonable time in the opinion of the Court, no penalty shall be inflicted.

Annual report of Government inspectors proceedings.

57. A report of the proceedings under this Act shall be made annually to the Secretary of State, by such inspectors and in such manner and form as may be directed by him, and shall be laid before both Houses of Parliament.

Inspection by railway inspectors or inspectors of Board of Trade.

58. The Board of Trade may from time to time, by order, direct—

(*a.*) Any person acting under the Board as an inspector of railways to inquire into the observance of this Act by any railway company or canal company, and generally to act with respect to any railway or canal as an inspector under this Act; or

(*b.*) Any person acting under the Board as an inspector or otherwise for the purposes of the Merchant Shipping Act, 1854, or the Acts amending the same, to inquire into the observance of this Act in any harbour or in the case of any ship, and generally to act in such harbour and with respect to ships as an inspector under this Act.

The Board of Trade may revoke any such order; and each such inspector shall,

while such order is in force, have for that purpose the same powers and authorities as he has under the Acts in pursuance of which he was originally appointed inspector, and also the powers and authorities of a Government inspector under this Act.

Application of 35 & 36 Vict. c. 76, and c 77. to magazines used for mines.

59. Where a magazine or store is established for the purpose of any mine subject to the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, by the owner (as defined by such Act) of the mine, the Secretary of State may from time to time by order direct an inspector under either of those Acts to act with respect to such magazine or store as a Government inspector under this Act, and may revoke any such order; and such inspector shall, while such order is in force, have for that purpose the same powers and authorities as he has under the said Acts, and also the powers and authorities of a Government inspector under this Act.

License and special rules certified by Government inspector to be evidence. 35 & 36 Vict. c. 76, s. 59.

60. A copy of any license confirmed by the Secretary of State under this Act, and of any special rules under this Act, certified by a Government inspector, shall be evidence of such license and special rules respectively, and of the fact of such license having been duly granted and confirmed, and such special rules duly established under this Act.

Keeping and carriage of samples by Government inspector.

61. A Government inspector, and any other person authorised by him for the purpose, may keep and convey any sample taken for the purposes of this Act by or by authority of such inspector, so that the amount of it do not exceed what is reasonably necessary for the purpose of enabling such inspector to perform his duties under this Act, and be kept and carried with all due precautions to prevent accident; and such inspector or person shall not be liable to any penalty, punishment, or forfeiture under this or any other Act for keeping or conveying such sample.

Salaries of Government inspectors and expenses of Act.

62. The salaries of the Government inspectors, and the expenses incurred by the Secretary of State or the Government inspectors in carrying this Act into execution, shall be defrayed out of moneys provided by Parliament.

Accidents.

Notice to be given of accidents connected with explosive.

63. Whenever there occurs any accident by explosion or by fire in or about or in connection with any factory, magazine, or store, or any accident by explosion or by fire causing loss of life or personal injury in or about or in connection with any registered premises, the occupier of such factory, magazine, store, or premises shall forthwith send or cause to be sent notice of such accident and of the loss of life or personal injury (if any) occasioned thereby to the Secretary of State. A notice of any accident of which notice is sent in pursuance of this section to a Government inspector need not be sent to any inspector or sub-inspector of factories or any inspector of mines.

Where in, about, or in connection with any carriage, ship, or boat, either conveying an explosive, or on or from which an explosive is being loaded or unloaded, there occurs any accident by explosion or by fire causing loss of life or personal injury, or if the amount of explosive conveyed or being so loaded or unloaded exceeds in the case of gunpowder half a ton, and in the case of any other explosive the prescribed amount, any accident by explosion or by fire, the owner or master of such carriage, ship, or boat, and the owner of the explosive conveyed therein or being loaded or unloaded therefrom, or one of them, shall forthwith send or cause to be sent notice of such accident, and of the loss of life or personal injury, if any, occasioned thereby, to the Secretary of State.

Every such occupier, owner, or master as aforesaid who fails to comply with this section shall be liable to a penalty not exceeding twenty pounds.

Reconstruction of buildings destroyed by accident.

64. Where an accident by explosion or fire has occurred in, and wholly or partly destroyed a factory magazine, or any magazine or store, the factory magazine, magazine or store shall not be reconstructed, and any further supply of an explosive shall not be put therein, except with the permission of the Secretary of State; and any explosive put therein in contravention of this section shall be deemed to be kept in an unauthorised place, and the offence may be punished accordingly:

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Provided, that this enactment shall not prevent the reconstruction of a factory magazine in any lawfully existing factory upon such site in the factory, and with such precautions as may seem reasonable to the Secretary of State, due regard being had to the working of the factory as well as to the safety of the public and of the persons employed therein.

Where an accident by explosion or fire in a factory has wholly or partly destroyed any building of such factory as to which a Government inspector has previously to the accident sent to the occupier a notice that the building is unduly near to some building or work outside the factory, such building shall be reconstructed only upon such site in the factory and with such precautions as may seem reasonable to the Secretary of State, due regard being had to the working of the factory as well as to the safety of the public and of the persons employed therein.

Where an accident by explosion or by fire in a factory has wholly or partly destroyed two or more buildings in such factory, not more than one of such buildings shall be reconstructed, except with the permission of the Secretary of State; provided that this enactment shall not apply to any buildings in a lawfully existing factory, if either both or all such buildings are incorporating mills, or if as regards any other buildings a Government inspector has not previously to the accident sent to the occupier a notice that such buildings are unduly near to each other.

Where a building is constructed on a different site in pursuance of this section, the Secretary of State shall cause the necessary alterations to be made in the license, and such alterations shall be deemed to be part of the license.

The reconstruction of any building in contravention of this section shall be deemed to be a breach of the terms of the license, and shall be punished accordingly.

Provisions as to coroners inquests on deaths from accidents connected with explosives.

65. With respect to coroners inquests on the bodies of persons whose death may have been caused by the explosion of any explosive or by any accident in connection with an explosive, the following provisions shall have effect:

(1.) Where a coroner holds an inquest upon a body of any person whose death may have been caused by any accident of which notice is required by this Act to be given to the Secretary of State, or by the explosion of any explosive, the coroner shall adjourn such inquest unless a Government inspector, or some person on behalf of the Secretary of State, is present to watch the proceedings:

(2.) The coroner, at least four days before holding the adjourned inquest, shall send to the Secretary of State notice in writing of the time and place of holding the adjourned inquest:

(3.) The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof:

(4.) If an explosion or accident has not occasioned the death of more than one person, and the coroner has sent to the Secretary of State notice of the time and place of holding the inquest not less than forty-eight hours before the time of holding the same, it shall not be imperative on him to adjourn such inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn:

(5.) A Government inspector or person employed on behalf of the Secretary of State shall be at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner on points of law:

(6.) Where evidence is given at an inquest at which no Government inspector or person employed on behalf of the Secretary of State is present, of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about or in connection with any factory, magazine, store, or registered premises, or any carriage, ship, or boat carrying an explosive, appearing to the coroner or jury to require a remedy, the coroner shall send to the Secretary of State notice in writing of such neglect or defect.

Inquiry into accidents and

66. The Secretary of State may direct an inquiry to be made by a Government inspector into the cause of any accident which is caused by an explosion or fire

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formal investigation in serious cases.

either in connection with any explosive, or of which notice is required by this Act to be given to the Secretary of State, and where it appears to the Secretary of State, either before or after the commencement of any such inquiry, that a more formal investigation of the accident, and of the causes thereof, and of the circumstances attending the same, is expedient, the Secretary of State may by order direct such investigation to be held, and with respect to such inquiry and investigation the following provisions shall have effect:

(1.) The Secretary of State may, by the same or any subsequent order, appoint any person or persons possessing legal or special knowledge to assist the Government inspector in holding the formal investigation, or may direct the county court judge, stipendiary magistrate, metropolitan police magistrate, or other person or persons named in the same or any subsequent order, to hold the same with the assistance of a Government inspector or any other assessor or assessors named in the order;

(2.) The persons holding any such formal investigation (in this section referred to as the court) shall hold the same in open court in such manner and under such conditions as they may think most effectual for ascertaining the causes and circumstances of the accident, and enabling them to make the report in this section mentioned;

(3.) The court shall have for the purpose of such investigation all the powers of a court of summary jurisdiction when acting as a court in hearing informations for offences against this Act, and all the powers of a Government inspector under this Act, and in addition the following powers; namely,

(*a.*) They may enter and inspect any place or building the entry or inspection whereof appears to them requisite for the said purpose;

(*b.*) They may by summons under their hands require the attendance of all such persons as they think fit to call before them and examine for the said purpose, and may for such purpose require answers or returns to such inquiries as they think fit to make;

(*c.*) They may require the production of all books, papers, and documents which they consider important for the said purpose;

(*d.*) They may administer an oath, and require any person examined to make and sign a declaration of the truth of the statements made by him in his examination;

(*e.*) Persons attending as witnesses before the court shall be allowed such expenses as would be allowed to witnesses attending before a court of record; and in case of dispute as to the amount to be allowed, the same shall be referred by the court to a master of one of the superior courts, who, on request under the hands of the members of the court, shall ascertain and certify the proper amount of such expenses;

(4.) The Government inspector making an inquiry into any accident and the court holding an investigation of any accident under this section shall make a report to the Secretary of State, stating the causes of the accident and all the circumstances attending the same, and any observations thereon or on the evidence or on any matters arising out of the inquiry or investigation which he or they think right to make to the Secretary of State, and the Secretary of State shall cause every such report to be made public in such manner as he thinks expedient;

(5.) All expenses incurred in and about an inquiry or investigation under this section shall be deemed to be part of the expenses of the Secretary of State in carrying this Act into execution; and

(6.) Any person who without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses (if any) to which he is entitled tendered to him, to comply with any summons or requisition of a court holding an investigation under this Act, or prevents or impedes such court in the execution of their duty, shall for every such offence incur a penalty not exceeding ten pounds, and in the case of a failure to comply with a requisition for making any return or producing any docu-

ment, not exceeding ten pounds during every day that such failure continues.

Local Supervision.

Definition and Powers of Local Authority.

Definition of local authority.

67. The local authority, for the purposes of this Act, shall be—

(1.) In the city of London, except as hereafter in this section mentioned, the court of the Lord Mayor and aldermen of the said city; and

(2.) In the metropolis (that is, in places for the time being within the jurisdiction of the Metroplitan Board of Works under the Metropolis Management Act, 1855), except the city of London, and except as hereafter in this section mentioned, the Metropolitan Board of Works; and

(3.) In any borough in England which is not assessed to the county rate of any county by the justices of such county, except as hereafter in this section mentioned, the mayor, aldermen, and burgesses acting by the council; and

(4.) In any harbour within the jurisdiction of a harbour authority, whether situate or not within the jurisdiction of any local authority before in this section mentioned, the harbour authority, to the exclusion of any other local authority; and

(5.) In any place in which there is no local authority as before in this section defined, the justices in petty sessions assembled.

Power of certain local bodies to become a local authority.

68. The council of any borough which is assessed to the county rate of any county by the justices of such county and the commissioners of any improvement district may by order of a Secretary of State made upon the application of such council or commissioners, and published in the *London Gazette*, be declared to be a local authority for the purposes of this Act, and thereupon shall become a local authority accordingly for such part of their borough or district as is not included in any harbour, to the exclusion of the justices in petty sessions.

Duty of local authority and power of officer.

69. It shall be the duty of every local authority to carry into effect within their jurisdiction the powers vested in them under this Act.

Any officer authorised by the local authority may, on producing, if demanded, either a copy of his authority purporting to be certified by the clerk or some member of the local authority, or some other sufficient evidence of his authority, require the occupier of any store (not being subject to the inspection under this Act of any inspector of mines) or any registered premises, or any small firework factory, to show him every or any place and all or any of the receptacles in which any explosive or ingredient of an explosive, or any substance the keeping of which is restricted or regulated by this Act, that is in his possession is kept, and to give him samples of such explosive, ingredient, or substance, or of any substance which the officer believes to be an explosive or such ingredient or substance.

Any occupier of a store or registered premises or a small firework factory who refuses to comply with any such requisition of an officer of the local authority, or to give him such assistance as he may require for the purpose of this section, or who wilfully obstructs the local authority, or any officer of the local authority, in the execution of this Act, shall be liable to a penalty not exceeding twenty pounds.

Expenses of local authority.

70. All expenses incurred by any local authority in carrying into effect the execution of this Act, including the salary and expenses of any officer directed by them to act under this Act, shall be paid out of the local rate. The local rate shall for the purposes of this Act mean as follows; that is to say,

In the city of London the consolidated rate;

In the metropolis (exclusive of the city of London) the consolidated rate as levied in the metropolis exclusive of the city of London, and without any demand on such city;

In a borough the borough fund or borough rate;

In a harbour any moneys, fund, or rate applicable or leviable by the harbour authority for any harbour purposes;

In any place where the justices in petty sessions are the local authority the county rate; and

In an improvement district any fund, moneys, or rate applicable or leviable by the Improvement Commissioners for any purposes of improvement within their district;

And the local rate or any increase of the local rate may notwithstanding any limitation in any Act be levied for the purposes of this Act.

Power of Local Authority to provide Carriages and Magazines.

Undertaking of carriage by harbour authority and canal company.

71. Every harbour authority and canal company shall, in addition to any other powers they may have for the like purpose, have power to provide carriages, ships, and boats for the conveyance, loading, or unloading of an explosive within the jurisdiction of such authority or company, and may charge a reasonable sum fixed by a bye-law under this Act for the use of such carriage, ship, or boat.

Provision of magazines by local authority.

72. Where any local authority other than justices in petty sessions satisfy the Secretary of State that the erection of a magazine by such authority, either within or without their jurisdiction, for the keeping of any explosive, would conduce to the safety of the public within their jurisdiction, and would not be injurious to any harbour or urban district out of their jurisdiction, the Secretary of State may grant a license under this Act for such magazine.

Where the magazine is without the jurisdiction of the local authority erecting the same, the assent of the local authority within whose jurisdiction the site is situate shall be applied for in manner provided by this Act, and when the magazine is within the said jurisdiction notice of the application to the Secretary of State for the license shall be given in like manner as notice of the intention to apply for the assent of the local authority to a site is required by this Act to be given.

The local authority may, for the purpose of any such license, acquire any land or right over land, or appropriate any land or right belonging to them, and acquire or build a magazine, and may maintain and manage such magazine, and may charge for the use by persons of any such magazine such reasonable sums as they may from time to time, with the approval of the Secretary of State, fix.

Such sums shall be applied in aid of the local rate, and the expenses incurred for the purposes of this section may be defrayed out of the local rate, and the local authority may borrow on the security of the local rate the amount required for the purpose of acquiring any land or right over land, or acquiring or building a magazine in pursuance of this section.

Any such loan shall be made with the approval, in the case of a council, of the Treasury, and in the case of Improvement Commissioners, of the Local Government Board, and in the case of a harbour authority, of the Board of Trade.

For the purpose of such borrowing the clauses of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the Commissioners, shall be incorporated with this Act, and in the construction of those clauses for the purpose of this Act, this Act shall be deemed to be the special Act, and the local authority which is borrowing shall be deemed to be the Commissioners.

For the purpose of the purchase of any land or right over land for the purpose of this section "The Lands Clauses Consolidation Act, 1845," and the Acts amending the same, (except so much as relates to the purchase of land otherwise than by agreement,) shall be incorporated with this section, and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean the local authority, and land shall be construed to include any right over land.

Where any offence under this Act is committed in or about any magazine erected in pursuance of this section, such offence may be prosecuted and tried and the penalty and forfeiture therefor recovered either in the county or place in which the magazine is situate, or in any adjoining county or place.

Search for explosive when in place in contravention of this Act, or offence being committed with respect to it.

73. Where any of the following officers—namely, any Government inspector, or any constable or any officer of the local authority, if such constable or officer is specially authorised either (*a*) by a warrant of a justice (which warrant such justice may grant upon reasonable ground being assigned on oath), or (*b*) (where it appears to a superintendent or other officer of police of equal or superior rank, or to a Government inspector, that the case is one of emergency and that the delay in obtaining a warrant would be likely to endanger life,) by a written order from such superintendent, officer, or inspector—has reasonable cause to believe that any offence has been or is being committed with respect to an explosive in any place (whether a building or not, or a carriage, boat, or ship), or that any explosive is in any such place in contravention of this Act, or that the provisions of this Act are not duly observed in any such place, such officer may, on producing, if demanded, in the case of a Government inspector a copy of his appointment, and in the case of any other officer his authority, enter at any time, and if needs be by force, and as well on Sunday as on other days, the said place, and every part thereof, and examine the same, and search for explosives therein, and take samples of any explosive and ingredient of an explosive therein, and any substance reasonably supposed to be an explosive, or such ingredient which may be found therein.

Any person who, by himself or by others, fails to admit into any place occupied by or under the control of such person any officer demanding to enter in pursuance of this section, or in any way obstructs such officer in the execution of his duty under this section, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof, which are at the time of the offence in his possession or under his control at the said place.

Where a constable or officer of the local authority specially authorised by written authority other than a warrant of a justice of the peace, enters and searches as above provided, a special report in writing of every act done by such constable or officer in pursuance of that authority, and of the grounds on which it is done, shall be forthwith sent by the person by whom or under whose authority it was done to the Secretary of State.

Seizure and detention of explosives liable to forfeiture.

74. Where any of the following officers, namely, any Government inspector, or any constable, or any officer of the local authority, has reasonable cause to believe that any explosive or ingredient of an explosive or substance found by him is liable to be forfeited under this Act, he may seize and detain the same until some court of summary jurisdiction has determined whether the same is or is not so liable to be forfeited, and with respect thereto the following provisions shall have effect:

(1.) The officer seizing may either require the occupier of the place in which it was seized (whether a building or not, or a carriage, boat, or ship) to detain the same in such place or in any place under the control of such occupier, or may remove it in such manner and to such place as will in his opinion least endanger the public safety, and there detain it, and may, where the matter appears to him to be urgent and fraught with serious public danger, and he is a Government inspector, or is authorised by an order from a Government inspector or a justice of the peace, or from a superintendent or other officer of police of equal or superior rank, cause the same to be destroyed or otherwise rendered harmless; but before destroying or rendering harmless the same he shall take and keep a sample thereof, and shall, if required, give a portion of the sample to the person owning the explosive, or having the same under his control at the time of the seizure; and any such occupier who, by himself or by others, fails to keep the same when he is required in pursuance of this section to detain it, and any such occupier or other person who, except with the authority of the officer seizing the same, or of a Government inspector, or in case of emergency for the purpose of preventing explosion or fire, removes, alters, or in any way tampers or deals with the same while so detained, shall be liable to a penalty not exceeding fifty pounds, and shall also be liable to forfeit all explosives, and ingredients thereof,

which are at the time of the offence in his possession or under his control at the said place:

(2.) The proceedings before a court of summary jurisdiction for determining whether the same is or is not liable to forfeiture shall be commenced as soon as practicable after the seizure; and

(3.) The receptacles containing the same may be seized, detained, and removed in like manner as the contents thereof; and

(4.) The officer seizing the same may use for the purposes of the removal and detention thereof any ship, boat, or carriage in which the same was seized, and any tug, tender, engine, tackle, beasts, and accoutrements belonging to or drawing or provided for drawing such ship, boat, or carriage; and shall pay to the owner a reasonable compensation for such use, to be determined, in case of dispute, by a court of summary jurisdiction, and to be recovered in like manner as penalties under this Act; and

(5.) The same shall, so far as practicable, be kept and conveyed in accordance with this Act, and with all due precaution to prevent accident, but the person seizing, removing, detaining, keeping, or conveying the same shall not be liable to any penalty, punishment, or forfeiture under this or any other Act, or to any damages, for keeping or conveying the same, so that he use all such due precautions as aforesaid; and

(6.) The officer seizing the same, or dealing with the same in pursuance of this section, shall not be liable to damages or otherwise in respect of such seizure or dealing, or any act incidental to or consequential thereon, unless it is proved that he made such seizure without a reasonable cause, or that he caused damage to the article seized by some wilful neglect or default.

Inspection of wharf, carriage, boat &c., with explosives in transitu.

75. Any of the following officers, namely, any Government inspector under this Act, any chief officer of police, and any superior officer appointed for the purposes of this Act where the justices in petty sessions are the local authority, by the court of quarter sessions to which such justices belong, and in the case of any other local authority by the local authority itself, may, for the purpose of ascertaining whether the provisions of this Act with respect to the conveyance, loading, unloading, and importation of an explosive are complied with, enter, inspect, and examine at any time, and as well on Sundays as on other days, the wharf, carriage, ship, or boat of any carrier or other person who conveys goods for hire, or of the occupier of any factory, mazagine, or store, or of the importer of any explosive, on or in which wharf, carriage, ship or boat he has reasonable cause to suppose an explosive to be for the purpose of or in course of conveyance, but so as not to unnecessarily obstruct the work or business of any such carrier, person, occupier, or importer.

Any such officer, if he find any offence being committed under this Act in any such wharf, carriage, ship, or boat, or on any public wharf, may seize and detain or remove the said carriage, ship, or boat, or the explosive, in such manner and with such precautions as appear to him to be necessary to remove any danger to the public, and may seize and detain the said explosive, as if it were liable to forfeiture.

Any officer above mentioned in this section, and any officer of police, or officer of the local authority who has reasonable cause to suppose that any offence against this Act is being committed in respect of any carriage (not being on a railway) or any boat conveying, loading, or unloading any explosive, and that the case is one of emergency, and that the delay in obtaining a warrant will be likely to endanger life, may stop, and enter, inspect, and examine, such carriage or boat, and by detention or removal thereof or otherwise take such precautions as may be reasonably necessary for removing such danger, in like manner as if such explosive were liable to forfeiture.

Every officer shall for the purpose of this section have the same powers and be in the same position as if he were authorised by a search warrant granted under this Act, and any person failing to admit or obstructing such officer shall be liable to the same penalty.

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Payment for samples of explosives.

76. When a Government inspector, constable, or officer of the local authority in pursuance of this Act takes samples of any explosive, or ingredient, or substance, he shall pay for or tender payment for the same to such amount as he considers to be the market value thereof, and the occupier of the place in which, or the owner of the bulk from which the sample was taken, may recover any excess of the real value over the amount so paid or tendered, and any amount so tendered, from the inspector, constable, or officer taking the sample as a debt in the county court of the district within which the sample was taken.

PART IV.

Supplemental Provisions, Legal Proceedings, Exemptions, and Definitions.

Supplemental Provisions.

Penalty on and removal of trespassers.

77. Any person who enters without permission or otherwise trespasses upon any factory, magazine, or store, or the land immediately adjoining thereto which is occupied by the occupier of such factory, magazine, or store, or on any wharf for which bye-laws are made by the occupier thereof under this Act, shall for every such offence, if not otherwise punishable, be liable to a penalty not exceeding five pounds, and may be forthwith removed from such factory, magazine, store, land, or wharf, by any constable, or by the occupier of such factory, magazine, store, or wharf, or any agent or servant of or other person authorised by such occupier.

Any person other than the occupier of or person employed in or about any factory, magazine, or store who is found committing any act which tends to cause explosion or fire in or about such factory, magazine, or store, shall be liable to a penalty not exceeding fifty pounds.

The occupier of any such factory, magazine, store, or wharf shall post up in some conspicuous place or places a notice or notices warning all persons of their liability to penalties under this section; but the absence of any such notice or notices shall not exempt a person from a penalty under this section.

Arrest without warrant of persons committing dangerous offences.

78. Any person who is found committing any act for which he is liable to a penalty under this Act, and which tends to cause explosion or fire in or about any factory, magazine, store, railway, canal, harbour, or wharf, or any carriage, ship, or boat, may be apprehended without a warrant by a constable, or an officer of the local authority, or by the occupier of or the agent or servant of or other person authorised by the occupier of such factory, magazine, store, or wharf, or by any agent or servant of or other person authorised by the railway or canal company or harbour authority, and be removed from the place at which he is arrested, and conveyed as soon as conveniently may be before a court of summary jurisdiction.

Imprisonment for wilful act or neglect endangering life or limb.

79. Where any person is guilty of any offence which under this Act is punishable by a pecuniary penalty only, and which, in the opinion of the court that tries the case, was reasonably calculated to endanger the safety of or to cause serious personal injury to any of the public or the persons employed in or about any factory, magazine, store, or registered premises, or any harbour, railway, canal, wharf, ship, boat, carriage, or place where such offence is committed, or to cause a dangerous accident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the court is of opinion that a pecuniary penalty will not meet the circumstances of the case, to imprisonment, with or without hard labour, for a period not exceeding six months.

Penalty for throwing fireworks in thoroughfare.

80. If any person throw, cast, or fire any fireworks in or into any highway, street, thoroughfare, or public place, he shall be liable to a penalty not exceeding five pounds.

Forgery and falsification of documents.

81. Every person who forges or counterfeits any license, certificate, document, or plan granted or required in pursuance or for the purposes of this Act, or gives or signs any such document or plan which is to his knowledge false in any material

particular, or wilfully makes use of any such forged, counterfeit, or false license, certificate, document, or plan, shall be liable to imprisonment, with or without hard labour, for a term not exceeding two years.

Punishment for defacing notices.

82. Every person who, without due authority, pulls down, injures, or defaces any notice, copy of rules, or document, when affixed in pursuance of this Act, or of the special rules, shall be liable to a penalty not exceeding two pounds.

Provisions as to Orders in Council and orders of Secretary of State.

83. Her Majesty may from time to time make Orders in Council for doing anything which is in this Act expressed to be authorised, directed, regulated, prescribed, or done by Order in Council.

Every Order in Council or order of the Secretary of State which purports to be made in pursuance of this Act shall be presumed to have been duly made and to be within the powers of this Act, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.

Every Order in Council made in pusuance of this Act shall take effect as if it were enacted in this Act, and shall be published in the *London Gazette*, and shall be laid before both Houses of Parliament within one month after it is made, if Parliament be then sitting, or if not, within one month after the commencement of the then next session of Parliament.

Her Majesty may by Order in Council, and a Secretary of State may by order, from time to time revoke, add to, or alter any previous Orders in Council or orders of the Secretary of State, at the case may be, under this Act.

Publication of bye-laws, notices, &c.

84. All bye-laws, notices, and documents directed by this Act to be published or advertised shall, save as otherwise provided by this Act, be published in the place which such notices and documents affect, by advertisement in some newspapers circulating generally in such place, or by placards or handbills, or in such manner as the Secretary of State may from time to time direct as being in his opinion sufficient for giving information thereof to all persons interested.

Requisitions, notices, &c., to be in writing, &c., and how to be served.

85. All orders, permissions, notices, and documents issued or given by the Secretary of State for the purposes of this Act, and all notices under this Act, shall be in writing or print, or partly in writing and partly in print, and all notices and documents required by this Act to be served, given, or sent by, on, or to a Government inspector or Secretary of State may be sent by post, by a prepaid letter, and if sent by post shall be deemed to have been served, given, and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service, giving, or sending, it shall be sufficient to prove that the letter containing the notice was properly addressed and prepaid and put into the post.

All notices and documents directed by or required for the purposes of this Act to be given or sent to the Secretary of State shall, if sent to a Government inspector under this Act, be deemed to have been sent to the Secretary of State.

All notices and documonts directed by or required for the purposes of this Act to be given or sent to a local authority may be sent, by post or otherwise, to the clerk or office of the local authority, or delivered to some person employed by them for the purposes of this Act.

Construction of enactments referring to powers of searching for gunpowder.

86. Where any enactment refers to any power of searching for gunpowder, or to any provisions of an Act in the twelfth year of King George the Third, chapter sixty-one, or of any Act repealed by this Act relative to the search for gunpowder, such enactment shall be deemed to refer to the provisions of this Act, with respect to the search for and seizure, detention, and removal of an explosive by a Government inspector.

Legal Proceedings.

Exemption of occupier from penalty upon proof of another being real offender.

87. Where any offence under this Act for which the occupier of any factory, magazine, store, or registered premises is liable to a penalty or forfeiture has in fact been committed by some other person, such other person shall be liable to a penalty not exceeding twenty pounds.

Where such occupier is charged with an offence so committed by some other person, the occupier shall be exempt from any penalty and forfeiture upon proving that he had supplied proper means and issued proper orders for the observance and

Secs. 87–91.

used due diligence to enforce the observance of this Act, and that the offence in question was actually committed by some other person without his connivance, and if the actual offender be alive, that he has taken all practicable means in his power to prosecute such offender to conviction.

Where a Government inspector, or an officer of the local authority, or the local authority is satisfied, before instituting a proceeding for any offence under this Act against an occupier, that such occupier, if such proceedings were instituted against him, would, under the foregoing provisions of this section, upon taking all practicable means in his power to prosecute the actual offender to conviction, be exempt from any penalty and forfeiture, and the occupier gives all facilities in his power for proceeding against and convicting the person whom the inspector, officer, or local authority believes actually to have committed the offence, the inspector, officer, or local authority shall proceed against that person in the first instance, without first proceeding against the occupier.

The occupier or other defendant, when charged in respect of any offence by another person, may, if he think fit, be sworn and examined as an ordinary witness in the case.

Where any offence under this Act for which any warehouseman, carrier, occupier of a wharf or dock, or owner or master of any ship, boat, or carriage, is liable to a penalty or forfeiture, has in fact been committed by some other person, this section shall apply in like manner as if the warehouseman, carrier, occupier of a wharf or dock, owner, or master were such an occupier as above in this section mentioned.

Exemption of carrier and owner and master of ship where consignee, &c., in fault.

88. Where a carrier, owner, or master of a ship or boat is prevented from complying with this Act by the wilful act, neglect, or default of the consignor or consignee of the explosive, or other person, or by the improper refusal of the consignee or other person to accept delivery of the explosive, such consignor, consignee, or other person who is guilty of such wilful act, neglect, default, or refusal shall be liable to the same penalty to which the carrier, owner, or master is liable for a breach of this Act, and his conviction shall exempt the carrier, owner, or master from any penalty or forfeiture under this Act.

Supplemental provisions as to forfeiture of explosive.

89. Where a court before whom a person is convicted of an offence against this Act has power to forfeit any explosive owned by or found in the possession or under the control of such person, the court may, if it think it just and expedient, in lieu of forfeiting such explosive, impose upon such person, in addition to any other penalty or punishment, a penalty not exceeding such sum as appears to the court to be the value of the explosive so liable to be forfeited.

Where any explosive, or ingredient of an explosive, is alleged to be liable under this Act to be forfeited, any indictment, information, or complaint may be laid against the owner of such explosive or ingredient, for the purpose only of enforcing such forfeiture, and where the owner is unknown, or cannot be found, a court may cause a notice to be advertised, stating that unless cause is shown to the contrary at the time and place the court, after hearing the owner or any person on his behalf (who may be present), may order all or any part of such explosive or ingredient to be forfeited.

Jurisdiction in tidal waters or on boundaries.

90. For all purposes of this Act—

(1.) Any harbour, tidal water, or inland water which runs between or abuts on or forms the boundary of the jurisdiction of two or more courts shall be deemed to be wholly within the jurisdiction of each of such courts; and

(2.) Any tidal water not included in the foregoing descriptions, and within the territorial jurisdiction of Her Majesty, and adjacent to or surrounding any part of the shore of the United Kingdom, and any pier, jetty, mole, or work extending into the same, shall be deemed to form part of the shore to which such water or part of the sea is adjacent, or which it surrounds.

Prosecution of offences either summarily or on indictment.

91. Every offence under this Act may be prosecuted and every penalty under this Act may be recovered, and all explosives and ingredients liable to be forfeited under this Act may be forfeited either on indictment or before a court of summary juridiction, in manner directed by the Summary Jurisdiction Acts.

Provided that the penalty imposed by a court of summary jurisdiction shall not exceed one hundred pounds, exclusive of costs, and exclusive of any forfeiture or

penalty in lieu of forfeiture, and the term of imprisonment imposed by any such court shall not exceed one month.

All costs and money directed to be recovered as penalties may be recovered before a court of summary jurisdiction in manner directed by the Summary Jurisdiction Acts.

A court of summary jurisdiction may by order prohibit a person from doing any act for doing which such person has twice been convicted under this Act, and may order any person disobeying such summary order to be imprisoned for any period not exceeding six months.

Power of offender in certain cases to elect to be tried on indictment, and not by summary jurisdiction.

92. Where a person is accused before a court of summary jurisdiction of any offence under this Act, the penalty for which offence, as assigned by this Act, exclusive of forfeiture, exceeds one hundred pounds, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

Appeal to quarter sessions.

93. If any party feels aggrieved by any summary order made by a court of summary jurisdiction under this Act, or by any order or conviction made by a court of summary jurisdiction in determining any complaint or information under this Act, by which order or conviction the sum adjudged to be paid, including costs, and including the value of any forfeiture, exceeds twenty pounds, the party so aggrieved may appeal therefrom to quarter sessions, [in manner provided with respect to an appeal to quarter sessions by section one hundred and ten of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six (1).]

24 & 25 Vict. c. 96.

Constitution of court.

94. The court of summary jurisdiction, when hearing and determining an information or complaint, in respect of any offence under this Act, shall be constituted either of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Distress of ship.

95. Where the owner or master of a ship or boat is adjudged to pay a penalty for an offence committed with or in relation to such ship or boat, the court may, in addition to any other power they may have for the purpose of compelling payment of such penalty, direct the same to be levied by distress or arrestment and sale of the said ship or boat and her tackle.

Application of penalties and disposal of forfeitures.

96. All penalties imposed in pursuance of this Act by a court of summary jurisdiction upon the prosecution of a Government inspector shall, notwithstanding anything in any other Act, be paid into the receipt of Her Majesty's Exchequer, in such manner as the Treasury may from time to time direct, and be carried to the Consolidated Fund.

Any explosive or ingredient forfeited in pursuance of this Act may be sold, destroyed, or otherwise disposed of in such manner as the court declaring the forfeiture, or the Secretary of State, may direct, and the proceeds of any such sale or disposal shall be paid, applied, and accounted for in like manner as penalties under this Act.

The receptacle containing any such explosive or ingredient may be forfeited, sold, destroyed, or otherwise disposed of, in like manner as the contents thereof.

The provisions of Part Three of this Act with respect to an explosive, or ingredient of an explosive, seized in pursuance of this Act, and to the officer seizing, removing, detaining, keeping, or conveying, or otherwise dealing with the same, shall apply to any explosive and ingredient declared by any court to be forfeited, and to the officer removing, detaining, keeping, conveying, selling, destroying, or otherwise disposing of the same.

The court declaring the forfeiture, or the Secretary of State directing the sale or

(1) The part within brackets is repealed by Summary Jurisdiction Act, 1884 (47 & 48 Vict. c. 43).

Secs. 96, 97.

other disposal of any forfeited explosive or ingredient, and the receptacles thereof, may require the owner of such explosive or ingredient to permit the use of any ship, boat, or carriage containing such explosive or ingredient for the purpose of such sale or disposal, upon payment of a reasonable compensation for the same, to be determined in case of dispute by a court of summary jurisdiction; and where the explosive or ingredient is directed to be destroyed, the owner and the person having possession of such explosive or ingredient, and the owner and master of the ship, boat, or carriage containing the same, or some or one of them, shall destroy the same accordingly, and if the court or Secretary of State so order, the ship, boat, or carriage may be detained until the same is so destroyed; and if the Secretary of State is satisfied that default has been made in complying with any such direction by him or by a court, and that the detention of the ship, boat, or carriage will not secure the safety of the public, and that it is impracticable, having regard to the safety of the public or of the persons employed in such destruction, to effect the same without using such ship, boat, or carriage, or otherwise dealing with such ship, boat, or carriage, in like manner as if it were a receptacle for an explosive forfeited under this Act, the Secretary of State may direct such ship, boat, and carriage, or any of them, to be, and the same may accordingly be, so used or dealt with.

Exemptions and Savings.

Exemption of Government factories, &c., from the Act.

97. This Act shall not apply—

(1.) To any factory, magazine, store, premises, wharf, place, or explosive under the control of a Secretary of State, the Commissioners of the Admiralty, or other department of the Government, or otherwise held for the service of the Crown, or to the manufacture, keeping, or importation of such explosive; or

(2.) To any of Her Majesty's ships, boats, or carriages; or

(3.) To the keeping or making up, or adapting for use of any explosive issued by or by the authority of a Secretary of State for the use of any volunteer corps or administrative regiment, or by the authority of the Commissioners of the Admiralty for the use of any force under the control of those commissioners, so far as such explosive is kept, made up, and adapted for use in accordance with the regulations of the Secretary of State or the said commissioners, as the case may be; or

26 & 27 Vict. c. 65.

(4.) To any storehouse appointed for receiving any such explosive as last above mentioned in pursuance of section twenty-six of the Volunteer Act, 1863, and any Act amending the same, or otherwise, if such storehouse is approved by the Secretary of State or the Commissioners of the Admiralty, as the case may be, as a fit place for the storing of such explosive, and is managed in accordance with the regulations of a Secretary of State or such commissioners for the management of such storehouses, or for the management of the like storehouses appointed for the use of Her Majesty's army or navy; or

(5.) To the conveyance of any explosive under the control of a Secretary of State, the Commissioners of the Admiralty, or other department of the Government, or to the conveyance of any explosive otherwise held for the service of the Crown when the same is being conveyed in accordance with the regulations of a Secretary of State or the Commissioners of the Admiralty or other department of the Government:

Provided that every person who enters without permission or otherwise trespasses upon any factory, magazine, or storehouse above in this section mentioned or the land immediately adjoining thereto in the occupation of the Crown or of a Secretary of State or the Commissioners of the Admiralty or other department of the Government, or if it adjoin such a storehouse in the occupation of the officer or person in whom such storehouse is vested, and any person found committing any act tending to cause explosion or fire in or about such factory, magazine, or storehouse, shall be liable to the like penalty, and may be removed and arrested in like manner as if this section had not been enacted and this

Act applied to such factory, magazine, or storehouse, as above in this section mentioned.

Secs. 97—103.

98. This Act shall not apply—

(1.) To the keeping of any rockets for use in any apparatus for saving life, kept under the control of the Commissioners of the Admiralty or the Board of Trade; or

(2.) To the keeping of any explosive kept for the purpose of signalling at or near a station on the sea coast, under the control of any general lighthouse authority, as defined by the Merchant Shipping Act, 1854.

Saving for rocket and fog stations.

17 & 18 Vict. c. 104, s. 389.

99. Nothing in this Act with respect to the keeping of gunpowder shall apply to any vessel for the storage of gunpowder moored in the river Mersey at a place appointed either before or after the passing of this Act, in pursuance of the Act of the session of the fourteenth and fifteenth years of the reign of Her present Majesty, chapter sixty-seven, intituled "An Act to repeal so much of an Act of the twelfth year of King George the Third relating to the making, keeping, and carriage of gunpowder, as exempts therefrom certain gunpowder magazines and stores near Liverpool, and to make certain temporary provisions with regard to the said magazines and stores;" nor shall anything in this Act affect the powers of the Commissioners of the Admiralty, or a Secretary of State, or the Commissioners for the Conservancy of the River Mersey under the said Act:

Exemption of magazines in the Mersey.

Provided that any explosive other than gunpowder shall not be kept in such vessel except in pursuance of a license under this Act.

100. Nothing in this Act shall render liable to any penalty or forfeiture the owner or master of any ship or boat, or any carrier or warehouseman, or the person having charge of any carriage, for any act done in breach of this Act, if he prove that by reason of stress of weather, inevitable accident, or other emergency, the doing of such act was, under the circumstances, necessary and proper.

Saving for master of ship and carrier in case of emergency.

101. Where any gunpowder, rockets, or other explosive are on board any ship in pursuance of the provisions of the Merchant Shipping Act, 1854, and the Acts amending the same, or any order or regulation made under any of those Acts, nothing in this Act shall apply to such gunpowder, rockets, or explosive, except that the conveyance and keeping thereof on board the ship or elsewhere while the ship is in harbour shall be subject to the bye-laws under this Act, and bye-laws under this Act may be made for regulating such conveyance and keeping.

Saving for rockets, gunpowder, &c., on board ship in compliance with 17 & 18 Vict. c. 104.

102. This Act shall not, save as is herein expressly provided, exempt any person from any action or suit in respect of any nuisance, tort, or otherwise, which might, but for the provisions of this Act, have been brought against him.

Saving clause as to liability.

This Act shall not exempt any person from any indictment or other proceeding for a nuisance, or for an offence which is indictable at common law, or by any Act of Parliament other than this Act, so that no person be punished twice for the same offence.

When proceedings are taken before any court against any person in respect of any offence under this Act, which is also an offence indictable at common law or by some Act of Parliament other than this Act, the court may direct that, instead of such proceedings being continued, proceedings shall be taken for indicting such person at common law or under some Act of Parliament other than this Act.

A continuing certificate granted under this Act shall not make lawful any factory, magazine, or store, or any part thereof, which immediately before the passing of this Act was unlawful.

103. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of Parliament, but the Secretary of State may, on the application of any local authority, or of any council of a borough, or any urban sanitary authority, or on the application of any persons making, keeping, importing, exporting, or selling any explosive within the jurisdiction of any local authority, council, or urban sanitary authority, after notice to such authority, make an order for repealing, altering, or amending all or any of the provisions of any Act of Parliament, charter, or custom respecting the manufacture, keeping, conveyance, importation, exportation, or sale of an explosive, or the powers of such council or authority for regulating the same, or otherwise in relation to an explosive.

Powers of Act cumulative, with power to make provisional order for repealing local Acts.

Secs. 103—108.

Notice of the draft of every such order shall be advertised not less than one month before the order is made, and the Secretary of State shall consider all objections to such draft order sent to him in writing during the said month, and shall, if it seem to him necessary, direct a local inquiry into the validity of any such objections.

Any such order shall be of no force unless confirmed by Parliament, but when so confirmed shall have effect, with such modifications or alterations as may be therein made by Parliament.

If while a Bill confirming any such order is pending in either House of Parliament, a petition is presented against such order, the Bill, so far as it relates to such order, may be referred to a Select Committee, and the petitioner shall be allowed to appear and oppose the same as in the case of a Bill for a private Act.

An order under this section may also be made for revoking or altering an order under this section previously made and confirmed by Parliament.

Definitions.

Extension of definition of explosive to other explosive substances.

104. Her Majesty may, by Order in Council, declare that any substance which appears to Her Majesty to be specially dangerous to life or property by reason either of its explosive properties, or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations, and restrictions as may be specified in the order) shall accordingly extend to such substance in like manner as if it were included in the term explosive in this Act.

Persons carrying on certain processes to be deemed manufacturers.

105. Any person who carries on any of the following processes, namely, the process of dividing into its component parts or otherwise breaking up or unmaking any explosive, or making fit for use any damaged explosive, or the process of remaking, altering, or repairing any explosive, shall be subject to the provisions of this Act as if he manufactured an explosive, and the expression "manufacture" shall in this Act be construed accordingly.

Definition and classification of explosives by Order in Council.

106. It shall be lawful for Her Majesty from time to time, by Order in Council, to define, for the purposes of this Act, the composition, quality, and character of any explosive, and to classify explosives.

Where the composition, quality, or character of any explosive has been defined by an Order in Council, any article alleged to be such explosive which differs from such definition in composition, quality, or character, whether by reason of deterioration or otherwise, shall not be deemed, for the purposes of this Act, to be the explosive so defined.

Definition of "chief officer of police."

107. In this Act—

The expression "chief officer of police" means—

(1.) In the city of London and the liberties thereof, the commissioner of city police; and

(2.) In the metropolitan police district, the commissioner or any assistant commissioner or any district superintendent of metropolitan police; and

(3.) Elsewhere the chief constable, or head constable, or other officer, by whatever name called, having the chief command of the police in the police district in reference to which such expression occurs:

"Police district."

The expression "police district" means—

(1.) The city of London and the liberties thereof; and

(2.) The metropolitan police district; and

(3.) Any county, or liberty of a county, borough, town, place, or union, or combination of places maintaining a separate police force; and all the police under one chief constable shall be deemed to constitute one force for the purposes of this section.

General definitions.

108. In this Act, unless the context otherwise requires—

The expression "this Act" includes any licence, certificate, bye-law, regulation, rule, and order granted or made in pursuance of this Act:

The expression "existing" means existing at the passing of this Act:

The expression "person" includes a body corporate:

The expression "occupier" includes any number of persons and a body corporate

and in the case of any manufacture or trade, includes any person carrying on such manufacture or trade:

The expression "master" includes every person (except a pilot) having command or charge of a ship, and in reference to any boat belonging to a ship, means the master of the ship; and when used in reference to any other boat, includes every person having command or charge of such boat:

The expression "magazine" includes any ship or other vessel used for the purpose of keeping any explosive.

The expression "factory magazine" means a building for keeping the finished explosive made in the factory, and includes, if such explosive is not gunpowder, any building for keeping the partly manufactured explosive or the ingredients of such explosive which is mentioned in that behalf in the license:

The expression "store" means an existing gunpowder store as defined by this Act, or a place for keeping an explosive licensed by a license granted by a local authority under this Act:

The expression "Secretary of State" means one of Her Majesty's Principal Secretaries of State:

The expression "warehouseman" includes all persons owning or managing any warehouse, store, wharf, or other premises in which goods are deposited:

The expression "carrier" includes all persons carrying goods or passengers for hire by land or water:

The expression "harbour authority" means any person or body of persons, corporate or unincorporate, being or claiming to be proprietor or proprietors of or intrusted with the duty or invested with the power of improving, managing, maintaining, or regulating any harbour properly so called, whether natural or artificial, and any port, haven, and estuary, or intrusted with the duty of conserving, maintaining, or improving the navigation of any tidal water, and any such harbour, port, haven, estuary, tidal water, and any wharf, dock, pier, jetty, and work, and other area, whether land or water, over which the harbour authority as above defined have control or exercise powers, are in the other portions of this Act included in the expression "harbour":

The expression "canal company" means any person or body of persons, corporate or unincorporate, being owner or lessee or owners or lessees of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom, constructed or carried on under the powers of any Act of Parliament, or intrusted with the duty of conserving, maintaining, or improving the navigation of any inland water, and every such canal and inland water under the control of a canal company as above defined, and any wharf, dock, pier, jetty, and work in or at which barges do or can ship or unship goods or passengers, and other area, whether land or water, which belong to or are under the control of such canal company, are in the other portions of this Act included in the expression "canal":

The expression "tidal water" means any part of the sea or of a river within the ebb and flow of the tides at ordinary spring tides:

The expression "inland water" means any canal, river, navigation, lake, or water which is not tidal water:

The expression "railway company" means any person or body of persons, corporate or unincorporate, being the owner or lessee or owners or lessees of or working any railway worked by steam or otherwise than by animal power in the United Kingdom, constructed or carried on under the powers of any Act of Parliament and used for public traffic, and every building, station, wharf, dock, and place which belong to or are under the control of a railway company, are in the other portions of this Act included in the expression "railway":

The expression "wharf" includes any quay, landing-place, siding, or other place at which goods are landed, loaded, or unloaded:

The expression "carriage" includes any carriage, waggon, cart, truck, vehicle, or other means of conveying goods or passengers by land, in whatever manner the same may be propelled:

Secs. 108, 122.

The expression "ship" includes every description of vessel used in sea navigation, whether propelled by oars or otherwise:

The expression "boat" means every vessel not a ship as above defined which is used in navigation in any inland water or any harbour, whether propelled by oars or otherwise:

The expression "prescribed" means prescribed by Order in Council:

The expression "borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "an Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same:

The expression "county" does not include a county of a city or a county of a town:

Every riding, division, liberty, or part of a county having a separate commission of the peace and separate court of quarter sessions is for the purposes of this Act to be deemed to be a county:

The expressions "urban sanitary district" and "urban sanitary authority" mean the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1872; and any urban sanitary district which is an Improvement Act district within the meaning of that Act, is in this Act referred to as an improvement district; and the expression "Improvement Commissioners" in this Act means the commissioners who are the urban sanitary authority for such district:

The expression "safety cartridges" means cartridges for small arms of which the case can be extracted from the small arm after firing, and which are so closed as to prevent any explosion in one cartridge being communicated to other cartridges:

The expression "Gunpowder Act, 1860," means the Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and thirty-nine, intituled "an Act to amend the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks," and the Acts amending the same:

The expression "Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "an Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same:

The expression "court of summary jurisdiction" means any justice or justices of the peace, metropolitan police magistrate, stipendiary, or other magistrate or officer, by whatever named called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to:

The expression "quarter sessions" includes general sessions.

Application of Act to Scotland.

Definitions.

Sections 109—115.

Application of Act to Ireland.

Sections 116—121.

Repeal of Acts.

Repeal of certain Acts and part of Act in 4th and 5th schedules.

122. The Acts specified in the fourth schedule to this Act are hereby repealed from and after the commencement of this Act, and the Act specified in the fifth schedule to this Act is hereby repealed from and after the commencement of this Act to the extent in the third column of that schedule mentioned.

Provided that—

(1.) The enactments hereby repealed shall continue in force—

For the purpose of any business or thing which any person is authorised to carry on or do in like manner as if this Act had not passed, for the time during which such business or thing is authorised to be carried on or done; and

Sec. 122.

(2.) Any rules made in pursuance of any enactment hereby repealed, for the purpose of regulating the conduct of servants and workmen employed in any mill, magazine, or place, shall continue in force, and the penalties under the said enactments for a breach of such rules may be enforced, until the expiration of three months after the grant of a continuing certificate under this Act to the occupier of such mill, magazine, or place, and such further period as the Secretary of State may by order direct, for the purpose of enabling such occupier to make special rules under this Act; and

(3.) This repeal shall not affect—

(*a.*) The past operation of any enactment hereby repealed, nor anything duly done or suffered under any enactment hereby repealed; or

(*b.*) Any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment hereby repealed; or

(*c.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or

(*d.*) Any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed; and

(4.) This repeal shall not revive any enactment, right, privilege, matter, or thing not in force or existing at the commencement of this Act.

SCHEDULES.

Sched. I.

FIRST SCHEDULE.

Part One.

Gunpowder Factories.

Regulations which are to form part of the terms of every continuing certificate of a factory for gunpowder.

(1.) The quantity of gunpowder or ingredients to be made into gunpowder to be at one time under any single pair of mill stones or rollers or runners shall not exceed fifty pounds as respects sporting and Government powder, and sixty pounds as respects all inferior powders; and every incorporating mill or gronp of incorporating mills shall be provided with a charge house for the store of mill charges, properly constructed of stone or brick, and situate at a safe and suitable distance from each incorporating mill or group of incorporating mills.

(2.) The quantity of gunpowder to be subjected to pressure at one time in any press house shall not exceed ten hundredweight.

(3.) The quantity of gunpowder to be corned or granulated at one time in any corning or granulating house shall not exceed twelve hundredweight.

(4.) The quantity of gunpowder to be dried at one time in one stove or place used for the drying of gunpowder shall not exceed fifty hundredweight.

(5.) The respective quantities to be at any one time in any press house or corning or granulating house shall not exceed twice the respective quantities hereby allowed to be subjected to pressure and to be corned or granulated at one time; and the quantity to be at any one time in any drying house or dusting house shall not be more than is necessary for the immediate supply and work of such house; and for the purposes of this provision any building used with any such press house, corning or granulating house, drying house or dusting house, shall be deemed part thereof, save only magazines constructed with stone or brick and situate forty yards at least from every such press house or other house as aforesaid (hereinafter distinguished as expense magazines), and save only the stove in which the powder which has been dried may be cooling.

Sched I.

(6.) Every person keeping or using any mill for the making of gunpowder shall have (in addition to the expense magazines) a good and sufficient factory magazine or magazines, situate (unless otherwise authorised by a certificate of the Secretary of State under the Gunpowder Act, 1860) at least one hundred and forty yards distant from the mill or mills and every press house and other house or place used for or in the making of gunpowder, such magazine or magazines to be well and substantially built with brick or stone, and situate in such place as may have been lawfully used or duly licensed by justices before the commencement of the Gunpowder Act, 1860, and not made unlawful by that Act, or may have been after the commencement of that Act duly licensed under the Gunpowder Act, 1860.

(7.) No maker of gunpowder shall keep or permit to be kept any charcoal within twenty yards of any mill or other engine for making gunpowder, or of any press house, or drying, corning, or dusting house or other place used in or for the making of gunpowder, or any magazine or storehouse thereto belonging.

Part Two.

Gunpowder Stores.

Regulations which are to form part of the terms of every continuing certificate for a gunpowder store.

(1.) The store shall be exclusively for the use of a mine, quarry, colliery, or factory for safety fuzes.

(2.) The amount of gunpowder in the store shall not exceed, if the store is well and substantially built of brick or stone, four thousand pounds, and in any other case three hundred pounds:

(3.) Where the amount of gunpowder in the store exceeds three hundred pounds, such store shall, unless otherwise authorised before the passing of this Act by a certificate of the Secretary of State, be within two hundred yards of the mine, quarry, colliery, or factory for safety fuzes, or one of the mines, quarries, collieries, or factories for safety fuzes for the use of which such gunpowder is kept, and not within two hundred yards of any inhabited house without the consent in writing of the occupier of such house:

(4.) Where such certificate has been given, the conditions on which it was given shall be duly observed as if they were contained in this schedule:

(5.) Where the amount of gunpowder does not exceed three hundred pounds, the store shall be within two hundred yards of the mine, quarry, colliery, or factory for the use of which it is erected, and unless it was erected and used for the said purpose before the passing of the Gunpowder Act, 1860, shall not be within two hundred yards from any inhabited house without the consent in writing of the occupier of such house:

(6.) The store shall not be within the city of London or Westminster or within three miles of either of them, or within any borough or market town or one mile of the same, or within two miles of any palace or house of residence of Her Majesty, her heirs and successors, or within two miles of any gunpowder magazine belonging to the Crown, or within half a mile of any parish church.

Sched. II.

SECOND SCHEDULE.

Arbitration.

Provisions as to arbitrations.

With respect to arbitrations under this Act, the following provisions shall have effect:

(1.) The parties to the arbitration are in this section deemed to be the occupier of the factory, magazine, or store on the one hand, and on the other the Government inspector (on behalf of the Secretary of State):

(2.) Each of the parties to the arbitration may, within twenty-one days after the date of the reference, appoint an arbitrator:

(3.) No person shall act as arbitrator or umpire under this Act who is employed in or in the management of or is directly or indirectly interested in the manufacture, trade, factory, magazine, store, business, or premises, to which the arbitration relates, or is in any manner interested directly or indirectly in the matter to which the arbitration relates:

(4.) The appointment of an arbitrator under this section shall be in writing, and notice of the appointment shall be forthwith sent to the other party to the arbitration, and shall not be revoked without the consent of such other party:

(5.) The death, removal, or other change in any of the parties to the arbitration shall not affect the proceedings under this section:

(6.) If within the said twenty-one days either of the parties fail to appoint an arbitrator the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator shall be final:

(7.) If before an award has been made any arbitrator appointed by either party die or become incapable to act, or for fourteen days refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matters in difference, and in such case the award of such single arbitrator shall be final:

(8.) In either of the foregoing cases where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who shall then act as if no failure had been made:

(9.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference shall be determined by the umpire appointed as hereinafter mentioned:

(10.) The arbitrators, before they enter upon the matters referred to them shall appoint by writing under their hands an umpire to decide on points on which they may differ:

(11.) If the umpire die or become incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire shall forthwith appoint another umpire in his place:

(12.) If the arbitrators refuse or fail or for seven days after the request of either party neglect to appoint an umpire, then on the application of either party an umpire shall be appointed by the chairman of the quarter sessions of the peace within the jurisdiction of which the factory, magazine or store is situate:

(13.) The decision of every umpire on the matters referred to him shall be final:

(14.) If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place:

The arbitrator and their umpire or any of them may examine the parties and their witnesses on oath, they may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult:

(15.) The payment, if any, to be made to any arbitrator or umpire for his services shall be fixed by the Secretary of State, and together with the costs of the arbitration and award shall be paid by the parties, or one of them, according as the award may direct. Such costs may be taxed by a master of one of the superior courts, who, on the written application of either of the parties, shall ascertain and certify the proper amount of such costs. The amount, if any, payable by the Secretary of State shall be paid as part of the expenses of inspectors under this Act. The amount, if any, payable by any other party may in the event of nonpayment be recovered in the same manner as penalties under this Act.

Sched. III.

THIRD SCHEDULE.

Maximum Fees for Licenses granted by the Secretary of State.

Factory license, original	Ten pounds.
Do. amending	Five pounds.
Do. renewal when lost	Five shillings.
Magazine license, original	Ten pounds.
Do. amending	Five pounds.
Do. renewal when lost	Five shillings.
Importation license, first grant	One pound.
Do. renewal	Ten shillings.
Continuing certificate	Forty shillings.

Sched. IV.

FOURTH SCHEDULE.

Session and Chapter.	Title.
23 & 24 Vict. c. 139 - -	An Act to amend the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks.
24 & 25 Vict. c. 130 - -	An Act for amending an Act passed in the last session of Parliament to amend the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks.
25 & 26 Vict. c. 98 - -	An Act for the amendment of an Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and thirty-nine, intituled An Act to amend the law concerning the making, keeping, and carriage of gunpowder and compositions of an explosive nature, and concerning the manufacture, sale, and use of fireworks, and of an Act amending the last-mentioned Act.
29 & 30 Vict. c. 69 - -	An Act for the amendment of the law with respect to the carriage and deposit of dangerous goods.
32 & 33 Vict. c. 113 - -	An Act to prohibit for a limited time the importation and to restrict and regulate the carriage of nitro-glycerine.

Sched. V.

FIFTH SCHEDULE.

Session and Chapter.	Abbreviated Title.	Extent of Repeal.
26 & 27 Vict. c. 65	The Volunteer Act, 1863.	Section twenty-six from "all exemptions contained in the Gunpowder Act, 1860," inclusive, to the end of the section.

THE

EXPLOSIVE SUBSTANCES ACT, 1883.

ARRANGEMENT OF SECTIONS.

Section.
1. Short title.
2. Punishment for causing explosion likely to endanger life or property.
3. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.
4. Punishment for making or possession of explosive under suspicious circumstances.
5. Punishment of accessories.
6. Inquiry under order of Attorney-General, and apprehension of absconding witnesses.
7. No prosecution except by leave of Attorney-General. Procedure and saving.
8. Search for and seizure of explosive substances.
9. Definitions, and application to Scotland.

THE

EXPLOSIVE SUBSTANCES ACT, 1883.

46 VICT. c. 3.

An Act to amend the Law relating to Explosive Substances (1).
[10*th April*, 1883.]

Secs. 1—4.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Explosive Substances Act, 1883.

Punishment for causing explosion likely to endanger life or property.

2. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for life, or for any less term (not less than the minimum term allowed by law), or to imprisonment with or without hard labour for a term not exceeding two years.

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

3. Any person who witnin or (being a subject of Her Majesty) without Her Majesty's dominions unlawfully and maliciously—

(*a.*) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance an explosion in the United Kingdom of a nature likely to endanger life or to cause serious injury to property; or

(*b.*) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in the United Kingdom, or to enable any other person by means thereof to endanger life or cause serious injury to property in the United Kingdom,

shall, whether any explosion does or not take place, and whether any injury to person or property has been actually caused or not, be guilty of felony, and on conviction shall be liable to penal servitude for a term not exceeding twenty years, or to imprisonment with or without hard labour for a term not exceeding two years, and the explosive substance shall be forfeited.

Punishment for making or possession of explosive under suspicious circumstances.

4. (1.) Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be guilty of felony, and, on conviction, shall be liable to penal servitude for a term not exceeding fourteen years, or to imprisonment for a term not exceeding two years, with or without hard labour, and the explosive substance shall be forfeited.

(2.) In any proceeding against any person for a crime under this section, such person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

(1) This Act was passed through Parliament in an unprecedentedly short period of time, after the attempt to destroy the Government buildings with dynamite, with a view to make provision for dealing more effectually with attempts of a similar nature than the law at that time permitted.

Punishment of accessories.

5. Any person who within or (being a subject of Her Majesty) without Her Majesty's dominions, by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any crime under this Act, shall be guilty of felony, and shall be liable to be tried and punished for that crime, as if he had been guilty as a principal.

Inquiry by Attorney-General, and apprehension of absconding witnesses.

6. (1.) Where the Attorney-General has reasonable ground to believe that any crime under this Act has been committed, he may order an inquiry under this section, and thereupon any justice for the county, borough, or place in which the crime was committed or is suspected to have been committed, who is authorised in that behalf by the Attorney-General, may, although no person may be charged before him with the commission of such crime, sit at a police court, or petty sessional or occasional court-house, or police station in the said county, borough, or place, and examine on oath concerning such crime any witness appearing before him, and may take the deposition of such witness, and, if he see cause, may bind such witness by recognizance to appear and give evidence at the next petty sessions, or when called upon within three months from the date of such recognizance; and the law relating to the compelling of the attendance of a witness before a justice, and to a witness attending before a justice and required to give evidence concerning the matter of an information or complaint, shall apply to compelling the attendance of a witness for examination and to a witness attending under this section.

(2.) A witness examined under this section shall not be excused from answering any question on the ground that the answer thereto may criminate, or tend to criminate, himself; but any statement made by any person in answer to any question put to him on any examination under this section shall not, except in the case of an indictment or other criminal proceedings for perjury, be admissible in evidence against him in any proceeding, civil or criminal.

(3.) A justice who conducts the examination under this section of a person concerning any crime shall not take part in the committing for trial of such person for such crime.

(4.) Whenever any person is bound by recognizance to give evidence before justices, or any criminal court, in respect of any crime under this Act, any justice, if he sees fit, upon information being made in writing, and on oath, that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person, and if such person is arrested any justice, upon being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties: Provided that any person so arrested shall be entitled on demand to receive a copy of the information upon which the warrant for his arrest was issued.

No prosecution except by leave of Attorney-General.

7. (1.) If any person is charged before a justice with any crime under this Act, no further proceeding shall be taken against such person without the consent of the Attorney-General, except such as the justice may think necessary by remand, or otherwise, to secure the safe custody of such person.

Procedure and saving.

(2.) In framing an indictment the same criminal act may be charged in different counts as constituting different crimes under this Act, and upon the trial of any such indictment the prosecutor shall not be put to his election as to the count on which he must proceed.

(3.) For all purposes of and incidental to arrest, trial, and punishment, a crime for which a person is liable to be punished under this Act, when committed out of the United Kingdom, shall be deemed to have been committed in the place in which such person is apprehended or is in custody.

(4.) This Act shall not exempt any person from any indictment or proceeding for a crime or offence which is punishable at common law, or by any Act of Parliament other than this Act, but no person shall be punished twice for the same criminal act.

Search for and seizure of explosive substances.

8. (1.) Sections seventy-three, seventy-four, seventy-five, eighty-nine, and ninety-six of the Explosives Act, 1875 (which sections relate to the search for, seizure, and detention of explosive substances, and the forfeiture thereof, and the

Secs. 8, 9.

disposal of explosive substances seized or forfeited), shall apply in like manner as if a crime or forfeiture under this Act were an offence or forfeiture under the Explosives Act, 1875.

38 & 39 Vict. c. 17.

(2.) Where the master or owner of any vessel has reasonable cause to suspect that any dangerous goods or goods of a dangerous nature which, if found, he would be entitled to throw overboard in pursuance of the Merchant Shipping Act, 1873, are concealed on board his vessel, he may search any part of such vessel for such goods, and for the purpose of such search may, if necessary, break open any box, package, parcel, or receptacle on board the vessel, and such master or owner, if he finds any such dangerous goods or goods of a dangerous nature shall be entitled to deal with the same in manner provided by the said Act, and if he do not find the same, he shall not be subject to any liability, civil or criminal, if it appears to the tribunal before which the question of his liability is raised that he had reasonable cause to suspect that such goods were so concealed as aforesaid.

36 & 37 Vict. c. 85.

9. *Definitions, and application to Scotland.*

THE

PUBLIC LIBRARIES AND MUSEUMS ACT, 1855.

18 & 19 VICT. c. 70.

An Act for further promoting the Establishment of Free Public Libraries and Museums in Municipal Towns, and for extending it to Towns governed under Local Improvements Acts and to Parishes. [30*th July*, 1855.]

Secs. 1—3.

Whereas it is expedient to amend and extend the Public Libraries Act, 1850: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

13 & 14 Vict. c. 65, repealed.

1. The Public Libraries Act, 1850 (1), is hereby repealed, but such repeal shall not invalidate or affect anything already done in pursuance of the same Act; and all libraries and museums established under that Act or the Act thereby repealed shall be considered as having been established under this Act, and the council of any borough which may have adopted the said Act of one thousand eight hundred and fifty, or established a museum under the Act thereby repealed, shall have and may use all the benefits, privileges, and powers given by this Act; and all moneys which have been borrowed by virtue of the said repealed Acts or either of them, and still remaining unpaid, and the interest thereof, shall be charged on the borough rates, or a rate to be assessed and recovered in the like manner as a borough rate to be made by virtue of this Act.

Short title of Act.

2. In citing this Act for any purposes whatever it shall be sufficient to use the expression "The Public Libraries Act, 1855" (2).

Interpretation of terms.

3. In the construction of this Act the following words and expressions shall, unless there be something in the subject or context repugnant to such construction, have the following meanings assigned to them respectively; that is to say, "parish" shall mean every place maintaining its own poor; "vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under the Act of the fifty-ninth year of King George the Third, chapter twelve, or under the Act of the first and second years of King William the Fourth, chapter sixty, or under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, and shall also mean any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry; "Ratepayers" (3) shall mean all persons for the time being assessed to rates for the relief of the poor of the

(1) The Public Libraries Act, 1850, repealed 8 & 9 Vict. c. 43, which was "An Act for encouraging the establishment of museums in large towns." The latter Act, however, authorized town councils to fix the rates of admission to the public, whereas under the former Act admission was to be free, so that the Public Libraries Act, 1850, was in point of fact the first attempt at legislation in respect of *free* public institutions of this kind.

(2) "The Public Libraries Act, 1855," is referred to in the amendment Act of 1871 as the "principal Act."

(3) There has been a very considerable difference of opinion as to whether the expression "ratepayers" in this Act includes "compound ratepayers." Up to the present time there has been no decided case upon the point. By 34 & 35 Vict. c. 71, it is extended so as to mean all persons assessed to and paying the general district rate.

Secs. 3—6.

parish; "Overseers of the Poor" shall mean also any persons authorised and required to make and collect the rate for the relief of the poor of the parish, and acting instead of overseers of the poor; "Board" (1) shall mean the commissioners, trustees, or other body of persons, by whatever name distinguished, for the time being in office and acting in the execution of any Improvement Act, being an Act for draining, cleansing, paving, lighting, watching, or otherwise improving a place, or for any of those purposes; "Improvement Rates" (2) shall mean the rates, tolls, rents, income, and other moneys whatsoever which under the provisions of any such Improvement Act, shall be applicable for the general purposes of such Act.

Town councils of certain boroughs may adopt this Act if determined by inhabitants.

4. The mayor of any municipal borough the population of which, according to the then last census thereof, shall exceed five thousand persons (3), shall, on the request of the town council (4), convene a public meeting of the burgesses of the borough, in order to determine whether this Act shall be adopted for the municipal borough, and ten days notice at least of the time, place, and object of the meeting should be given by affixing the same on or near the door of every church and chapel within the borough, and also by advertising the same in one or more of the newspapers published or circulated within the borough, seven days at least before the day appointed for the meeting; and if at such meeting two-thirds (5) of such persons as aforesaid then present shall determine that this Act ought to be adopted for the borough (6), the same shall thenceforth take effect and come into operation in such borough, and shall be carried into execution in accordance with the laws for the time being in force relating to the municipal corporation of such borough: Provided always, that the mayor, or, in his absence, the chairman of the meeting, shall cause a minute to be made of the resolutions of the meeting, and shall sign the same; and the resolutions so signed shall be conclusive evidence that the meeting was duly convened, and the vote thereat duly taken, and that the minute contains a true account of the proceedings thereat.

Expenses of carrying Act into execution in a borough to be paid out of the borough fund.

5. The expenses incurred in calling and holding the meeting, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in such borough, may be paid out of the borough fund, and the council may levy by separate rate, to be called a Library Rate, to be made and recoverable in the manner hereinafter (7) provided, all moneys from time to time necessary for defraying such expenses (8); and distinct accounts shall be kept of the receipts, payments, and liabilities of the council with reference to the execution of this Act.

Board of any district within limits of any Improvement Act may

6. The board (9) of any district, being a place within the limits of any Improvement Act, and having such a population as aforesaid (10), shall, upon the requisition in writing of at least ten persons assessed to and paying the improvement rate, appoint a time not less than ten days nor more than twenty days from the

(1) By 34 & 35 Vict. c. 71, s. 2, the signification of the word "board" is extended so as to include "every local board under the Public Health Act, 1848, and the Local Government Act, 1858, or either of them." By section 26 of the Public Health Act, 1875, local boards constituted under either of the above Acts are made "urban authorities" under that Act.

(2) By 34 & 35 Vict. c. 71, s. 2, "improvement rates" are intended to mean "general district rates."

(3) By section 6, 29 & 30 Vict. c. 114, any limit as regards population is taken away.

(4) Or by section 3, 29 & 30 Vict. c. 114, on the request in writing of the ratepayers.

(5) By section 5, 29 & 30 Vict. c. 114, a bare majority is all that is necessary for the adoption of the Act: *Reg.* v. *Mayor of Portsmouth—Times*, January 25, 1876.

(6) Any burgess or ratepayer who is dissatisfied with the conclusion arrived at by the meeting is entitled as of right to demand and to have a poll taken of the whole body of burgesses or ratepayers: *R.* v. *St. Matthew, Bethnal Green Vestry*, 32 L. T. N. S. 558, and *R.* v. *Wimbledon Local Board*, 8 L. R. Q. B. D. 459, 51 L. J. Q. B. 219, 46 L. T. N. S. 47, 30 W. R. 400.

(7) See section 13.

(8) This section down to the word "expenses" is repealed by 29 & 30 Vict. c. 114, s. 2.

(9) See note (1), *supra*.

(10) See note (3), *supra*.

time of receiving such requisition for a public meeting (1) of the persons assessed to and paying such rate in order to determine whether this Act shall be adopted for such district, and ten days' notice at least of the time, place, and object of such meeting shall be given by affixing the same on or near the door of every church and chapel within the district, and also by advertising the same in one or more of the newspapers published or circulated within the district, seven days at least before the day appointed for the meeting; and if at such meeting two-thirds (2) of such persons as aforesaid then present shall determine that this Act ought to be adopted for the district, the same shall thenceforth take effect, and come into operation in such district, and shall be carried into effect according to the laws for the time being in force relating to such board.

adopt this Act if determined by inhabitants.

7. The expenses incurred in calling and holding the meeting, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in any such district, shall be paid out of the improvement rate (3), and the board may levy as part of the improvement rate, or by a separate rate to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for defraying such expenses; and the board shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, which accounts shall be audited in the same way as accounts are directed to be audited under the Improvement Act.

Expenses of carrying Act into execution by improvement commissioners to be charged on improvement rate.

8. Upon the requisition in writing of at least ten ratepayers of any parish having such a population as aforesaid, the overseers of the poor (4) shall appoint a time, not less than ten days nor more than twenty days from the time of receiving such requisition, for a public meeting of the ratepayers in order to determine whether this Act shall be adopted for the parish; and ten days' notice at least of the time, place, and object of the meeting shall be given by affixing the same on or near the door of every church and chapel within the parish, and also by advertising the same in one or more of the newspapers published or circulated within the parish, seven days at least before the day appointed for the meeting; and if at such meeting two-thirds of the ratepayers then present shall determine that this Act ought to be adopted for such parish, the same shall come into operation in such parish, and the Vestry shall forthwith appoint not less than three nor more than nine ratepayers commissioners for carrying the Act into execution, who shall be a body corporate by the name of "The Commissioners for Public Libraries and Museums for the parish of , in the county of ," and by that name may sue and be sued, and hold and dispose of lands, and use a common seal: Provided always, that in any parish where there shall not be a greater population than eight thousand inhabitants by the then last census, it shall be lawful for any ten ratepayers to deliver a requisition by them signed, and describing their place of residence, to the overseers or one of the overseers of the said parish, requiring the votes of the ratepayers at such meeting to be taken according to the provisions of the Act passed in the fifty-eighth year of the reign of King George the Third, chapter sixty-nine, and the votes at such

Certain parishes may adopt this Act, with the consent of two-thirds of the ratepayers.

The vestry to appoint commissioners for carrying the Act into execution, who shall be a body corporate.

(1) By 40 & 41 Vict. c. 54, s. 1, the local authority upon receiving the requisition may proceed to ascertain the opinions of the ratepayers by the issue of voting papers instead of by public meeting.

(2) See note (5), *ante*, p. 718.

(3) See note (2), *ante*, p. 718. Section 4, 34 & 35 Vict. c. 71, authorises local boards, for the purpose of carrying this Act into execution, to borrow upon mortgage of the general district rate or of any separate rate to be levied under the authority of this section.

(4) This gives an alternative mode of proceeding. The requisition may be sent in to the overseers instead of to the local authority, in which event the meeting is to be summoned by the overseers under the auspices of the vestry, and the vestry becomes the authority for the execution of the Act, if it is adopted by the public meeting so called.

Secs. 8—14.

meeting shall thereupon be taken according to the provisions of the said last-mentioned Act of Parliament, and not otherwise (1).

One-third of such commissioners to go out of office yearly, and others to be appointed, but those retiring may be re-appointed.

9. At the termination of every year (the year being reckoned from and exclusive of the day of the first appointment of commissioners) a meeting of the vestry shall be held, at which meeting one-third or as nearly as may be one-third of the commissioners, to be determined by ballot, shall go out of office, and the vestry shall appoint other commissioners in their place, but the outgoing commissioners may be re-elected; and the vestry shall fill up every vacancy among the commissioners, whether occurring by death, resignation, or otherwise, as soon as possible after the same occurs.

General and special meetings of commissioners.

10. The commissioners shall meet at least once in every calendar month, and at such other times as they think fit, at the public library or museum or some other convenient place; and any one commissioner may summon a special meeting of the commissioners by giving three clear days' notice in writing to each commissioner, specifying therein the purpose for which the meeting is called; and no business shall be transacted at any meeting of the commissioners unless at least two commissioners shall be present.

Minutes of proceedings of commissioners to be entered in books.

11. All orders and proceedings of the commissioners shall be entered in books to be kept by them for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any judicial proceeding whatsoever.

Distinct accounts to be kept by commissioners, and duly audited.

12. The commissioners shall keep distinct and regular accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, which accounts shall be audited yearly by the poor law auditor, if the accounts of poor rate expenditure of the parish be audited by a poor law auditor, but if not so audited, then by two auditors not being commissioners, who shall be yearly appointed by the vestry, and the auditor or auditors shall report thereon, and such report shall be laid before the vestry by the commissioners.

Expenses of executing Act in any parish to be paid out of poor rate.

13. The expenses of calling and holding the meeting of the ratepayers, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution (2) in any parish, to such amount as shall be from time to time sanctioned by the vestry, shall be paid out of a rate to be made and recovered in like manner as a poor rate, except that every person occupying lands used as arable, meadow, or pasture ground only, or as woodlands or market gardens, or nursery grounds, shall be rated in respect of the same in the proportion of one-third part only of the full net annual value thereof respectively; the vestry to be called for the purpose of sanctioning the amount shall be convened in the manner usual in the parish; the amount for the time being proposed to be raised for such expenses shall be expressed in the notice convening the vestry, and shall be paid, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same: Provided always, that in the notices requiring the payment of the rate there shall be stated the proportion which the amount to be thereby raised for the purposes of this Act shall bear to the total amount of the rate.

Vestries of two or more neighbouring parishes may adopt the Act.

14. The vestries of any two or more neighbouring parishes having, according to the then last census an aggregate population exceeding five thousand persons may adopt this Act, in like manner as if the population of each of those parishes according to the then last census exceeded five thousand, and may concur in carrying the same into execution in such parishes for such time as they shall

(1) This Act, section 3, provides that every inhabitant who shall not be rated to the relief of the poor to the amount of £50 shall have one vote, but that any inhabitant who shall be rated to the amount of £50 and upwards shall have one vote in respect of every £25 of annual rent profit and value upon which he shall have been charged in the last rate subject to a limitation of six votes in all.

(2) See note (3), *ante*, section 7. For the way in which a general district rate is to be made and recovered, see sections 210 and 211 Public Health Act, 1875.

mutually agree; and such vestries may decide that a public library or museum, or both, shall be erected in any one of such parishes, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually approve; the proportion for each of such parishes of such expenses shall be paid out of the moneys to be raised for the relief of the poor of the same respective parishes accordingly; but no more than three commissioners shall be appointed for each parish; and the commissioners so appointed for each of such parishes shall in the management of the said public library and museum form one body of commissioners, and shall act accordingly in the execution of this Act; and the accounts of the commissioners shall be examined and reported on by the auditor or auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively, in the proportion in which such parishes shall be liable to such expenses.

Rates levied not to exceed one penny in the pound.

15. The amount of the rate to be levied in any borough, district, or parish in any one year for the purposes of this Act shall not exceed the sum of one penny in the pound (1); and for the purposes of the library rate all the clauses of the Towns Improvement Clauses Act, 1847, with respect to the manner of making rates, to the appeal to be made against any rate, and to the recovery of rates, shall be incorporated with this Act; and whenever the words "special Act" occur in the Act so incorporated they shall mean "The Public Libraries Act, 1855;" the accounts of the said board and commissioners respectively with reference to the execution of this Act shall at all reasonable times be open, without charge, to the inspection of every person rated to the improvement rate or to the rates for the relief of the poor of the parish, as the case may be, who may make copies of or extracts from such accounts, without paying for the same; and in case the board or the commissioners, or any of them respectively, or any of their respective officers or servants having the custody of such accounts, shall not permit the same accounts to be inspected, or copies of or extracts from the same to be made, every person so offending shall for every such offence forfeit any sum not exceeding five pounds.

Accounts of board and commissioners to be open to inspection.

Power to council, &c., to borrow on mortgage.

16. For carrying this Act into execution, the council, board, or commissioners respectively may, with the approval of Her Majesty's Treasury (and as to the commissioners, with the sanction also of the vestry and the Poor Law Board (2), from time to time borrow at interest, on the security of a mortgage or bond of the borough fund, or of the rates levied in pursuance of this Act, such sums of money as may be by them respectively required, and the commissioners for carrying into execution the Act of the ninth and tenth years of Her Majesty, chapter eighty (3), may from time to time advance and lend any such sums of money.

Provisions of 8 & 9 Vict. c. 16, as to borrowing extended to this Act.

17. The clauses and provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the borrowing of money on mortgage or bond (4), and the accountability of officers (5), and the recovery of damages and penalties (6), so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act.

(1) A "penny" rate means a penny rate on the nominal rateable property, although part of it is unproductive. A deficiency thus arising cannot be supplied out of the productive part: *Reg.* v. *Liverpool, JJ.*, 31 L. J. M. C. 108; 6 L. T. N. S. 241.

40 & 41 Vict. c. 54, s. 1, gives the local authority the option of ascertaining the opinion of the ratepayers for or against the adoption of the Acts by the issue of voting papers instead of by public meeting, and section 2 authorises the voter to stipulate that its adoption shall be subject to a limitation of a lower rate than a penny in the pound.

(2) Now the Local Government Board, 34 & 35 Vict. c. 70, s. 2, *ante*, p. 393.

(3) This Act has been repealed and "The Public Works Loans Act, 1875," 38 & 39 Vict. c. 89, and "The Public Works Loans Act, 1878," are the Acts at present applicable to this purpose, *post*, see also section 243 Public Health Act, 1875.

(4) See The Companies Clauses Act, 1845, section 38, *et seq.*

(5) See The Companies Clauses Act, 1845, section 109, *et seq.*

(6) See The Companies Clauses Act, 1845, section 142, *et seq.*

Secs. 18–24.

Lands, &c., may be appropriated, purchased, or rented for the purposes of this Act.

18. The council of any borough and the board of any district respectively may from time to time, with the approval of Her Majesty's Treasury, appropriate for the purposes of this Act any lands vested, as the case may be, in a borough, in the mayor, aldermen, and burgesses, and in a district in the board; and the council, board, and commissioners respectively may also, with such approval, purchase or rent any lands or any suitable buildings; and the council and board and commissioners respectively may, upon any lands so appropriated, purchased, or rented respectively, erect any buildings suitable for public libraries or museums (1), or both, or for schools for science or art, and may apply, take down, alter, and extend any buildings for such purposes, and rebuild, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences (2).

Provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

19. "The Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act; but the council, board, and commissioners respectively shall not purchase or take any lands otherwise than by agreement.

Lands, &c., may be sold or exchanged.

20. The council, board, and commissioners aforesaid respectively may, with the like approval as is required for the purchase of lands (3), sell any lands vested in the mayor, alderman, and burgesses, or board, or commissioners respectively, for the purposes of this Act, or exchange (4) the same for any lands better adapted for the purposes; and the moneys to arise from such sale, or to be received for equality of exchange, or a sufficient part thereof, shall be applied in or towards the purchase of other lands better adapted for such purposes.

General management to be vested in council, board, and commissioners.

21. The general management, regulation, and control of such libraries and museums, schools for science and art, shall be, as to any borough, vested in and exercised by the council, and as to any district in and by the board, and as to any parish or parishes in and by the commissioners (5), or such committee as such council or board may from time to time appoint, the members whereof need not be members of the council or board or be commissioners, who may from time to time purchase and provide the necessary fuel, lighting, and other similar matters, books, newspapers, maps, and specimens of art and science, for the use of the library or museum, or school, and cause the same to be bound or repaired when necessary, and appoint salaried officers and servants, and dismiss the same, and make rules and regulations for the safety and use of the libraries and museums, and schools, and for the admission of the public.

Property of library, &c., to be vested in council, board, and commissioners respectively.

22. The lands and buildings so to be appropriated, purchased, or rented as aforesaid, and all other real and personal property whatever presented to or purchased for any library or museum established under this Act, or school, shall be vested, in the case of a borough, in the mayor, alderman, and burgesses, in the case of a district, in the board, and in the case of a parish or parishes, in the commissioners.

If any meeting determine against adoption of Act no other meeting to be called for a year.

23. If any meeting called as aforesaid to determine as to the adoption of this Act for any borough, district, or parish shall determine against the adoption, no meeting for a similar purpose shall be held for the space of one year at least from the time of holding the previous meeting (6).

Act may be adopted in

24. The Lord Mayor of the city of London shall, on the request of the Lord Mayor, aldermen, and commons of the city of London, in common council assembled, convene a public meeting in manner hereinbefore mentioned of all persons rated and assessed to the consolidated rate in the city of London, in order

(1) *A.-G.* v. *Sunderland Corporation*, 45 L. J. Ch. 839, L. R. 2 Ch. D. 634, 34 L. T. 921, 24 W. R. 991, 40 J. P. 564.

(2) Now, by Public Libraries Act, 1884, 47 & 48 Vict. c. 37, s. 2, *post*, buildings may be erected for public libraries, public museums, schools for science, art galleries and schools of art, or for any one or more of these objects. See also section 3 of the same Act.

(3) See section 16.

(4) For a similar power to exchange lands see Public Health Act, 1875, section 175.

(5) To be appointed by the vestry, see section 8.

(6) So that any ten ratepayers are entitled annually to test the opinion of the general body of ratepayers upon the subject, until the Acts are adopted for any borough, district or parish.

to determine whether this Act shall be adopted in the said city; and if at such meeting two-thirds of such persons then present (1) shall determine that this Act ought to be adopted for the city of London, the same shall thenceforth take effect and come into operation in the city of London, and shall be carried into execution in accordance with the laws for the time being in force relating to the city of London: Provided always, that the resolution of such public meeting, signed by the Lord Mayor, shall be reported to the said Lord Mayor, aldermen, and commons, in common council assembled, and entered on the minutes thereof, and that such entry shall be evidence; the expenses incurred in calling and holding the meeting, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in the city of London, shall be paid out of the consolidated rate, and the Commissioners of Sewers of the city of London may levy a part of the consolidated rate, or, by a separate rate, to be assessed and recovered in like manner as the consolidated rate, all moneys from time to time necessary for defraying such expenses, and distinct accounts shall be kept of the receipts, payments, and liabilities of the said Lord Mayor, aldermen, and commons with reference to the execution of the Act.

Secs. 24–26.

the city of London if two-thirds of persons rated to the consolidated rate, assembled at a public meeting, assent.

25. The admission to all libraries and museums established under this Act shall be open to the public free of all charge (2).

Museums to be free.

26. This Act shall not extend to Ireland or Scotland (3)

Extent of Act.

THE

PUBLIC LIBRARIES AMENDMENT ACT, 1866.

29 & 30 VICT. c. 114.

An Act to amend the Public Libraries Act. [10*th August*, 1866.]

1. So much of the section fifteen of the said Public Libraries Act, 1855 (4), as incorporates with that Act certain clauses of the "Towns Improvement Clauses Act, 1847," shall, so far as the same relates to or concerns municipal boroughs, be repealed.

Secs. 1, 2.

Towns Improvement Clauses Act not to apply to boroughs.

2. Section five of the said Act (5), except so much thereof as relates to keeping distinct accounts, shall be repealed; and the expenses incurred in calling and holding the meeting, whether the said Act shall be adopted or not, and the expenses of carrying the said Act into execution in any municipal borough, may be paid out of the borough rate of such borough, or by and out of a rate to be made and recovered in such borough, in like manner as a borough rate may be made and recovered therein, but the amount so paid in such borough in any one year shall not exceed the sum of one penny in the pound upon the annual value of the property in such borough rateable to a borough rate: provided always, that nothing in this Act shall interfere with the operation of the Act twenty-eighth and twenty-ninth Victoria, chapter one hundred and eight, so far as it relates to the collection of a rate for a public library in the city of Oxford.

Part of section 5 of recited Act repealed.

Expenses of executing Act in boroughs to be paid out of borough fund.

(1) A bare majority instead of "two thirds" now sufficient, 29 & 30 Vict. c. 114, s. 5.

(2) See note, section 1.

(3) The Acts relating to free libraries in Ireland are 18 & 19 Vict. c. 40, 40 & 41 Vict. c. 15, and 40 & 41 Vict. c. 54.

The Acts relating to free libraries in Scotland are 30 & 31 Vict. c. 37, 34 & 35 Vict. c. 59, and 40 & 41 Vict. 54.

(4) *I.e.*, 18 & 19 Vict. c. 70, s. 15, *ante*, p. 721.

(5) *I.e.*, 18 & 19 Vict. c. 70, s. 5, *ante*, p. 718.

Secs. 3–11.

In boroughs meeting to be called at the request of ten ratepayers.

3. The public meeting mentioned in section four of the said Public Libraries Act, 1855 (1), shall be called either on the request of the town council, or on the request in writing of ten ratepayers residing in the borough.

Parishes adjoining a borough, &c., may unite in adopting Act.

4. Any parish, of whatever population, adjoining any borough, district, or parish which shall have adopted or shall contemplate the adoption of the said Public Libraries Act, 1855 (2), may, with the consent of more than one half of the ratepayers thereof present at a meeting to be convened in manner directed by the said Act with reference to meetings of ratepayers, and with the consent also of the town council of such borough, or the board of such district, or the commissioners of such parish, as the case may be, determine that such adjoining parish shall for the purposes of the said Act form part of such borough, district, or parish, and thereupon the vestry of such adjoining parish shall forthwith appoint three ratepayers commissioners for such parish, one third of whom shall go out of office and the vacancies be filled up as provided by the said Act with respect to the commissioners of a parish, and such commissioners for the time being shall for the purposes of the said Act be considered as part of such town council, board, or commissioners, as the case may be; and the expenses of calling the meeting, and the proportion of the expenses of such adjoining parish of carrying the said Act into execution, shall be paid out of the poor rates thereof to such person as the commissioners of the said adjoining parish shall appoint to receive the same.

A majority of one half of the ratepayers may adopt Act.

5. The majority necessary to be obtained for the adoption of the said Act(2) or the Public Libraries Act (Scotland), 1854, shall be more than one half of the persons present at the meeting, instead of two thirds of such persons as now required.

Act may be adopted whatever amount of population.

6. The Public Libraries Act (1855) (2) and the Public Libraries Act (Scotland) (1854) shall be applicable to any borough, district, or parish or burgh, of whatever population

If any burgh declines to adopt Act, no fresh meeting to be held for a year.

8. If any meeting called as provided by the said last-mentioned Act(2) shall determine against the adoption of the Act in any burgh, no meeting for a similar purpose shall be held for the space of one year at least from the time of holding the previous meeting.

A library or museum may be established in connection with any museum or library.

10. Wherever a public museum or library has been established under any Act relating to public libraries or museums, or shall hereafter be established under either of the said before-mentioned Acts, a public library or museum, as the case may be, may at any time be established in connexion therewith without any further proceedings being taken under the said Acts.

Short title.

11. This Act may be cited as the Public Libraries Amendment Act (England and Scotland), 1866, and shall be taken to be part of the said Public Libraries Act, 1855 (2), and shall be construed accordingly.

THE

PUBLIC LIBRARIES ACT (1855) AMENDMENT ACT, 1871.

34 & 35 VICT. c. 71.

An Act to amend the Public Libraries Act, 1855. [14*th August*, 1871.]

Sec. 1.

Local boards to put principal Act into execution.

1. Every local board under the Public Health Act, 1848, and the Local Government Act, 1858, or either of them, is empowered, in like manner as a board under any Improvement Act, to adopt and carry into execution the principal Act.

(1) *Ante*, p. 718. (2) 18 & 19 Vict. c. 70, *ante*, p. 717.

Secs. 2—5.

2. For the purposes aforesaid, the following words in the principal Act shall have the following extended significations; viz., the word "board" shall mean any such local board as aforesaid; the words "improvement rate" shall mean the general district rate levied by any such board; the word "ratepayers" shall mean all persons assessed to and paying such general district rate; the word "district" shall mean the district in which such local board has authority to levy a general district rate; the term "Improvement Act" shall mean the Local Government Act, 1858. Interpretation of terms.

3. So much of section fifteen of the principal Act as refers to the Towns Improvement Clauses Act, 1847, shall not apply to rates made by local boards under the principal Act; but nothing herein contained shall enable local boards to levy or expend for the purposes of the principal Act any greater sum in any year than one penny in the pound. Section 15 of recited Act not to apply to rates made by local boards.

4. For carrying into execution the principal Act, every such local board may borrow upon mortgage of the general district rate or any separate rate to be levied under the principal Act; and such borrowing shall be effected in conformity with the provisions as to borrowing contained in the Local Government Act, 1858, and the Acts incorporated therewith, in lieu of the provisions as to borrowing contained in the principal Act. Provision as to borrowing by local boards for purposes of recited Act.

5. This Act shall not apply to any district the whole or any part of which is within any municipal borough, or within the jurisdiction of commissioners under any Improvement Act. Not to apply to certain districts.

THE

PUBLIC LIBRARIES ACT AMENDMENT ACT, 1877.

40 & 41 VICT. c. 54.

An Act to amend the Public Libraries Acts. [14*th August*, 1877.]

Secs. 1—4

Whereas by the Public Libraries Acts, 18 & 19 Vict. c. 40, for Ireland; 29 & 30 Vict. c. 114, for England; and 30 & 31 Vict. c. 37, for Scotland, the mode by which the Act is to be adopted is prescribed to be by public meeting, and it has been found that in many cases a public meeting is a most incorrect and unsatisfactory mode, and fails to indicate the general opinion of the ratepayers, and it is desirable to ascertain these opinions more correctly:

Be it enacted, &c.

1. It shall be competent for the prescribed local authority in any place or community which has the power to adopt one of the above recited Acts, to ascertain the opinions of the majority of the ratepayers either by the prescribed public meeting or by the issue of a voting paper to each ratepayer, and the subsequent collection and scrutiny thereof, and any expense in connection with such voting papers shall be borne in the same way as the expense of a public meeting would be borne, and the decision of the majority so ascertained shall be equally binding. Ratepayers' opinions may be ascertained by voting papers.

2. In addition to the simple vote "Yes" or "No" to the adoption of the Act, such voting paper may stipulate that its adoption shall be subject to a limitation to some lower rate of assessment than the maximum allowed by Act of Parliament in force at the time, and such lower limit, if once adopted, shall not be subsequently altered except by public vote similarly taken. Ratepayers may stipulate for modified assessment.

3. "Ratepayer" shall mean every inhabitant who would have to pay the Free Library assessment in event of the Act being adopted. Definition.

THE

CONTAGIOUS DISEASES (ANIMALS) ACT, 1878.

41 & 42 VICT. c. 74.

ARRANGEMENT OF SECTIONS.

A.D 1878.

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16. Declaration of infected place in pleuro-pneumonia by local authority.
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18. Declaration of infected area in pleuro-pneumonia by Privy Council.
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20. Declaration of freedom from pleuro-pneumonia.
21. Slaughter by local authority in pleuro-pneumonia, and compensation out of local rates.

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Section.
22. Declaration of infected place in foot and mouth disease by local authority.
23. Declaration or extension of infected place in foot and mouth disease by Privy Council.
24. Declaration of infected area in foot and mouth disease by Privy Council.
25. Rules for foot and mouth disease.
26. Declaration of freedom from foot and mouth disease.

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27. Privy Council to provide for pleuro-pneumonia and foot and mouth disease during transit, and in other cases.

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28. General provisions respecting declaration of infected places and areas.

Slaughter in Disease, and Compensation, generally.

29. Power for Privy Council to provide for slaughter in other diseases.
30. General provisions relative to slaughter and compensation.

Notice of Disease to Police.

31. Separation of diseased animals, and notice to constable.

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32. Power for Privy Council to make orders for prevention or checking of disease, and other purposes.
33. Provision of water and food at railway stations.

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34. Power for Privy Council to make orders relative to dairies, cow-sheds, and milk-shops.

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37. Local authorities to be treated as incorporated.
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46. Expenses out of local rate.
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60. Fines for offences.
61. General offences.
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63. Proceedings in court of summary jurisdiction.
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85. Application of provisions respecting police.
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The First Schedule (*Enactments Repealed*).
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The Third Schedule (*Pleuro-Pneumonia*).
The Fourth Schedule (*Foot-and-Mouth Disease*).
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The Sixth Schedule (*Committees of Local Authorities*).
The Seventh Schedule (*Local Authorities in Scotland*).

THE

CONTAGIOUS DISEASES (ANIMALS) ACT, 1878.

41 & 42 VICT. c. 74.

An Act for making better provision respecting Contagious and Infectious Diseases of Cattle and other Animals; and for other purposes. [16*th August*, 1878.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Part I.—General.

Short title.

1. This Act may be cited as the Contagious Diseases (Animals) Act, 1878.

Commencement of Act.

2.—(1.) This Act shall, except as otherwise expressed, commence and have effect from and immediately after the thirtieth day of September, one thousand eight hundred and seventy-eight, which time is in this Act referred to as the commencement of this Act.

(2.) But on and after the passing of this Act any Order of Council and Order in Council necessary or proper for bringing this Act into operation at the commencement thereof, and any order or regulation of a local authority authorised by any such Order of Council or in Council, may be made so that the same do not take effect before the commencement of this Act; and on and after the passing of this Act any committee and any inspector or other officer may be appointed to act under this Act as from the commencement thereof.

Division of Act into parts.

3. This Act is divided into Parts, as follows:

Part I.—General.
Part II.—England.
Part III.—Scotland.
Part IV.—Ireland.

Repeal of enactments in schedule, with savings and other provisions.

4.—(1.) The enactments described in the First Schedule are hereby repealed, subject to the qualifications and exceptions in this Act mentioned [1].

(2.) The repeal of enactments or any other thing in this Act shall not—

(i.) Affect the past operation of any of those enactments, or any Order of Council or in Council or regulation of a local authority made, or any license granted, or any committee or sub-committee constituted, or any appointment made, or any right, title, obligation, or liability accrued, or any money borrowed, or any market, wharf, lair, landing-place, or other accommodation provided, or any rate or mortgage made, or the validity or invalidity of anything done or suffered, under any of those enactments before the commencement of this Act;

(ii.) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect of any offence committed against, or penalty or forfeiture incurred or liability accrued under or in consequence of, any of those enactments or any order or regulation made thereunder;

(iii.) Take away or abridge any protection or benefit given or to be enjoyed in relation thereto.

[1] This section repealed the Contagious Diseases (Animals Act) 1869, except paragraphs 2, 3 and 4 of section 28 (local) and sections 100 and 101 (transitory).

Secs. 4, 5.

(3.) Notwithstanding the repeal of enactments or any other thing in this Act, every Order of Council and in Council and other thing in this section mentioned shall continue and be as if this Act had not been passed; but so that the same may be revoked, altered, or otherwise dealt with under this Act, as if it had been made or done under this Act.

32 & 33 Vict. c. 70. 40 & 41 Vict. c. 68.

(4.) This Act, instead of the Contagious Diseases (Animals) Act, 1869, shall be deemed to be referred to in the Destructive Insects Act, 1877; and penalties under the provisions of that Act relating to Great Britain shall be recoverable in manner provided in Parts II. and III. of this Act.

Interpretation and construction.

5.—(1.) In this Act—

(i.) "Cattle" means bulls, cows, oxen, heifers, and calves;

(ii.) "Animals" means, except where it is otherwise expressed, cattle, sheep, and goats, and all other ruminating animals, and swine;

(iii.) "Disease" [1] means cattle plague (that is to say, rinderpest, or the disease commonly called cattle plague), contagious pleuro-pneumonia of cattle (in this Act called pleuro-pneumonia), foot and mouth disease, sheep pox, or sheep scab;

(iv.) "Disease" means affected with disease;

(v.) "Suspected" means suspected of being diseased;

(vi.) "Carcase" means the carcase of an animal, and includes part of a carcase, and the meat, bones, hide, skin, hoofs, horns, offal, or other part of an animal, separately or otherwise, or any portion thereof;

(vii.) "Fodder" means hay or other substance commonly used for food of animals;

(viii.) "Litter" means straw or other substance commonly used for bedding or otherwise for or about animals;

(ix.) "Foreign," applied to a country, denotes a country out of the United Kingdom of Great Britain and Ireland, and applied to animals and things, means brought to the United Kingdom of Great Britain and Ireland from a foreign country;

(x.) "Inspector of the Privy Council" or "inspector of a local authority" means a person appointed to be an inspector for purposes of this Act, by the Privy Council or by a local authority, as the case may be; and "inspector," used alone, means such a person, by whichever authority appointed;

(xi.) "Veterinary inspector" means an inspector being a member of the Royal College of Veterinary Surgeons, or any veterinary practitioner qualified as approved by the Privy Council;

(xii.) "Treasury" means the Commissioners of Her Majesty's Treasury;

(xiii.) "The Corporation of London" means the mayor and commonalty and citizens of the City of London, acting by the mayor, aldermen, and commons of that city, in Common Council assembled;

39 & 40 Vict. c. 36.

(xiv.) "The Customs Acts" means the Customs Consolidation Act, 1876, and any enactment amending or substituted for that Act;

(xv.) "Justice" means justice of the peace;

(xvi.) "Court of summary jurisdiction" means two or more justices sitting in petty sessions at a court or other public place appointed in that behalf, or a police, stipendiary, or other magistrate or officer, however designated, having by law power to act for any purpose with the authority of two justices, and sitting at a police court or other place appointed in that behalf;

(xvii.) "Railway company" includes a company or persons working a railway under lease or otherwise;

(xviii.) "Person" includes a body corporate or unincorporate;

(xix.) "Part" means Part of this Act, and "Schedule" means Schedule to this Act;

(2.) The schedules shall be construed and have effect as part of this Act.

(3.) In the computation of time for purposes of this Act, a period reckoned by

[1] See section 32, sub-section xxxiii, *post*.

days from the happening of an event or the doing of an act or thing, shall be deemed to be exclusive of the day on which the event happens or the act or thing is done.

Secs. 5—9.

PART II.—ENGLAND.

6. Part II. applies to England.

Extent of Part II.

7. In and for purposes of Part II.—

Definition of county and other districts.

(i.) "County" does not include a county of a city or a county of a town, but includes a riding or division or parts of a county having a separate commission of the peace;

(ii.) The liberty of the Isle of Ely and the soke of Peterborough are each a county;

(iii.) Every other liberty or franchise of a county is part of the county by which it is surrounded, or, if partly surrounded, by two or more counties, is part of that county with which it has the longest common boundary;

(iv.) "Metropolis" has the same meaning as in the Metropolis Management Act, 1855; 18 & 19 Vict. c. 120.

(v.) "Borough" means—

(a.) A place for the time being subject to the Municipal Corporation Act, 1835; or 5 & 6 Will. IV. c. 76.

(b.) A place having for the time being under any general or local Act of Parliament, or otherwise, a separate police establishment;

(vi.) Every place not being a county, borough, part of the metropolis, or named in the Second Schedule, forms part of the county to the county rate whereof it is assessed, or, if it is not so assessed, forms part of the county wherein it is situate.

Privy Council.

Powers of Privy Council.

8.—(1.) In this Act Her Majesty's most Honourable Privy Council is referred to as the Privy Council, and an order of the Privy Council under this Act is referred to as an Order of Council.

(2.) Powers by this Act conferred on the Privy Council may be exercised by the Lords and others of the Privy Council, or two of them; and, as regards the making of orders (1) and doing of acts affecting only particular local authorities, persons, ports, towns, districts, places, areas, vessels, or things, and as regards the issuing and revocation of licences, and the appointment or removal of inspectors and other officers, may be exercised by the Lord President of the Council or one of Her Majesty's principal Secretaries of State.

Local Authorities.

Local authorities described in schedule.

9. For the purposes of this Part, the respective districts, authorities, rates, and officers described in the Second Schedule, shall be the district, the local authority (2), the local rate, and the clerk of the local authority, but subject as regards the metropolis to the following provisions:

(i.) The corporation of London shall alone be the local authority in and for the metropolis for purposes of the provisions of this Act relating to foreign animals:

(ii.) The city of London and the liberties thereof shall contribute for purposes of this Act to the Metropolitan Consolidated Rate:

(iii.) No part of the expenses of the local authority for a county shall be

(1) *Huggins* v. *Ward*, 29 L. T. N. S. 33, decided that the production of a copy of an order of the Privy Council purporting to have been printed by the Government printer was sufficient proof under the Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37), s. 2, sub-s.

(2) See *Misler* v. *Corporation of Hull*, L. R. 5 Q. B. D. 325, 49 L. J. Q. B. 501; 42 L. T. 894, 28 W. R. 700.

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included in any precept or warrant for levying or collecting of a county rate within the metropolis.

Cattle Plague.

Declaration of infected place in cattle plague by inspector.

10.—(1.) Where it appears to an inspector that cattle plague exists, or has within ten days existed, in a cow-shed, field, or other place, he shall forthwith make and sign a declaration thereof.

(2.) He shall serve a notice, signed by him, of that declaration on the occupier of that cow-shed, field, or other place.

(3.) Thereupon that cow-shed, field, or other place, with all lands and buildings contiguous thereto in the same occupation, shall become and be a place infected with cattle plague, subject to the determination and declaration of the Privy Council.

(4.) The inspector shall serve a like notice, signed by him, unless, in the circumstances, this appears to him not to be expedient, on the occupiers of all lands and buildings, any part whereof lies in his judgment within one mile in any direction from that cow-shed, field, or other place, or on the occupiers of any of those lands and buildings.

(5.) Thereupon, all the lands and buildings aforesaid, on the occupiers whereof the inspector serves such a notice, shall become and be part of the aforesaid place infected with cattle plague, subject to the determination and declaration of the Privy Council.

(6.) The inspector shall, with all practicable speed, inform the Privy Council and the local authority of his declaration and notices, and shall send to the Privy Council his declaration and a copy of his secondly-mentioned notice (if any).

(7.) The Privy Council shall forthwith on receipt of the information inquire into the correctness of the inspector's declaration.

(8.) If the Privy Council are satisfied of the correctness of that declaration as regards the existence or past existence of cattle plague, they shall by order determine and declare accordingly, and prescribe the limits of the place infected with cattle plague.

(9.) If the Privy Council are not satisfied of the correctness of the inspector's declaration as regards the existence or past existence of cattle plague, they shall by order determine and declare accordingly; and thereupon, as from the time specified in the order, the place comprised in the inspector's declaration and notices shall cease to be a place infected with cattle plague.

Declaration of infected place in cattle plague by Privy Council.

11. The Privy Council may at any time, if they think fit, on any evidence satisfactory to them, by order declare any cow-shed, field, or other place, with or without any lands or buildings adjoining or near thereto, to be a place infected with cattle plague.

Declaration of infected area in cattle plague.

12. The Privy Council may from time to time, if they think fit, by order declare any area, wherein a place infected with cattle plague is situate, to be an area infected with cattle plague.

Alteration of infected place or area in cattle plague.

13. The Privy Council may from time to time, if they think fit, by order extend, contract, or otherwise alter the limits of a place or area infected with cattle plague.

Declaration of freedom from cattle plague.

14. The Privy Council may at any time, if they think fit, by order declare a place or area infected with cattle plague, or part thereof, to be free from cattle plague.

Slaughter by Privy Council in cattle plague, and compensation out of public money.

15. (1.)—The Privy Council shall cause to be slaughtered—

(i.) All animals affected with cattle plague:

(ii.) All animals being or having been in the same shed or stable, herd or flock, or in contact with an animal affected with cattle plague.

(2.) The Privy Council may, if they think fit, in any case cause to be slaughtered—

(iii.) All animals suspected of cattle plague, or being in a place infected with cattle plague:

(iv.) All animals being in such parts of an area infected with cattle plague as are not comprised in a place infected with cattle plague (but in this last-

mentioned case subject to such regulations as the Treasury from time to time think fit to make).

(3.) The Privy Council shall, for animals slaughtered under this section, pay compensation as follows, out of money provided by Parliament:

(*a.*) Where the animal slaughtered was affected with cattle plague, the compensation shall be one half of its value immediately before it became so affected, but so that the compensation do not in any such case exceed twenty pounds:

(*b.*) In every other case the compensation shall be the value of the animal immediately before it was slaughtered, but so that the compensation do not in any case exceed forty pounds.

Pleuro-Pneumonia.

Declaration of infected place in pleuro-pneumonia by local authority.

16.—(1.) Where it appears to an inspector of a local authority that pleuro-pneumonia exists, or has within fifty-six days existed, in a cow-shed, field, or other place, he shall forthwith make and sign a declaration thereof.

(2.) He shall serve a notice, signed by him, of the declaration on the occupier of that cow-shed, field, or other place.

(3.) Thereupon that cow-shed, field, or other place shall become and be a place infected with pleuro-pneumonia, subject to the determination and declaration of the local authority.

(4.) The inspector shall, with all practicable speed, inform the local authority of his declaration and notice, and shall send his declaration and a copy of his notice to the local authority.

(5.) The local authority shall forthwith on receipt of that information inquire into the correctness of the inspector's declaration, with the assistance and advice of a veterinary inspector, or of a person qualified according to this Act to be such.

(6.) If the local authority are satisfied of the correctness of the inspector's declaration as regards the existence or past existence of disease, they shall by order determine and declare accordingly, and prescribe the limits of the place infected with pleuro-pneumonia, and may, if they think fit, include within those limits any lands or buildings adjoining or near to the cow-shed, field, or other place to which the inspector's declaration relates.

(7.) The local authority may include in a place infected with pleuro-pneumonia any adjoining part of the district of another local authority, with the previous consent in writing of that authority, but not otherwise.

(8.) If the local authority are not satisfied of the correctness of the inspector's declaration as regards the existence or past existence of disease, they shall by order determine and declare accordingly; and thereupon, as from the time specified in that behalf in their order, the cow-shed, field, or other place to which the inspector's declaration relates shall cease to be a place infected with pleuro-pneumonia.

(9.) The local authority shall forthwith report to the Privy Council the declaration of the inspector, and the proceedings of the local authority thereon, and shall state whether or not it is, in their opinion, expedient that an infected area, comprising the infected place, shall be declared, and, if so, what should, in their opinion, be the limits of that area, and whether or not there is within that area any place used for the holding of a market, fair, exhibition, or sale of cattle, and, if so, whether or not it is, in their opinion, expedient that the holding in that area, while infected, of a market, fair, exhibition, or sale of cattle, should be prohibited or restricted by Order of Council.

(10.) This section, shall, notwithstanding anything therein contained, be construed and have effect subject to the subsequent section in this Act contained, whereby the Privy Council are required to make, by order, provision respecting the case of cattle found to be affected with pleuro-pneumonia while exposed for sale or exhibited in a market, fair, sale-yard, or place of exhibition, and in other circumstances specified in the same section, and generally while being in a place not in the possession or occupation, or under the control, of the owner of the cattle.

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Declaration or extension of infected place in pleuro-pneumonia by Privy Council.

17.—(1.) The Privy Council may at any time, if they think fit, on any evidence satisfactory to them, by order declare any cow-shed, field, or other place, with or without any lands or buildings adjoining or near thereto, to be a place infected with pleuro-pneumonia.

(2.) The Privy Council may from time to time, if they think fit, by order extend the limits of a place infected with pleuro-pneumonia, declared either by a local authority or by the Privy Council.

Declaration of infected area in pleuro-pneumonia by Privy Council.

18.—(1.) The Privy Council may at any time, if they think fit, on any evidence satisfactory to them, by order declare any area wherein a place infected with pleuro-pneumonia is situate to be an area infected with pleuro-pneumonia, and may from time to time, if they think fit, by order extend the limits of such an area.

(2.) The Privy Council, on making any such order, shall consider whether it is necessary or expedient to prohibit the holding in that area, while infected, of any market, fair, exhibition, or sale of cattle, and shall either prohibit the holding thereof accordingly, or allow the same to be held on such terms and conditions as they think fit to prescribe.

Rules for pleuro-pneumonia.

19. The rules set forth in the Third Schedule shall have effect in relation to a place or area infected with pleuro-pneumonia.

Declaration of freedom from pleuro-pneumonia.

20.—(1.) Where a local authority have declared a place to be infected with pleuro-pneumonia, they may, if they think fit, at any time after the expiration of fifty-six days from the date of the cessation therein of that disease, but not sooner, declare by order that place to be free from pleuro-pneumonia.

(2.) Where the Privy Council or a local authority have declared a place to be infected with pleuro-pneumonia, the Privy Council may, if they think fit, at any time after the expiration of fifty-six days from the date of the cessation therein of that disease, but not sooner, declare by order that place to be free from pleuro-pneumonia.

(3.) Where the Privy Council have declared an area to be infected with pleuro-pneumonia, they may, if they think fit, at any time when there is not within that area, or within some particular portion thereof, any place infected with pleuro-pneumonia, declare by order that area, or that portion thereof, to be free from pleuro-pneumonia.

Slaughter by local authority in pleuro-pneumonia, and compensation out of local rates.

21.—(1.) A local authority shall cause all cattle affected with pleuro-pneumonia to be slaughtered within two days after the existence of the disease is known to them.

(2.) A local authority may, if they think fit, cause any cattle being or having been in the same shed or herd, or in contact, with cattle affected with pleuro-pneumonia to be slaughtered.

(3.) The local authority shall out of the local rate pay compensation as follows for cattle slaughtered under this section:

(i.) Where the animal slaughtered was affected with pleuro-pneumonia, the compensation shall be three-fourths of its value immediately before it became so affected, but so that the compensation do not in any such case exceed thirty pounds:

(ii.) In every other case the compensation shall be the value of the animal immediately before it was slaughtered, but so that the compensation do not in any case exceed forty pounds.

Foot and Mouth Disease.

Declaration of infected place in foot and mouth disease by local authority.

22.—(1.) Where it appears to an inspector of a local authority that foot and mouth disease exists, or has within ten days existed, in a cow-shed, field, or other place, he shall forthwith make and sign a declaration thereof.

(2.) He shall serve a notice, signed by him, of that declaration on the occupier of that cow-shed, field, or other place, and also on the occupier or occupiers of any lands or buildings contiguous thereto as he shall consider necessary.

(3.) Thereupon that cow-shed, field, or other place shall become and be a place infected with foot and mouth disease, subject to the determination and declaration of the local authority.

(4.) The inspector shall, with all practicable speed, inform the local authority

of his declaration and notice, and shall send his declaration and a copy of his notice to the local authority.

(5.) The local authority shall forthwith on receipt of that information inquire into the correctness of the inspector's declaration.

(6.) If the local authority are satisfied of the correctness of the inspector's declaration as regards the existence or past existence of disease, they shall by order determine and declare accordingly, and prescribe the limits of the place infected with foot and mouth disease, and may, if they think fit, include within those limits any lands or buildings adjoining or near to the cow-shed, field, or other place to which the inspector's declaration relates.

(7.) The local authority may include in a place infected with foot and mouth disease any adjoining part of the district of another local authority, with the previous consent in writing of that authority, but not otherwise.

(8.) If the local authority are not satisfied of the correctness of the inspector's declaration as regards the existence or past existence of disease, they shall by order determine and declare accordingly; and thereupon, as from the time specified in that behalf in their order, the cow-shed, field, or other place to which the inspector's declaration relates shall cease to be a place infected with foot and mouth disease.

(9.) The local authority shall forthwith report to the Privy Council the declaration of the inspector, and the proceedings of the local authority thereon, and shall state whether or not it is, in their opinion, expedient that an infected area, comprising the infected place, shall be declared, and, if so, what should, in their opinion, be the limits of that area, and whether or not there is within that area any place used for the holding of a market, fair, exhibition, or sale of animals, and, if so, whether or not it is, in their opinion, expedient that the holding in that area, while infected, of a market, fair, exhibition, or sale of animals should be prohibited or restricted by Order of Council.

(10.) This section shall, notwithstanding anything therein contained, be construed and have effect subject to the subsequent section in this Act contained, whereby the Privy Council are required to make, by order, provision respecting the case of animals found to be affected with foot and mouth disease while exposed for sale or exhibited in a market, fair, sale-yard, or place of exhibition, and in other circumstances specified in the same section, and generally while being in a place not in the possession or occupation, or under the control, of the owner of the animals.

Declaration or extension of infected place in foot and mouth disease by Privy Council.

23.—(1.) The Privy Council may at any time, if they think fit, on any evidence satisfactory to them, by order declare any cow-shed, field, or other place, with or without any lands or buildings adjoining or near thereto, to be a place infected with foot and mouth disease.

(2.) The Privy Council may from time to time, if they think fit, on any evidence satisfactory to them, by order extend the limits of a place infected with foot and mouth disease, declared either by the Privy Council or by a local authority.

Declaration of infected area in foot and mouth disease by Privy Council.

24.—(1.) The Privy Council may at any time, if they think fit, on any evidence satisfactory to them, by order declare any area wherein a place infected with foot and mouth disease is situate to be an area infected with foot and mouth disease, and may from time to time, if they think fit, by order extend the limits of such an area.

(2.) The Privy Council, on making any such order, shall consider whether it is necessary or expedient to prohibit the holding in that area, while infected, of any market, fair, exhibition, or sale of animals, and shall either prohibit the holding thereof accordingly or allow the same to be held on such terms and conditions as they think fit to prescribe.

Rules for foot and mouth disease.

25. The rules set forth in the Fourth Schedule shall have effect in relation to a place or area infected with foot and mouth disease.

Declaration of freedom from foot

26.—(1.) Where a local authority have declared a place to be infected with foot and mouth disease, they may, if they think fit, at any time after the expiration of fourteen days from the date of the cessation therein of that disease, or of such longer period, not exceeding twenty-eight days from that date, as the Privy

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and mouth disease.

Council from time to time by general order direct, but not sooner, declare by order that place to be free from foot and mouth disease.

(2.) Where the Privy Council or a local authority have declared a place to be infected with foot and mouth disease, the Privy Council may, if they think fit, at any time after the expiration of fourteen days from the date of the cessation therein of that disease, or of such longer period, not exceeding twenty-eight days from that date, as the Privy Council from time to time by general order direct, but not sooner, declare by order that place to be free from foot and mouth disease.

(3.) Where the Privy Council have declared an area to be infected with foot and mouth disease, they may, if they think fit, at any time when there is not within that area, or within some particular portion thereof, any place infected with foot and mouth disease, declare, by order, that area, or that portion thereof, to be free from foot and mouth disease.

Exceptional Powers for Transit, and other cases.

Privy Council to provide for pleuro-pneumonia and foot and mouth disease during transit, and in other cases.

27.—(1.) The Privy Council shall, as soon as may be after the passing of this Act, and thereafter from time to time, by general order make such further or other provision as they think necessary or expedient respecting the case of animals found to be affected with pleuro-pneumonia or foot and mouth disease—

(i.) While exposed for sale or exhibited in a market, fair, sale-yard, place of exhibition, or other place; or

(ii.) While placed in a lair or other place before exposure for sale; or

(iii.) While in transit or in course of being moved by land or by water; or

(iv.) While in a foreign animals wharf or foreign animals quarantine station; or

(v.) While being in a slaughter-house or place where animals are slaughtered or are kept with a view to slaughter; or

(vi.) While being on common or uninclosed land; or

(vii.) Generally, while being in a place not in the possession or occupation or under the control of the owner of the animals.

(2.) The Privy Council shall, by general orders under this section, from time to time make such provision as they think fit for the consequences under this Act of animals being so found in the circumstances aforesaid, as well with regard to the animals as with regard to the places where they are when so found and other places, and with regard to animals being or having been in the same shed or stable, herd or flock, or in contact, with animals so found.

(3.) The Privy Council may from time to time, by special orders under this section relating to particular places, make such provision as they think fit for the consequences aforesaid.

(4.) Every order under this section shall have full effect, notwithstanding any provision of this Act requiring the declaration of a place infected by pleuro-pneumonia or foot and mouth disease, or relating to any consequence thereof, or to any matter connected therewith, and notwithstanding any other provision whatsoever of this Act.

Infected Places and Areas generally.

General provisions respecting declaration of infected places and areas.

28.—(1.) The Privy Council may, from time to time, make such general orders as they think fit, subject and according to the provisions of this Act, for prescribing the cases in which places and areas are to be declared to be infected with a disease other than cattle plague, pleuro-pneumonia, or foot and mouth disease, and the authority, mode, and conditions by, in, and on which declarations in that behalf are to be made, and the effect and consequences thereof, and the duration and discontinuance thereof, and other matters connected therewith.

(2.) Every place or area so declared infected, as well as a place or area declared infected with cattle plague, pleuro-pneumonia, or foot and mouth disease, shall be an infected place or area within this Act.

(3.) Notwithstanding anything in this Act, where the Privy Council, on

inquiry, and after communication with the local authority, but without prejudice to the powers of the Privy Council as regards cattle plague, are satisfied that a declaration of a place being an infected place, has been made in error respecting the existence or past existence of disease, or respecting the limits of a place, or respecting any other matter of fact whereon the declaration proceeded, the Privy Council may, by order, cancel the declaration as regards the infected place, or as regards any part thereof, as they think fit.

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(4.) Where, in accordance with the provisions of this Act, a place or area, or a portion of an area, is declared free from a disease, or a declaration of a place being an infected place is cancelled, as regards the place or as regards any part thereof, then, as from the time specified in that behalf by the Privy Council or a local authority, as the case may be, the place or area, or that portion of the area, or that part of the place shall cease to be, or to be in, an infected place or area.

(5.) An order of the Privy Council or of a local authority declaring a place or area to be an infected place or area, or a place or area, or a portion of an area, to be free from disease, or cancelling a declaration, shall be conclusive evidence to all intents of the existence or past existence or cessation of the disease, or of the error, and of any other matter whereon the order proceeds.

Slaughter in Disease, and Compensation, generally.

Power for Privy Council to provide for slaughter in other diseases.

29. The Privy Council may from time to time make such orders as they think fit, subject and according to the provisions of this Act, for directing or authorising in case of the existence of any disease other than cattle plague or pleuro-pneumonia, slaughter of animals by local authorities, either generally or in particular instances, and in all or any of such cases payment of compensation for the same by local authorities out of the local rate.

General provisions relative to slaughter and compensation.

30.—(1.) The Privy Council may, notwithstanding anything in this Act, reserve for observation and treatment an animal liable to be slaughtered under this Act by order of the Privy Council or of a local authority, but subject to payment of compensation by the Privy Council or the local authority, as the case may be, as in case of actual slaughter.

(2.) Where an animal is slaughtered under this Act by order of the Privy Council or of a local authority, the carcase of the animal shall belong to the Privy Council or to the local authority, as the case may be, and shall be buried or sold, or otherwise disposed of by them, or as they direct, as the condition of the animal or carcase and other circumstances may require or admit; and any money received by a local authority on any such sale shall be carried by them to the credit of the local rate.

(3.) If, in any case, the sum received by the Privy Council or a local authority on sale of a carcase under this section exceeds the amount paid for compensation to the owner of the animal slaughtered, the Privy Council or local authority, as the case may be, shall pay that excess to the owner, after deduction of reasonable expenses.

(4.) Where an animal is slaughtered under this Act by order of the Privy Council or of a local authority, the Privy Council or local authority, as the case may be, may use for the burial of the carcase any ground in the possession or occupation of the owner of the animal and suitable in that behalf, or any common or uninclosed land, but, as regards the use by a local authority of common or uninclosed land, not without the approval of the Privy Council.

(5.) If the owner of an animal slaughtered under this Act by order of the Privy Council or of a local authority has an insurance on the animal, the amount of the compensation awarded to him under this Act may be deducted by the insurers from the amount of the money payable under the insurance before they make any payment in respect thereof.

(6.) A local authority shall keep, as the Privy Council from time to time by general order direct, a record relative to slaughter, which record shall be admitted in evidence.

(7.) Notwithstanding anything in this Act, the Privy Council or a local authority, as the case may be, may, if they think fit, withhold, either wholly or

Secs. 30–32.

partially, compensation or other payment in respect of an animal slaughtered under this Act by their respective order, where the owner or the person having charge thereof has, in their respective judgment, been guilty, in relation to the animal, of an offence against this Act, or where the animal, being a foreign animal, was, in their respective judgment, diseased at the time of its landing.

Notice of Disease to Police.

Separation of diseased animals, and notice to constable.

31.—(1.) Every person having in his possession or under his charge an animal affected with disease shall, as far as practicable, keep that animal separate from animals not so affected, and shall, with all practicable speed, give notice of the fact of the animal being so affected to a constable of the police establishment for the police district or area, county, borough, town, or place wherein the animal so affected is (1).

(2.) The constable to whom notice is given shall forthwith give information thereof to such person or authority as the Privy Council from time to time by general order direct.

(3.) The Privy Council from time to time may make such general orders as they think fit for prescribing and regulating the notice to be given to or by any person or authority in case of any particular disease, or in case of the illness of an animal, and for supplementing or varying for those purposes any of the provisions of this section.

Disease and Movement, generally.

Power for Privy Council to make orders for prevention or checking of disease, and other purposes.

32. The Privy Council may from time to time make such general or special orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them:

(i.) For prescribing and regulating the publication by placards, handbills, or otherwise, in the immediate neighbourhood of a place or area declared infected, of the fact of such declaration.

(ii.) For prohibiting or regulating the movement of animals and persons into, in, or out of an infected place or area.

(iii.) For prescribing and regulating the isolation or separation of animals being in an infected place or area.

(iv.) For prohibiting or regulating the removal of carcases, fodder, litter, utensils, pens, hurdles, dung, or other things into, in, or out of an infected place or area.

(v.) For prescribing and regulating the destruction, burial, disposal, or treatment of carcases, fodder, litter, utensils, pens, hurdles, dung, or other things, being in an infected place or area, or removed thereout.

(vi.) For prescribing and regulating the cleansing and disinfecting of infected places and areas, or parts thereof.

(vii.) For prescribing and regulating the disinfecting of the clothes of persons coming in contact with or employed about diseased or suspected animals, or being in an infected place, and the use of precautions against the spreading of disease by such persons.

(viii.) For prohibiting or regulating the digging up of carcases buried.

(ix.) For prohibiting or regulating the exposure of diseased or suspected animals in markets, or fairs, or sale-yards, or other public or private places, where animals are commonly exposed for sale, and the placing thereof in lairs or other places adjacent to or connected with markets or fairs, or where animals are commonly placed before exposure for sale.

(x.) For prohibiting or regulating the sending or carrying of diseased or suspected animals, or of dung or other thing likely to spread disease, or

(1) Before a person can be convicted before a magistrate for a breach of the above enactment, it is necessary to prove that the accused was aware that the animal was suffering from a contagious disease. *Nicholls* v. *Hall*, L. R. 8 C. P. 322, 42 L. J. 157 C. P. and 105 M. C., and 28 L. T. N. S. 473. *See* also note to sec. 51, sub-s. 5, *post.*

the causing the same to be sent or carried, on railways, canals, rivers, or inland navigations, or in coasting vessels, or otherwise.

(xi.) For prohibiting or regulating the carrying, leading, or driving of diseased or suspected animals, or the causing them to be carried, led, or driven on highways or thoroughfares, or elsewhere.

(xii.) For prohibiting or regulating the placing or keeping of diseased or suspected animals on commons or uninclosed lands, or in fields or other places insufficiently fenced, or on the sides of highways.

(xiii.) For prescribing and regulating the seizure, detention, and disposal of a diseased or suspected animal exposed, carried, kept, or otherwise dealt with in contravention of an Order of Council; and for prescribing and regulating the liability of the owner or consignor or consignee of the animal to the expenses connected with the seizure, detention, and disposal thereof.

(xiv.) For prescribing the mode of ascertainment of the value of an animal slaughtered, or liable to be slaughtered, by order of the Privy Council or of a local authority.

(xv.) For regulating applications for, and the mode of payment of, compensation to be paid out of money provided by Parliament.

(xvi.) For prescribing and regulating the destruction, burial, disposal, or treatment of carcases of animals slaughtered by order of the Privy Council or of a local authority, or dying while diseased or suspected.

(xvii.) For prohibiting or regulating movement of animals, and the removal of carcases, fodder, litter, dung, and other things, and for prescribing and regulating the isolation of animals newly purchased.

(xviii.) For prescribing and regulating the issuing and production of licences respecting movement and removal of animals and things.

(xix.) For prohibiting or regulating the holding of markets, fairs, exhibitions, and sales of animals.

(xx.) For prescribing and regulating the cleansing and disinfecting of places used for the holding of markets, fairs, exhibitions, and sales of animals, or for lairage of animals, and yards, sheds, stables, and other places used for animals.

(xxi.) For prescribing and regulating the cleansing and disinfecting of vessels, vehicles, and pens and other places, used for the carrying of animals for hire or purposes connected therewith.

(xxii.) For prescribing modes of cleansing and disinfecting.

(xxiii.) For insuring for animals carried by sea a proper supply of food and water and proper ventilation during the passage and on landing.

(xxiv.) For protecting them from unnecessary suffering during the passage and on landing.

(xxv.) For protecting animals from unnecessary suffering during inland transit.

(xxvi.) For securing a proper supply of water and food to animals during any detention thereof.

(xxvii.) For prescribing and regulating the marking of animals.

(xxviii.) For prohibiting, absolutely or conditionally, the use, for the carrying of animals or for any purpose connected therewith, of a vessel, vehicle, or pen or other place in respect whereof, or of the use whereof, a penalty has been recovered from any person for an offence against this Act.

(xxix.) For prescribing and regulating the payment and recovery of expenses in respect of animals.

(xxx.) For prescribing and regulating the form and mode of service or delivery of notices and other instruments.

(xxxi.) For authorising a local authority to make regulations for purposes of this Act or of an Order of Council, subject to such conditions, if any, as the Privy Council, for the purpose of securing uniformity and the due execution of the provisions of this Act, think fit to prescribe.

(xxxii.) For applying all or any of the provisions of this Act to horses, asses, and mules, and to glanders and farcy, and other diseases thereof.

Secs. 32–34.

(xxxiii.) For extending, for all or any of the purposes of this Act, the definition of disease in this Act [1], so that the same shall for those purposes comprise any disease of animals in addition to the diseases mentioned in this Act.

(xxxiv.) Generally, for the better execution of this Act, or for the purpose of in any manner preventing the spreading of disease.

Provision of water and food at railway stations.

33.—(1.) Every railway company shall make a provision, to the satisfaction of the Privy Council, of water [2] and food, or either of them, at such stations as the Privy Council from time to time, by general or specific description, direct, for animals carried, or about to be or having been carried, on the railway of the company.

(2.) The water and food so provided, or either of them, shall be supplied to any such animal by the company carrying it, on the request of the consignor or of any person in charge thereof.

(3.) As regards water, if, in the case of any animal, such a request is not made, so that the animal remains without a supply of water for twenty-four consecutive hours, the consignor and the person in charge of the animal shall each be guilty of an offence against this Act; and it shall lie on the person charged to prove such a request and the time within which the animal had a supply of water.

(4.) But the Privy Council may from time to time, if they think fit, by order prescribe any other period, not less than twelve hours, instead of the period of twenty-four hours aforesaid, generally, or in respect of any particular kind of animals.

(5.) The company supplying water or food under this section may make in respect thereof such reasonable charges (if any) as the Privy Council by order approve, in addition to such charges as they are for the time being authorised to make in respect of the carriage of animals. The amount of those additional charges accrued due in respect of any animal shall be a debt from the consignor and from the consignee thereof to the company, and shall be recoverable by the company from either of them, with costs, by proceedings in any court of competent jurisdiction. The company shall have a lien for the amount thereof on the animal in respect whereof the same accrued due, and on any other animal at any time consigned by or to the same consignor or consignee to be carried by the company.

Dairies, Cow-sheds, and Milk-shops.

Power for Privy Council to make orders relative to dairies, cow-sheds and milk-shops.

34. The Privy Council may from time to time make such general or special orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them:

(i.) For the registration with the local authority of all persons carrying on the trade of cowkeepers [3], dairymen, or purveyors of milk.

(ii.) For the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies and cow-sheds in the occupation of persons following the trade of cowkeepers or dairymen.

(iii.) For securing the cleanliness of milk-stores, milk-shops, and of milk vessels used for containing milk for sale by such persons.

(iv.) For prescribing precautions to be taken for protecting milk against infection or contamination.

(v.) For authorising a local authority to make regulations for the purposes aforesaid, or any of them, subject to such conditions, if any, as the Privy Council prescribe.

(1) See section 5, sub-section iii, *ante*.

(2) As to local jurisdiction of justices in cases of neglect to provide cattle with water, see *Johnson* v. *Colam*, 40 J. P. 135.

(3) As to what constitutes a cowkeeper, see *Southwell* v. *Lewis*, 44 J. P. 796 Q. B. D.

35.—(1.) The Privy Council may from time to time make such general or special orders as they think fit for prohibiting the landing of animals, or of any specified kind thereof, or of carcases, fodder, litter, dung, or other thing, brought from any specified foreign country, or any specified part thereof. Prohibition of importation; slaughter or quarantine.

(2.) Any such order may be made at any time after the passing of this Act, but shall not take effect before the first day of January one thousand eight hundred and seventy-nine; and until that day Part III., relating to foreign animals, of the Contagious Diseases (Animals) Act, 1869, and all other provisions relating to foreign animals of that Act and of any other Act repealed by this Act, shall, notwithstanding that repeal, or any other thing in this Act, be in force as if this Act had not been passed. 32 & 33 Vict. c. 70.

(3.) On and after the first day of January one thousand eight hundred and seventy-nine, the provisions set forth in the Fifth Schedule shall apply to foreign animals, the landing whereof is not for the time being prohibited by Order of Council made under this section (1).

36.—(1.) The Privy Council may from time to time make such general or special orders as they think fit, subject and according to the provisions of this Act, for the following purposes, or any of them: Regulation of ports.

(i.) For prescribing the ports at which alone foreign animals may be landed.

(ii.) For defining the limits of ports for purposes of this Act.

(iii.) For defining parts of ports.

(iv.) For prohibiting or regulating the movement of animals into, in, or out of a defined part of a port.

(v.) For prescribing and regulating the inspection and examination, and the mode, time, and conditions of slaughter, of animals in a defined part of a port.

(vi.) For prescribing and regulating the disposal of animals, not being foreign animals, and being in a defined part of a port.

(vii.) For regulating the removal of carcases, fodder, litter, utensils, dung, or other things into, in, or out of a defined part of a port, and the disposal thereof, when likely to introduce or spread disease.

(viii.) For prescribing and regulating the cleansing and disinfecting of a defined part of a port or of parts thereof.

(ix.) For prescribing and regulating the disinfecting or destruction of things being in a defined part of a port or removed thereout.

(x.) For regulating the movement of persons into, in, or out of a defined part of a port.

(xi.) For prescribing and regulating the disinfecting of the clothes of persons employed or being in a defined part of a port, and the use of precautions against the introduction or spreading by them of disease.

(xii.) For prescribing and regulating the seizure and detention of any foreign animal, carcase, fodder, litter, dung, or other thing whereby disease may be introduced or spread.

(xiii.) Generally, for the better execution of this Act in relation to foreign animals, carcases, fodder, litter, dung, or other things, or for the purpose of in any manner preventing the introduction or spreading thereby of disease.

(2.) Notwithstanding anything in this Act, a defined part of a port, or any part thereof, shall not be declared to be an infected place, or be made part of an infected place, otherwise than by the Privy Council.

(1) The fifth Schedule makes provision for the slaughter of foreign animals at the place of landing. *Nissler* v. *Corporation of Hull*, 5 Q. B. D. 325, 49 L. J. Q. B. 501, 42 L. T. 894, 28 W. R. 700, 44 J. P. 664, decided that under the Contagious Diseases (Animals) Act, 32 & 33 Vict. c. 70, no compensation is payable by local authorities in respect of foreign animals slaughtered after their arrival, but before being landed at a British port; for compensation is only payable where animals have been slaughtered in pursuance of the Act, and the Act does not authorise local authorities to order such animals to be slaughtered.

Secs. 36-40.

(3.) Where the district or part of a district of a local authority described in the Second Schedule is or comprises, or is comprised in, a port or part of a port, the Privy Council may from time to time, if they think fit, in relation to that port or part of a port, by order, make any body, other than the body constituted the local authority by the Second Schedule, the local authority for the purposes of the provisions of this Act relating to foreign animals, and, in connection with the local authority so made, prescribe the local rate, if any, and the clerk of the local authority.

Powers and Duties of Local Authorities.

Local authorities to be treated as incorporated.

37. A local authority, not being a body corporate, may sue and be sued, and take and hold land, and otherwise act and be dealt with for all purposes of this Act, by the name or title of the local authority under this Act for their district, as if they were incorporated.

Committees of local authorities.

38. The provisions in the Sixth Schedule shall have effect with respect to committees of local authorities.

Provision of places for landing of foreign animals.

39.—(1.) A local authority may provide, erect, and fit up wharves, stations, lairs, sheds, and other places for the landing, reception, keeping, sale, slaughter, or disposal of foreign animals, carcases, fodder, litter, dung, and other things.

10 & 11 Vict. c. 14.

(2.) There shall be incorporated with this Act the Markets and Fairs Clauses Act, 1847, except sections six to nine and fifty-one to sixty thereof, all inclusive.

(3.) A wharf or other place provided by a local authority under this section shall be a market within that Act; and this Act shall be the special Act; and the prescribed limits shall be the limits of lands acquired or appropriated for purposes of this section; and bye-laws shall be approved by the Privy Council, which approval shall be sufficient without any other approval or allowance, notice of application for approval being given, and proposed bye-laws being published before application, as required by the Markets and Fairs Clauses Act, 1847.

10 & 11 Vict. c. 14.

(4.) A local authority may charge for the use of a wharf or other place provided by them under this section such sums as bye-laws from time to time appoint, and the same shall be deemed tolls authorised by the special Act.

(5.) All sums so received by the local authority shall be carried to a separate account, and shall be applied in payment of interest on money borrowed by them for purposes of Part III., relating to foreign animals, of the Contagious Diseases (Animals) Act, 1869, or of this section, and in repayment of the principal thereof, and, subject thereto, towards discharge of their expenses under this Act.

32 & 33 Vict. c. 70.

(6.) The local authority shall make such periodical returns to the Privy Council of their expenditure and receipts in respect of the wharf or other place as the Privy Council from time to time require.

(7.) The Privy Council, if satisfied on inquiry that the tolls taken by the local authority for the wharf or other place may properly be reduced, regard being had to the expenditure and receipts of the local authority in respect thereof, and to any money secured on the tolls, and to the other circumstances of the case, may require the local authority to submit to the Privy Council, for their approval, a new schedule of tolls, and on failure of the local authority to do so, to the satisfaction of the Privy Council, may, by order, prescribe such tolls as they think fit, in lieu of those before approved by them.

32 & 33 Vict. c. 70.

(8.) The provisions of this section shall apply to a wharf or other place provided by a local authority under the Contagious Diseases (Animals) Act, 1869.

Power for local authority to acquire land.

40.—(1.) A local authority may purchase, or may by agreement take on lease or at a rent, land for wharves or other places, or for use for burial of carcases in cases where there is not any ground suitable in that behalf in the possession or occupation of the owner of the animal, or any common or uninclosed land suitable, and approved by the Privy Council, in that behalf, or for any other purpose of this Act.

(2.) They may (subject to any agreement) dispose of lands so acquired, but not required for this Act, carrying the money produced thereby to the credit of the local rate.

(3.) The regulations contained in section one hundred and seventy-six of the Public Health Act, 1875, shall be observed with respect to the purchase of land by a local authority for purposes of this Act, as if the local authority were a local board, and purposes of this Act were purposes of that Act; save that the requisite advertisements and notices may be published and served in any two consecutive months, and that the local rate be substituted for the rates therein mentioned. 38 & 39 Vict. c. 55.

(4.) The powers conferred by this section may be exercised by a local authority with respect to land within or without their district.

Duties of local authorities, and enforcement thereof.

41.—(1.) Every local authority shall execute and enforce this Act and every Order of Council, as far as the same are to be executed or enforced by local authorities.

(2.) Where a local authority fail to execute or enforce any of the provisions of this Act, or of an Order of Council, the Privy Council may by order empower a person therein named to execute and enforce those provisions, or to procure the execution and enforcement thereof.

(3.) The expenses incurred thereby by or on behalf of the Privy Council, including compensation for animals slaughtered, shall be expenses of the local authority, and the amount thereof shall be paid to the Privy Council, on demand, by the treasurer or other proper officer of the local authority; and in default of payment the same shall be recoverable from the local authority, with costs, by a person appointed by the Privy Council to sue in that behalf.

(4.) For the purposes of this section an order of the Privy Council shall be conclusive in respect of any default, amount of expenses, or other matter therein stated or appearing.

(5.) The provisions of this section shall be without prejudice to the right or power of the Privy Council, or any other authority or any person, to take any other proceedings for requiring a local authority to execute or enforce any of the provisions of this Act, or of an Order of Council.

Inspectors and other officers of local authority.

42.—(1.) Every local authority shall from time to time appoint so many inspectors and other officers as they think necessary for the execution and enforcement of this Act, and shall assign to those inspectors and officers such duties, and salaries or allowances, and may delegate to any of them such authorities and discretion, as to the local authority seem fit, and may at any time revoke any appointment so made.

(2.) Every local authority shall keep appointed at all times at least one veterinary inspector, and shall appoint and at all times keep appointed so many other veterinary inspectors as the Privy Council, having regard to the extent and circumstances of the district of the local authority, from time to time direct.

(3.) The Privy Council, on being satisfied on inquiry that an inspector of a local authority is incompetent, or has been guilty of misconduct or neglect, may, if they think fit, direct his removal, and thereupon he shall cease to be an inspector.

Reports to Privy Council.

43. Every local authority and their inspectors and officers shall send and give to the Privy Council such notices, reports, returns, and information as the Privy Council from time to time require.

Orders and regulations of local authorities.

44.—(1.) An order or regulation of a local authority may be proved—

(i.) By the production of a newspaper purporting to contain the order or regulation as an advertisement; or,

(ii.) By the production of a copy of the order or regulation purporting to be certified by the clerk of the local authority as a true copy.

(2.) An order or regulation so proved shall be taken to have been duly made, unless and until the contrary is proved.

(3.) An order or regulation of a local authority authorised by this Act or by Order of Council shall alone be deemed for purposes of this Act an order or regulation of a local authority.

Powers of local authorities to be for their district.

45. The provisions of this Act conferring powers on, or otherwise relating to, a local authority, or their inspectors or officers, shall, unless otherwise expressed, be read as having reference to the district of the local authority; and powers thereby conferred shall, unless it is otherwise expressed, be exerciseable and shall operate within and in relation to that district only.

Secs. 46–50.

Expenses of Local Authorities.

Expenses out of local rate.

46. The expenses of a local authority shall be defrayed out of the local rate; and such sums as may be necessary to defray those expenses shall from time to time be levied with and as part of the local rate.

Relief of boroughs from contribution to county expenses.

47.—(1.) The local authority of a borough assessed to the county rate of a county shall be paid by the local authority of the county the proportionate amount paid by the several parishes and parts of parishes in the borough towards the expenses under this Act of the local authority of the county.

(2.) The local authority of a borough having a separate court of quarter sessions shall be exempt from contributing towards the expenses under this Act of the local authority of the county within which the borough is situate; and the treasurer of the county shall, out of the account required by the Municipal Corporation Act, 1835, to be kept by him of money expended out of the county rate for other purposes than those in that Act mentioned, exclude the expenses under this Act of the local authority of the county; and the amount to be paid to the treasurer of the county by the borough shall be varied accordingly.

5 & 6 Will. 4. c. 76.

Outstanding rates.

48. The existence of an order or precept for the making or collection under any former Act of a rate remaining uncollected wholly or in part at the commencement of this Act shall not affect the validity of any rate thereafter made.

Borrowing by Local Authorities.

Power for local authority to borrow.

49.—(1.) Where the amount or proportion of the local rate levied or required for this Act exceeds or would exceed in any financial year sixpence in the pound, a local authority may borrow at interest on the credit of the local rate any money necessary under this Act, and may secure the repayment thereof, with interest, by mortgaging the local rate for any term not exceeding seven years.

(2.) Where the amount or proportion aforesaid exceeds or would exceed in any financial year ninepence in the pound, the Local Government Board may, if they think fit, on application of the local authority, extend the term to any period not exceeding fourteen years.

(3.) A local authority, borrowing for the purposes of this section, shall borrow subject to the provisions of the Local Loans Act, 1875; and every loan raised under this section shall be discharged in manner prescribed by section thirteen of that Act, for which purpose a sinking fund is hereby prescribed, if in any case the Local Government Board so direct, but not otherwise.

38 & 39 Vict. c. 83.

(4.) The Public Works Loan Commissioners may, on the recommendation of the Local Government Board, advance money to a local authority in manner provided by the Public Works Loans Act, 1875, and any enactment amending or substituted for that Act, the same to be repaid, with interest, within the term aforesaid, and the local authority may so borrow accordingly.

38 & 39 Vict. c. 58.

(5.) A local authority, borrowing for purposes of the provisions of this Act relating to foreign animals, may, if they think fit, give as security, either with the local rate, if any, or separately therefrom, the charges which they are authorised to make for the use of a wharf or other place provided by them under this Act, and any estates, revenues, or funds belonging to them and not otherwise appropriated by law; and in that case the limitations in this section respecting the amount or proportion of rate and term of years shall not operate.

Police.

Duties and authorities of constables.

50.—(1.) The police of each police district or area, county, borough, town, and place shall execute and enforce this Act and every Order of Council.

(2.) Where a person is seen or found committing, or is reasonably suspected of being engaged in committing, an offence against this Act, a constable may, without warrant, stop and detain him; and, if his name and address are not known to the constable, and he fails to give them to the satisfaction of the constable, the constable may, without warrant, apprehend him; and the constable may, whether

so stopping or detaining or apprehending the person or not, stop, detain, and examine an animal, vehicle, boat, or thing to which the offence or suspected offence relates, and require the same to be forthwith taken back to or into any place or district wherefrom or whereout it was unlawfully removed, and execute and enforce that requisition.

(3.) If any person obstructs or impedes a constable or other officer in the execution of this Act or of an Order of Council or of a regulation of a local authority, or assists in any such obstructing or impeding, the constable or officer may without warrant apprehend the offender.

(4.) A person apprehended under this section shall be taken with all practicable speed before a justice, and shall not be detained without a warrant longer than is necessary for that purpose; and all enactments relating to the release of persons on recognizances taken by an officer of police or a constable shall apply in the case of a person apprehended under this section.

(5.) The foregoing provisions of this section respecting a constable extend and apply to any person called by a constable to his assistance.

(6.) A constable shall forthwith make a report in writing to his superior officer of every case in which he stops any person, animal, vehicle, boat, or thing under this section, and of his proceedings consequent thereon.

(7.) Nothing in this section shall take away or abridge any power or authority that a constable would have had if this section had not been enacted.

General.

General powers of inspectors.

51.—(1.) An inspector shall have, for purposes of this Act, all powers which a constable has under this Act or otherwise in the place where the inspector is acting.

(2.) An inspector may at any time enter any land, or dairy or cow-shed to which this Act applies, or milk-stores or milk-shop, or other building or place wherein he has reasonable grounds for supposing—

(*a.*) That disease exists or has within fifty-six days existed; or

(*b.*) That the carcase of a diseased or suspected animal is or has been kept, or has been buried, destroyed, or otherwise disposed of; or

(*c.*) That there is to be found any pen, place, vehicle, or thing in respect whereof any person has on any occasion failed to comply with the provisions of this Act, or of an Order of Council, or of a regulation of a local authority; or

(*d.*) That this Act or an Order of Council or a regulation of a local authority has not been or is not being complied with.

(3.) An inspector may at any time enter any pen, vehicle, vessel, or boat in which or in respect whereof he has reasonable grounds for supposing that this Act or an Order of Council or a regulation of a local authority has not been or is not being complied with.

(4.) An inspector entering, as in this section authorised, shall, if required by the owner, or occupier, or person in charge of the land, building, place, pen, vehicle, vessel, or boat, state in writing his reasons for entering.

(5.) A certificate of a veterinary inspector to the effect that an animal is or was affected with a disease specified in the certificate shall for the purposes of this Act be conclusive evidence in all courts of justice of the matter certified ([1]).

(6.) An inspector of the Privy Council shall have all the powers of an inspector throughout England or that part thereof for which he is appointed.

([1]) H was summoned for exposing in a public market pigs suffering from typhoid fever. A certificate of the veterinary inspector was produced that the pigs were so suffering. H produced evidence to prove that he did not know and had no means of knowing of the disease. The justices refused to receive such rebutting evidence, and convicted H. Held, that the justices were wrong in rejecting the evidence, though they were to determine whether it amounted to any excuse: *Harris* v. *Smith*, 44 J. P. 361 Q. B. D.

Secs. 52–57.

Power for detention of vessels.

52.—(1.) Where an inspector of the Privy Council is satisfied that this Act or an Order of Council or a regulation of a local authority has not been or is not being complied with on board a vessel in a port, then, on the representation in writing to that effect of the inspector, stating particulars of non-compliance, the vessel may be detained until the Privy Council otherwise direct.

(2.) The officer detaining the vessel shall forthwith deliver to the master or person in charge of the vessel a copy of the representation.

39 & 40 Vict. c. 80.

(3.) Section thirty-four of the Merchant Shipping Act, 1876, shall apply in the case of such detention, as if it were effected under an Act in that section mentioned.

Expenses of burial of carcases washed ashore.

53. Where a carcase washed ashore is buried or destroyed under the direction of a receiver of wreck, with authority from the Board of Trade, the expenses thereof shall be the expenses of the local authority, and shall be paid by them to the receiver on demand, and in default of payment shall be recoverable with costs from them by the receiver.

Power to exclude strangers by notice.

54. A person owning or having charge of animals in a place or area declared infected with any disease may affix, at or near the entrance to a building or inclosure in which the animals are, a notice forbidding persons to enter therein without the permission mentioned in the notice; and thereupon it shall not be lawful for any person, not having by law a right of entry or way into, on, or over that building or inclosure, to enter or go into, on, or over the same without that permission.

Provisions for protection of local authority and persons acting under Act.

55.—(1.) An action, prosecution, or proceeding against a local authority, or an inspector or officer of the Privy Council or of a local authority, or any person, for any act done in pursuance or execution or intended execution of this Act, or of an Order of Council, or regulation of a local authority, or in respect of any alleged neglect or default in the execution of this Act, or of such an order or regulation, shall not lie or be instituted unless it is commenced within four months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within four months next after the ceasing thereof.

(2.) In any such action tender of amends before the action was commenced may, in lieu of or in addition to any other plea, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed as between solicitor and client, as from the time of such tender or payment; but this provision shall not affect costs on any injunction in the action.

(3.) Subject and without prejudice to any other powers, a local authority, where the defendant in any such action, prosecution, or other proceeding is their officer, servant, or agent, may, if they think fit, except so far as the court before whom such action, prosecution, or other proceeding is heard and determined otherwise directs, pay as part of their expenses in the execution of this Act all or any part of any sums payable by such defendant in or in consequence of such action, prosecution, or proceeding, whether in respect of costs, charges, expenses, damages, fine, or otherwise.

No stamp duty or fees.

56. No stamp duty shall be payable on, and no fee or other charge shall be demanded or made for, any appointment, certificate, declaration, licence, or thing under this Act, or an Order of Council, or a regulation of a local authority, or for any inspection or other act precedent to the granting, making, or doing of a certificate, declaration, licence, or other thing.

Evidence and form and service of instruments.

57.—(1.) In any proceeding under this Act, no proof shall be required of the appointment or handwriting of an inspector or other officer of the Privy Council, or of the clerk or an inspector or other officer of a local authority.

(2.) Every notice or other instrument under this Act or under an Order of Council or regulation of a local authority may be in writing or print, or partly in writing and partly in print.

(3.) Any such notice or other instrument may be served on the person to be affected thereby, either by the delivery thereof to him personally, or by the leaving thereof for him at his last known place of abode or business, or by the sending thereof through the post in a registered letter addressed to him there.

(4.) A notice or other instrument so sent by post shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course.

(5.) In order to prove service by letter of a notice or other instrument, it shall be sufficient to prove that the letter was properly addressed, registered, and posted, and contained the notice or other instrument to be served.

(6.) A notice or other instrumeut to be served on the occupier of any building, land, or place may, except when sent by post, be addressed to him by the designation of the occupier of that building, land, or place, without naming or further describing him; and where it is to be served on the several occupiers of several buildings, lands, or places, may, except when sent by post, be addressed to them collectively by the designation of the occupiers of those several buildings, lands, or places, without further naming or describing them, but separate copies thereof being served on them severally.

Provisions respecting Orders of Council.

58.—(1.) The Privy Council may from time to time alter or revoke any Order of Council.

(2.) Every Order of Council shall have effect as if it had been enacted by this Act.

(3.) Every Order of Council shall be published in the *London Gazette;* save that where an order affects only a particular local authority, person, port, town, district, place, area, vessel, or thing, or is a licence or revocation of a licence, or in the nature thereof, or is an appointment or removal of an inspector or other officer, then the insertion in the *London Gazette* of a notice of the making of the order shall suffice; and a copy of the *London Gazette* containing such a notice shall be evidence of the order, as if the notice were the order.

(4.) Every Order of Council, licence, or other instrument issued by the Privy Council shall be published by and at the expense of every local authority to whom it is sent by the Privy Council for publication, in such manner as the Privy Council direct, and, subject to and in the absence of any direction, by advertisement in a newspaper circulating in the district of the local authority.

(5.) The validity or effect of an Order of Council, licence, or other instrument issued by the Privy Council shall not be affected by want of or defect or irregularity in any publication thereof.

(6.) Any act of the Privy Council under this Act, done otherwise than by Order of Council, shall be sufficiently done and signified by an instrument signed by the Clerk of the Council; and every act done and signified by an instrument purporting to be so signed shall be deemed to have been duly done by the Privy Council; and every such instrument shall be received in evidence in all courts and proceedings without proof of the authority or signature of the Clerk of the Council or other proof.

Yearly return to be laid before Houses of Parliament.

59. A return shall be made and laid before both Houses of Parliament not later than the thirty-first day of March in each year, setting forth every Order of Council made since the date of the last return and every previous Order of Council required to be published in the *London Gazette* and in force; and stating the proceedings and expenditure under this Act of the Privy Council, and, as far as reasonably may be, of local authorities, in the year ending the thirty-first day of December then last; and showing the number of foreign animals landed and found diseased in that year, specifying separately the different kinds of disease, and the ports of exportation and landing, and the mode of disposal of the animals; and containing such other information respecting the operation of this Act as the Privy Council think fit.

Offences and Proceedings.

Fines for offences.

60. If any person is guilty of an offence against this Act he shall for every such offence be liable—

(i.) To a penalty not exceeding twenty pounds; or

(ii.) If the offence is committed with respect to more than four animals, to a penalty not exceeding five pounds for each animal; or

(iii.) Where the offence is committed in relation to carcases, fodder, litter,

Secs. 60–62.

dung, or other thing (exclusive of animals) to a penalty not exceeding ten pounds in respect of every half ton in weight thereof after one half ton, in addition to the first penalty of not exceeding twenty pounds.

General offences.

61.—(1.) If any person, without lawful authority or excuse, proof whereof shall lie on him, does any of the following things, he shall be guilty of an offence against this Act:

(i.) If he does anything in contravention of this Act, or of an Order of Council, or of a regulation of a local authority:

(ii.) If, where required by this Act to keep an animal separate as far as practicable, or to give notice of disease with all practicable speed, he fails to do so:

(iii.) If he fails to give, produce, observe, or do any notice, licence, rule, or thing which by this Act, or by an Order of Council, or by a regulation of a local authority, he is required to give, produce, observe, or do:

(iv.) If he does anything which by this Act or an Order of Council is made or declared to be not lawful:

(v.) If he does or omits anything, the doing or omission whereof is declared by this Act or by an Order of Council to be an offence by him against this Act:

(vi.) If he refuses to an inspector or other officer acting in execution of this Act, or of an Order of Council, or of a regulation of a local authority, admission to any land, building, place, vessel, pen, vehicle, or boat which the inspector or officer is entitled to enter or examine, or obstructs or impedes him in so entering or examining, or otherwise in any respect obstructs or impedes an inspector or constable or other officer in the execution of his duty, or assists in any such obstructing or impeding:

(vii.) If he throws or places, or causes or suffers to be thrown or placed, into or in any river, stream, canal, navigation, or other water, or into or in the sea within three miles of the shore, the carcase of an animal which has died of disease, or been slaughtered as diseased or suspected:

(2.) And on a further conviction within a period of twelve months for a second or subsequent offence against the same sub-section of this section, he shall be liable, in the discretion of the court of summary jurisdiction before which he is convicted, to be imprisoned for any term not exceeding one month, with or without hard labour, in lieu of the pecuniary penalty to which he is liable under this Act.

Imprisonment instead of fine for use of expired licences, digging up of carcases, and other specified offences.

62.—(1.) If any person does any of the following things, he shall be guilty of an offence against this Act:

(i.) If, with intent to unlawfully evade this Act, or an Order of Council, or a regulation of a local authority, he does anything for which a licence is requisite under this Act, or an Order of Council, or a regulation of a local authority, without having obtained a licence:

(ii.) If, where such a licence is requisite, having obtained a licence, he, with the like intent, does the thing licensed after the licence has expired:

(iii.) If he uses or offers, or attempts to use as such a licence, an instrument not being a complete licence, or an instrument untruly purporting or appearing to be a licence, unless he shows to the satisfaction of the court of summary jurisdiction before which he is charged that he did not know of that incompleteness or untruth, and that he could not with reasonable diligence have obtained knowledge thereof:

(iv.) If, with intent to unlawfully evade this Act, or an Order of Council, or a regulation of a local authority, he alters, or falsely makes, or ante-dates, or counterfeits, or offers or utters, knowing the same to be altered, or falsely made, or ante-dated, or counterfeited, a licence, declaration, certificate, or instrument made or issued, or purporting to be made or issued, under or for any purpose of this Act; or an Order of Council, or a regulation of a local authority:

(v.) If, for the purpose of obtaining such a licence, certificate, or instrument, he makes a declaration or statement false in any material particular, unless he shows to the satisfaction of the court of summary jurisdiction before

which he is charged that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof:

(vi.) If he obtains or endeavours to obtain such a licence, certificate, or instrument by means of a false pretence, unless he shows to the satisfaction of the court of summary jurisdiction before which he is charged that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof:

(vii.) If he grants or issues such a licence, certificate, or instrument, being false in any date or other material particular, unless he shows to the satisfaction of the court of summary jurisdiction before which he is charged that he did not know of that falsity, and that he could not with reasonable diligence have obtained knowledge thereof, or grants or issues such a licence, certificate, or instrument, having, and knowing that he has, no lawful authority to grant or issue the same:

(viii.) If, with intent to unlawfully evade or defeat this Act, or an Order of Council, or a regulation of a local authority, he grants or issues an instrument being in form a licence, certificate, or instrument made or issued under this Act, or an Order of Council, or a regulation of a local authority, for permitting or regulating the movement of a particular animal, or the doing of any other particular thing, but being issued in blank, that is to say, not being before the issue thereof so filled up as to specify any particular animal or thing:

(ix.) If he uses, or offers, or attempts to use for any purpose of this Act, or of an Order of Council, or of a regulation of a local authority, an instrument so issued in blank, unless he shows to the satisfaction of the court of summary jurisdiction before which he is charged that he did not know of it having been so issued in blank, and that he could not with reasonable diligence have obtained knowledge thereof:

(x.) If he by means of any fraud or false pretence obtains, or attempts to obtain, compensation from the Privy Council or a local authority in respect of an animal slaughtered, or aids or abets any person in any such fraud or false pretence:

(xi.) If, without lawful authority or excuse, proof whereof shall lie on him, he digs up, or causes to be dug up, a carcase buried under the direction of the Privy Council or of a local authority or of a receiver of wreck:

(xii.) If, where an Order of Council has prohibited, absolutely or conditionally, the use for the carrying of animals, or for any purpose connected therewith, of a vessel, vehicle, or pen, or other place, he, without lawful authority or excuse, proof whereof shall lie on him, does anything so prohibited.

(2.) And in every case in this section specified he shall be liable, on conviction, in the discretion of the court of summary jurisdiction before which he is convicted, to be imprisoned for any term not exceeding two months, with or without hard labour, in lieu of the pecuniary penalty to which he is liable under this Act.

Proceedings in court of summary jurisdiction.

63. Proceedings and penalties for offences against this Act may be taken and recovered, and expenses and other money by this Act or an Order of Council made recoverable summarily may be recovered with costs, and summary orders under this Act or an Order of Council may be made with costs, by or before a court of summary jurisdiction, under and according to the Act of the session of the eleventh and twelfth years of Her Majesty's reign (chapter forty-three), "to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same; but nothing in this section shall apply to proceedings under the Customs Acts.

11 & 12 Vict. c. 43.

Appeal.

64.—(1.) If any person thinks himself aggrieved by the dismissal of a complaint by, or by any determination or adjudication of, a court of summary jurisdiction under this Act, he may appeal therefrom.

(2.) The appeal shall be made to the next practicable court of general or quarter sessions [for the county or place in which the cause of appeal arises, holden not less than twenty-one days after the decision appealed from.

Secs. 64–66.

(3.) The appellant shall, within ten days after the decision, give notice to the clerk of the court whose decision is appealed from of his intention to appeal, and of the grounds thereof, and to the other party.

(4.) The appellant shall, within three days after such notice, enter into a recognizance before a justice, with two sufficient sureties, conditioned personally to try the appeal.

(5.) The court may adjourn the appeal, and may make such order thereon as the court thinks fit.

(6.) Nothing in this section shall affect any enactment relative to appeals in cases of summary convictions or adjudications in the city of London or the metropolitan police district, or apply to proceedings under the Customs Acts (1)].

Proceedings under Customs Acts for unlawful landing or shipping.

65.—(1.) If any person lands or ships or attempts to land or ship an animal or thing in contravention of this Act or of an Order of Council, he shall be liable, under and according to the Customs Acts, to the penalties imposed on persons importing or exporting or attempting to import or export goods, the importation or exportation whereof is prohibited by or under the Customs Acts, without prejudice to any proceeding against him under this Act for an offence against this Act, but so that he be not punished twice for the same offence.

(2.) The animal or thing in respect whereof the offence is committed shall be forfeited, under and according to the Customs Acts, as goods the importation or exportation whereof is prohibited by or under the Customs Acts, are liable to be forfeited.

General provision as to procedure.

66.—(1.) The description of an offence against this Act in the words of this Act, or of the Order of Council or regulation of a local authority under which the offence arises, or in similar words, shall be sufficient in law.

(2.) Any exception, exemption, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, or in the Order of Council or regulation of a local authority under which the offence arises, may be proved by the defendant, but need not be specified or negatived in the information; and, if it is so specified or negatived, proof in relation to the matter so specified or negatived shall not be required on the part of the informant.

(3.) [A warrant of commitment under this Act shall not be held void by reason of any defect therein, if only there is a valid conviction to sustain the warrant, and it is alleged in the warrant that the person named therein has been convicted (1).]

(4.) Where the owner or person in charge of an animal is charged with an offence against this Act relative to disease or to any illness of the animal, he shall be presumed to have known of the existence of the disease or illness, unless and until he shows to the satisfaction of the court of summary jurisdiction before which he is charged that he had not knowledge thereof, and could not with reasonable diligence have obtained that knowledge.

(5.) Where a person is charged with an offence against this Act in not having duly cleansed or disinfected any place, vessel, vehicle, or thing belonging to him or under his charge, and a presumption against him on the part of the prosecution is raised, it shall lie on him to prove the due cleansing and disinfecting thereof.

(6.) A person charged with an offence against this Act may, if he thinks fit, tender himself to be examined on his own behalf, and thereupon he may give evidence in the same manner and with the like effect and consequences as any other witness.

(7.) Every offence against this Act shall be deemed to have been committed, and every cause of complaint or matter for summary proceeding under this Act, or an Order of Council, or regulation of a local authority shall be deemed to have arisen, either in any place where the same actually was committed or arose, or in any place where the person charged or complained of or proceeded against happens to be at the time of the institution or commencement of the charge, complaint, or proceeding.

(1) The portion of the section between brackets has been repealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43.

(8.) Notwithstanding anything in any Act relating to the metropolitan police or to municipal corporations or in any other Act, such part not exceeding one-half of every penalty or forfeiture recovered under this Act (except in proceedings under the Customs Acts) as the court of summary jurisdiction before which it is recovered thinks fit, shall be paid to the person who proceeds for the same, and the residue thereof shall be applied as if this section had not been enacted.

PART III.—SCOTLAND.

Sections 67—74.

PART IV.—IRELAND.

Sections 75—88.

Sched. I.

(Section 4.)

SCHEDULES.

THE FIRST SCHEDULE.

Enactments Repealed.

	I.—England and Scotland.
32 & 33 Vict. c. 70. [9 August, 1869.] in part.	The Contagious Diseases (Animals) Act, 1869: Except— (i.) Paragraphs 2, 3, and 4 of section 28 (local), relating to the markets of the mayor, aldermen, and commons of the City of London, with the Fifth Schedule referred to in that section. (ii.) Sections 100 and 101 (transitory), relating to money borrowed by local authorities before the passing of that Act.
	II.—Scotland.
	III.—Ireland.

Sched. II.

(Sections 7 and 9.)

THE SECOND SCHEDULE.

Local Authorities in England.

District.	Local Authority.	Local Rate.	Clerk of Local Authority.
I.—Counties, except within the metropolis.	The justices in general or quarter sessions assembled.	The county rate, or rate in the nature of a county rate.	The clerk of the peace.
II.—The City of London and the liberties thereof.	The Corporation of London.	The consolidated rate.	The town clerk.
III.—The metropolis, except the City of London and the liberties thereof.	The Metropolitan Board of Works.	The metropolitan consolidated rate.	The clerk of the Metropolitan Board of Works.
IV.—Boroughs subject to the Municipal Corporation Act, 1835.	The mayor, aldermen, and burgesses acting by the Council.	The borough rate, with the borough fund.	The town clerk.
V.—Other boroughs.	The Commissioners or other body maintaining the police therein.	The rate applicable by the commissioners or other body to the maintenance of the police.	The clerk of the commissioners or other body.
VI.—The district of the local board of Oxford.	The local board -	The rate leviable by the local board.	The clerk of the local board.

Sched. III.
Section 19.

THE THIRD SCHEDULE.

Pleuro-Pneumonia.

1. Cattle are not to be moved into or out of a place infected with pleuro-pneumonia, except where, as regards movement into such a place, the cattle are affected with pleuro-pneumonia, and except in such other cases as the Privy Council think fit from time to time by general Order to except.

2. In the cases so excepted by Order cattle may be moved into or out of an infected place on conditions prescribed by general or special Order of Council, and not otherwise.

3. Cattle may be moved into, in, or out of such parts of an area infected with pleuro-pneumonia as are not comprised in a place infected with pleuro-pneumonia, by licence of the local authority, granted on conditions prescribed by general Order of Council, and not otherwise.

4. Nothing in this Schedule restricts movement of cattle in a place infected with pleuro-pneumonia.

Sched. IV.
Section 25.

THE FOURTH SCHEDULE.

Foot-and-Mouth Disease.

1. Animals are not to be moved into or out of a place infected with foot-and-mouth disease, except where, as regards movement into such a place, the animals are affected with foot-and-mouth disease, and except in such other cases as the Privy Council think fit from time to time by general Order to except.

2. In the cases so excepted by Order animals may be moved into or out of an infected place on conditions prescribed by general or special Order of Council, and not otherwise.

3. Animals may be moved into, in, or out of such parts of an area infected with foot-and-mouth disease as are not comprised in a place infected with foot-and-mouth disease, by licence of the local authority, granted on conditions prescribed by Order of Council, and not otherwise.

4. Nothing in this Schedule restricts movement of animals in a place infected with foot-and-mouth disease.

Sched. V.
Section 35.

THE FIFTH SCHEDULE.

Foreign Animals.

I.—*Slaughter at Port of Landing.*

1. Foreign animals are to be landed only at a part of a port defined for that purpose by special Order of Council, to be called a foreign animals wharf.

2. They are to be landed in such manner, at such times, and subject to such supervision and control as the Commissioners of Customs from time to time direct.

3. They are not to be moved alive out of the wharf.

II.—*Quarantine.*

4. The foregoing provisions of this Schedule (under the head of Slaughter at Port of Landing) do not apply to animals intended for exhibition or for other exceptional purposes; and in lieu thereof the subsequent provisions of this Schedule (under the head of Quarantine) apply to those animals.

5. Those animals are to be landed only at a part of a port defined for that purpose by special Order of Council, to be called a foreign animals quarantine station.

6. They are to be landed in such manner, at such times, and subject to such supervision and control as the Commissioners of Customs from time to time direct, and subject to such conditions in respect of the animals, or of the vessel from which they are landed, as the Privy Council from time to time by general Order prescribe.

Sched. V.

Section 35.

7. When landed they are to be placed in sheds or other receptacles in the quarantine station, prepared by the local authority or the owners of the quarantine station, or the consignees of animals or other persons, and approved by the Privy Council.

8. Any such animal is not to be moved out of the quarantine station except on conditions prescribed by general or special Order of Council.

9. Notwithstanding anything in the foregoing provisions of this Schedule (under the head of Quarantine), the provisions of this Act relating to slaughter in case of the existence of disease, and to compensation or other payment in respect of animals so slaughtered, and to the ownership of carcases of such animals, shall apply to animals in a foreign animals quarantine station.

III.—*Channel Islands and Isle of Man.*

10. In relation to animals brought from the Channel Islands or the Isle of Man, the Privy Council may from time to time, if they think fit, by general or special Order or by licence, alter or add to the provisions of this Schedule relating to slaughter or to quarantine, as the case may require.

IV.—*Other Foreign Countries.*

11. In relation to foreign animals other than those brought from the Channel Islands and the Isle of Man, if and as long as, from time to time, the Privy Council are satisfied, with respect to any foreign country, that the laws thereof relating to the importation and exportation of animals, and to the prevention of the introduction or spreading of disease, and the general sanitary condition of animals therein, are such as to afford reasonable security against the importation therefrom of diseased animals, then from time to time, the Privy Council, by general or special order, shall allow animals, or any specified kind of animals, brought from that country, to be landed, without being subject, under the provisions of this Schedule, to slaughter or to quarantine, and may for that purpose alter or add to those provisions, as the case may require; but every such order shall forthwith, after the making thereof, if Parliament is then sitting, and if not, then forthwith after the next meeting of Parliament, be laid before both Houses of Parliament.

Sched. VI.

Section 38.

THE SIXTH SCHEDULE.

Committees of Local Authorities.

1. Each local authority shall form and keep up a committee or committees, and may appoint the number of members by whom the powers of a committee may be exercised, and may at any time add to or diminish the number of the members of a committee, or otherwise alter the constitution thereof, and fill up or provide for the filling up of vacancies therein, or revoke the appointment thereof and appoint another committee or committees, and lay down rules for the guidance of a committee, who shall act accordingly.

2. Each committee may consist wholly of members of the local authority, or partly thereof, and partly of other persons, being rated occupiers in the district of the local authority, and otherwise qualified as the local authority think fit.

3. A local authority may delegate all or any of their powers, except the power to make a rate, to a committee, with or without conditions or restrictions.

4. A local authority may revoke or alter any power given by them to a committee.

5. A local authority may, if they think fit, appoint and designate one committee as their executive committee.

6. An executive committee shall have all the powers of the local authority, except the power to make a rate, and may, if they think fit, appoint a sub-committee or sub-committees, and delegate to them all or any of the powers of the executive committee, with or without conditions or restrictions, and from time to time revoke or alter any such delegation, and appoint the number of members by whom the powers of a sub-committee may be exercised, and add to or diminish the number of the members of a sub-committee, or otherwise alter the constitution thereof, and fill up or provide for the filling up of vacancies therein, or revoke the appointment thereof and appoint another sub-committee

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or other sub-committees, and lay down rules for the guidance of a sub-committee, who shall act accordingly.

7. Proceedings of a committee or sub-committee shall not be invalidated by any vacancy in the committee or sub-committee, or, in the case of a committee appointed by the local authority for a county, by the termination of the session at which they were appointed.

8. In case of the formation of two or more committees, they shall act according to rules laid down for their guidance by the local authority.

9. A committee and a sub-committee of an executive committee, may elect a chairman of their meetings.

10. If no chairman is elected, or if the chairman so elected is not present at the time appointed for a meeting, the members then present shall choose a chairman for that meeting.

11. A committee or sub-committee may meet and adjourn as they think proper.

12. Every question at a meeting of a committee or sub-committee shall be determined by a majority of the votes of the members, including the chairman, present and voting on the question; and in case of equal division, the chairman shall have a second vote.

THE SEVENTH SCHEDULE.

Sched. VII.
Section 68.

Local Authorities in Scotland.

THE

HIGHWAY ACT, 1835.

5 & 6 WILL. IV. c. 50.

An Act to Consolidate and Amend the Laws relating to Highways in that part of Great Britain called England. [31*st August*, 1835.]

Secs. 1—5. WHEREAS it is expedient to amend the laws relating to highways in that part of Great Britain called England, and to consolidate the same in one Act, and to make other provisions respecting highways: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, [*Repeal of* 6 *Geo. I. c.* 6, *in part, viz., so much as relates to the carriage of bricks, except as to London,* 18 *Geo. II. c.* 33, *except as to London,* 24 *Geo. II. c.* 43, *in part, viz., so much as relates to the preventing mischief occasioned by the drivers riding upon carts, drays, cars, and waggons in the City of London, or within ten miles thereof, except as to London,* 30 *Geo. II. c.* 22, *except as to London,* 13 *Geo. III. c.* 78, 34 *Geo. III. c.* 64, 34 *Geo. III. c.* 74, *part of* 42 *Geo. III. c.* 90, 44 *Geo. III. c.* 52, 54 *Geo. III. c.* 109, *and* 55 *Geo. III. c.* 68] (1)

2. [*Not to revive repealed Acts*] (1).

3. [*As to the recovery of penalties incurred for offences against Acts repealed*] (2).

4. [*Present surveyor to continue until a surveyor is appointed*] (2).

Interpretation clause.

5. And be it further enacted, that in the construction of this Act the word "surveyor" shall be understood to mean surveyor of the highways, or waywarden (3); the word "parish" shall be construed to include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or any other place or district maintaining its own highways (4); and wherever anything in this Act is prescribed to be done by the

(1) Repealed by the Statute Law Revision Act, 1874, 37 & 38 Vict. c. 35. The Acts repealed by section 1 are, however, not thereby revived.

(2) Repealed by the Statute Law Revision Act, 1874, 37 & 38 Vict. c. 35.

(3) As to the appointment of surveyor, see sections 6 and 11, *post.*

In urban sanitary districts the urban authority is the surveyor of highways: see the Public Health Act, 1875, s. 144, *ante*, p. 113. In highway districts all the powers, rights, duties, &c., of surveyor vest in the highway board: see 25 & 26 Vict. c. 61, s. 11, *post.* As to the election of waywardens in highway districts, see section 10 of this last Act, *post.*

(4) As to the interpretation of the word "parish," see further the Highway Acts, 1862 and 1864, and the Highways and Locomotives (Amendment) Act, 1878, *i.e.*, 25 & 26 Vict. c. 61, s. 3; 27 & 28 Vict. c. 101, s. 3; and 41 & 42 Vict. c. 77, s. 38, *post.* As to the meaning of "parish" in the Public Health Act, 1875, see *ante*, p. 44. "Tithings," "towns," or "vills" are of the same signification in law, and are said to have had, each of them, originally a church and celebration of divine service, sacraments and burials. The word "town" or "vill" is now become a generic term, comprehending under it the several species of cities, boroughs, and common towns. 1 Br. & Had. Com. 136. "City" is a town incorporated, which usually is or has been the see of a bishop. *Ib.* A "borough" is now understood to be a town, either corporate or not, sending burgesses to

inhabitants of any parish in vestry assembled, the same shall be construed to extend to any meeting of inhabitants contributing to the highway rates in places where there shall be no vestry meeting, provided the same notice shall have been given of the said meeting as would be required by law for the assembling of a meeting in vestry (1); and that the word "highways" shall be understood to mean all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements (2); and that the word "justices"

Section 5.

Parliament. *Ib.* "Rape" is a division of a county similar to that of a hundred, but oftentimes containing in it more hundreds than one. Wharton's Law Lexicon. "Wapentake," a hundred; others think it was ten hundreds or boroughs. *Ib.* "Hamlet," the same as vill. *Ib.;* and see *R.* v. *Morris*, 4 T. R. 550.

(1) In urban sanitary districts the urban authority have all the powers of vestries. See Public Health Act, 1875, s. 144, *ante*, p. 113.

By 58 Geo. III. c. 69, s. 1, "No vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, [*by the publication of such notice in the parish church or chapel on some Sunday, during or immediately after divine service. and*] by affixing the same, fairly written or printed, on the principal door of such church or chapel." The words in *italics* are repealed by 7 Will IV. & 1 Vict. c. 45, s. 1. See this statute, *post.*

As to the publication of notices, see the notes, *ante*, p. 231. The notices must be published on all the churches in the township, not merely on those where notices were previously given: *R.* v. *Whipp*, 4 Q. B. 141, 12 L. J. M. C. 64. It is not necessary to give notice of the adjournments of the original meeting: *Scadding* v. *Lorant*, 3 H. L. Cas. 418, 19 L. J. M. C. 5, 17 L. T. 225; *Kerr* v. *Wilkie*, 6 Jur. N. S. 383, 1 L. T. N. S. 501, 8 W. R. 286, 24 J. P. 211. In stating the "special purpose" of the meeting, it is sufficient if the notice gives information fairly of the nature and subject of the business to be brought before the meeting, without going too much into detail: *R.* v. *Powell*, L. R. 8 Q. B. 403, 42 L. J. M. C. 129, 28 L. T. N. S. 697, 21 W. R. 867, 37 J. P. 372.

It rests with the authority summoning the meeting to determine the hour of meeting, and they cannot be compelled to insert in the notice paper a notice of motion by a ratepayer for changing the hours for holding the meetings of the vestry: *R.* v. *Vicar, &c., of Tottenham*, L. R. 4 Q. B. D. 367, 48 L. J. Q. B. 407.

As to the meaning of "inhabitant," see *post*, p. 762.

As to the conduct of the proceedings, &c., at vestry meetings, see *post*, p. 769.

What is a highway at common law.

(2) At common law highways are those public paths which all the subjects of the realm have a right to use; and the term (for some purposes at least) also applies to such ways as are common to the inhabitants of some particular parish or district only—as in the case of church paths: 3 Steph. Black. 130. Churchways which are common to the subjects of the realm, and not merely to the parishioners, are repairable as other highways: *Thrower's Case*, 1 Ventr. 208, 2 Raym. 1175.

Highways are of three kinds: (1) footways, called also *prime* ways; (2) horse or bridle ways, called also *pack and prime* ways, because they are both footways and ways for pack horses, and sometimes called *pack and drift* ways, because they may be used for driving cattle; and (3) cart or carriage ways, which include footways and horseways, and generally, though not necessarily, driftways: *Ballard* v. *Dyson*, 1 Taunt. 279. See Co. Litt. 56 a. To constitute a highway it is not necessary that the way should be a thoroughfare: *Bateman* v. *Bluck*, 18 Q. B. 870, 21 L. J. Q. B. 406; *Gwyn* v. *Hardwicke*, 25 L. J. M. C. 97; *Vernon* v. *Vestry of St. James'*, L. R. 16 Ch. D. 449, 50 L. J. Ch. 81, 44 L. T. N. S. 229, 29 W. R. 222. See, also, *Young* v. *Cuthbertson*, 1 Macq. H. L. C. 455; *R.* v. *Hawkhurst*, 7 L. T. N. S. 268, 27 J. P. 262. A turnpike road is a highway, and has all the incidents of a highway: *R.* v. *Netherthong*, 2 B. & Ald. 179; *R.* v. *Lordsmere*, 19 L. J. M. C. 215; *R.* v. *JJ. of St. Albans*, 22 L. J. M. C. 142; *Bussey* v. *Storey*, 4 B. & Ad. 98. See *R.* v. *French*, L. R. 4 Q. B. D. 507, 48 L. J. M. C. 175, 41 L. T. N. S. 63 (a case in which all the roads authorised by statute were not completed). And see 37 & 38 Vict. c. 95, s. 10, *post.*

A way may be established by tracks across a common, sometimes one track being used

Section 5. and sometimes another, as validly as over a formed road: *Wimbledon, &c., Conservators* v. *Dixon*, L. R. 1 Ch. D. 362, 45 L. J. Ch. 353, 33 L. T. N. S. 679, 24 W. R. 466. But there must in such case be a dedication by the owner to the public, as in other cases: *Evans* v. *Smith*, 38 J. P. 85. See, further, *Mackett* v. *Herne Bay Commissioners*, 37 L. T. N. S. 812.

As to "streets," see *ante*, pp. 45, 46, 117 *et seq.*

A railroad or tramroad made under the authority of an Act of Parliament may be a highway: *R.* v. *Severn Ry.*, 2 B. & Ald. 646. See, also, the Railways Clauses Consolidation Act, 1845, s. 92, *post*, and the Tramways Act, 1870, s. 19; and a railway carriage is an open and public place within the Vagrant Act: *Langrish* v. *Archer*, L. R. 10 Q. B. D. 44, 52 L. J. M. C. 47, 47 L. T. N. S. 548, 31 W. R. 183.

So a bridge may be a common highway: *R.* v. *Sainthill*, 2 Ld. Raym. 1174, 1 Salk. 359, 6 Mod. 255; *R.* v. *Yorkshire*, 2 East, 342; *R.* v. *Bucks*, 12 East, 192; *R.* v. *Salop*, 13 East, 95. But a public bridge, repairable by immemorial custom by the inhabitants of a hundred, is not a highway within the meaning of the term in this section, and is not repairable under this Act by the parish where it is situated: *R.* v. *Chart & Longbridge*, L. R. 1 C. C. 237, 39 L. J. M. C. 107, 22 L. T. N. S. 416, 18 W. R. 791, 34 J. P. 454, 11 C. C. C. 502. See as to bridges, *post*.

A ferry connected with a highway and leading to some public place is a highway: *Hussey* v. *Field*, 2 C. M. & R. 442; *Newton* v. *Cubitt*, 12 C. B. N. S. 58; and see, also, *R.* v. *French*, *supra*. The grantee of a ferry is bound to keep it in an efficient state for the use of the public, and this duty may be enforced by indictment: *Letton* v. *Goodden*, L. R. 2 Eq. 123, 35 L. J. Ch. 427, 14 L. T. N. S. 296. As to the property in the soil on either side of a ferry, see *Peter* v. *Kendal*, 6 B. & C. 703; *Williams* v. *Jones*, 12 East, 346; and as to rating the tolls to the poor rate, see *R.* v. *N. & S. Shields Ferry Co.*, 1 E. & B. 140, 22 L. J. M. C. 9.

The public have no right at common law to use the banks of an ancient navigable river for the purpose of towing: *Ball* v. *Herbert*, 3 T. R. 253. As to duty to keep towing paths in repair, see *Winch* v. *Conservators of the Thames*, L. R. 9 C. P. 378, 43 L. J. C. P. 167, 31 L. T. N. S. 128, 22 W. R. 879; and as to the ownership in the soil of a towing path, see *Conservators of Lee* v. *Button*, L. R. 6 App. Cas. 685, 51 L. J. Ch. 17, 45 L. T. N. S. 385, 30 W. R. 233.

How created. At common law, highways may exist by prescription, or they may be created by dedication.

Prescription. Where all persons without distinction have for a considerable period used and enjoyed a way, such way will be presumed to be a highway and to have been granted at some time by the owner of the soil, and a shorter period will suffice to establish a right of way in the public than in a private individual; in one case three or four years was, under special circumstances, held sufficient: *Trustees of Rugby Charity* v. *Merryweather*, 11 East, 375; *Jarvis* v. *Dean*, 3 Bing. 447; *R.* v. *Hudson*, Str. 909. The fact of repair by the parish, or the absence of repair, is a strong circumstance to prove that the way is a highway, or the contrary: *R.* v. *Leake*, 5 B. & Ad. 469, *per* Denman, C.J. But the fact that a highway has been repaired by the inhabitants at large is not conclusive of its being a highway so repairable if there has been only a limited user of it: *R.* v. *Hawkhurst*, 7 L. T. N. S. 268, 27 J. P. 262. On the other hand, proof that the way has time out of mind been used as a highway, and that the inhabitants have always repaired their own highway is sufficient without showing the repair of the particular way: *R.* v. *Newbold*, 33 J. P. 115. Long user may be proved not only by the testimony of aged persons long acquainted with the way, but also by the declarations of deceased persons made before litigation originated: *Drinkwater* v. *Porter*, 7 C. & P. 181, *Barraclough* v. *Johnson*, *infra*, and see generally *R.* v. *Wandsworth*, 1 B. & Ald. 63; *Davies* v. *Stephens*, 7 C. & P. 570; *R.* v. *Leake*, 5 B. & Ad. 469; *Austin's case*, Ventr. 189; *Fowler* v. *Port*, 7 C. & P. 792; *R.* v. *Cotton*, 3 Camp. 444.

Dedication. The owner of land may, if he think fit, dedicate a way over it to the use of the public; and if he for a long period permit strangers to pass over it at their free will and pleasure and without molestation, such a dedication will be presumed: 3 Steph. Com. 130. See *R.* v. *Lloyd*, 1 Campb. 260; *Lade* v. *Shepherd*, 2 Str. 1004; *Barraclough* v. *Johnson*, 8 A. & E. 99; 3 Nev. & P. 233, 2 Jur. 839; *R.* v. *Petrie*, 4. E. & B. 737, 24 L. J. Q. B. 167; *R.* v. *Bradfield*, L. R. 9 Q. B. 552, 43 L. J. M. C. 155, 30 L. T. N. S. 700, 22 W. R. 693, 38 J. P. 536; *Roberts* v. *Hunt*, 15 Q. B. 17. It is a maxim, "once a

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highway, always a highway," and, therefore, once a way has been dedicated to the public, it cannot afterwards be closed, or diverted or obstructed, except under the statute (*post*, pp. 812, *et seq.*): *R.* v. *Londsmere*, 19 L. J. M. C. 215; *Dawes* v. *Hawkins*, 8 C. B. N. S. 848, 25 J. P. 502; and see *Young* v. *Cuthbertson*, 1 Macq. H. L. Ca. 455. But there must be an intention, express or implied, by the owner to dedicate; the mere laying out of a road is not enough: *Poole* v. *Huskisson*, 11 M. & W. 827; *R.* v. *Warde*, Cro. Car. 266. But if a man opens his land, so that the public pass over it continually, the public, after a user of a very few years, will be entitled to pass over it and use it as a way, and if the party does not mean to dedicate it as a way, but only to give a licence, he should do some act to show that he gives a licence only; the common course is to shut it up one day in every year: *Trustees of British Museum* v. *Finnis*, 5 C. & P. at p. 465, *per* Patteson, J. See, also, *Barraclough* v. *Johnson*, *ante*, p. 758; *R.* v. *Lloyd*, 1 Camp. 260; *Thomas* v. *Williams*, 24 J. P. 821; *Grand Surrey Canal* v. *Hall*, 1 M. & G. 392. But the existence of a gate is not conclusive to show the way is not public: see *Davies* v. *Stephens*, *ante*, p. 758. On the other hand, mere occupation roads laid out through an estate for the use and convenience of the owners and occupiers are not thereby dedicated to the public: *Selby* v. *Crystal Palace Gas Co.*, 31 L. J. Ch. 595, 30 Beav. 606; and the fact that such ways have been for many years used by the public does not necessarily amount to a dedication of the ways to them: *R.* v. *St. Benedict, Cambridge*, 4 B. & Ald. 447; though use of such a way by the public and other circumstances may be sufficient to establish dedication: *R.* v. *Bradfield*, *ante*, p. 758. There may be an occupation way and a public highway over the same road, so that, though the public right of way may be extinguished, the private way may still remain: *Wells* v. *London, Tilbury, &c., Ry.*, L. R. 5 Ch. D. 126, 37 L. T. N. S. 302, 25 W. R. 325; *Brownlow* v. *Tomlinson*, 1 M. & G. 484, *per* Denman, C.J.; *Duncan* v. *Louch*, 14 L. J. Q. B. 185; but the cesser of user by the private owner may, without any reference to length of time, show an intention to abandon the private right and so destroy it: See *R.* v. *Chorley*, 12 Q. B. 515, 3 C. C. C. 262. There must also be an acceptance of the way by user by the public: *Cubitt* v. *Maxse*, L. R. 8 C. P. 704, 42 L. J. C. P. 278, 29 L. T. N. S. 244; *A.-G.* v. *Biphosphated Guano Co.*, L. R. 11 Ch. D. 327, 49 L. J. Ch. 68, 40 L. T. N. S. 201, 27 W. R. 621; and see the cases cited, *post*, p. 763. But, since this statute, new highways do not become *repairable by the inhabitants at large*, unless its provisions have been complied with: see section 23, *post*, p 776; see, also, the Highway Act, 1862, ss. 11, 42, *post;* the Public Health Act, 1875, s. 152, *ante*, p. 125; and *R.* v. *Dukinfield*, 4 B. & S. 158, 32 L. J. M. C. 235, *per* Blackburn, J.

No particular time is necessary for evidence of a dedication: it is not like a grant presumed from length of time. If the act of dedication be unequivocal, it may take place immediately: *Woodyer* v. *Hadden*, 5 Taunt. 136, *per* Chambre, J.

Limited dedication of highway.

There cannot be a temporary dedication of a way to the public, nor can there be a dedication to a portion of the public, as to the inhabitants of a particular parish, though the inhabitants of a parish may possess as *private* property a right of way. So the owner cannot reserve a power of afterwards restricting or interfering with a way dedicated by him to the public: *R.* v. *Charlesworth*, 16 Q. B. 1012. But a way may be dedicated to the public for limited purposes only, as for a footway or towing path only: *Roberts* v. *Carr*, 1 Camp. 262. And a way may be dedicated subject to an obstruction, as a doorstep or area flap, or to the right of depositing goods thereon, or ploughing over a footway across a field: *Fisher* v. *Prowse*, 2 B. & S. 770, 31 L. J. Q. B. 212; *Hamilton* v. *Vestry of St. George's*, L. R. 9 Q. B. 42, 43 L. J. M. C. 41, 29 L. T. N. S. 428, 22 W. R. 86; *Vestry of St. Mary's* v. *Jacobs*, L. R. 7 Q. B. 47, 41 L. J. M. C. 72, 25 L. T. N. S. 800, 20 W. R. 249; *Le Neve* v. *Mile End Old Town*, *ante*, p. 46; *Arnold* v. *Blaker*, L. R. 6 Q. B. 433, 40 L. J. Q. B. 185: or a way may be dedicated subject to a reservation of the right to keep a gate across it to prevent cattle straying, in which case the keeping the gate across the way does not prevent it being a public way: *Davies* v. *Stephens*, 7 C. & P. 570; *R.* v. *Bliss*, 1 Jur. 960. As to partial dedication of a carriage way, see *Mayor of Stafford* v. *Coyney*, 7 B. & C. 257.

No one can dedicate a way to the public, except the owner of the fee. Therefore, acquiescence by a tenant for life or a lessee in acts of user of a way by the public cannot amount to a dedication of the way: *Wood* v. *Veal*, 5 B. & Ald. 454; *Winterbottom* v. *E. Derby*, L. R. 2 Ex. 316, 36 L. J. Ex. 194, 16 L. T. N. S. 771; *Brough* v. *Ld.*

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Scarsdale, 29 J. P. 740; *Rugby Charity* v. *Merryweather*, 11 East, 376n. See, also, *R.* v. *Edmonton*, 1 M. & R. 24; *Pryor* v. *Ib.*, 26 L. T. N. S. 760, and *Hall* v. *Bootle*, 44 L. T. N. S. 874, 29 W. R. 862. But if the owner in fee is aware of the use of the way he may be bound, though the land be in the occupation of lessees. And if the user has been for a great length of time he will be presumed to have known of it: *R.* v. *Barr*, 4 Camp. 16; *Davies* v. *Stephens*, 7 C. & P. 570; *Winterbottom* v. *E. Derby*, *supra;* and see *Vernon* v. *Vestry of St. James*, *ante*, p. 757.

The Crown may dedicate a way to the public, and will be bound by long acquiescence in the use of a way by the public: *R.* v. *Inhabitants of E. Mark*, 11 Q. B. 877, 17 L. J. Q. B. 177, 12 Jur. 332, 3 C. C. C. 60; *Turner* v. *Walsh*, L. R. 6 App. Cas. 636, 50 L. J. P. C. 55, 45 L. T. N. S. 50.

Creation of highways by statute.

Highways may be created by statute provided the intention to do so be clear: *Sutcliffe* v. *Greenwood*, 8 Price, 535, *Harrod* v. *Worship*, 30 L. J. M. C. 165, 25 J. P. 581.

As to the creation of highways under this statute, see sections 84—92, *post*, and see section 25, *post*.

As to the powers of urban sanitary authorities under the Public Health Act, see sections 146, 147, 154, 157 and 164 of that Act, *ante*.

See also the Towns Improvement Clauses Act, 1847, sections 57—63, and sections 67 and 135, *post*.

Various highways exist and are managed under the powers conferred by various Turnpike Acts. See *R.* v. *Netherthong*, *ante*, p. 757.

Highways are also created under the powers conferred upon commissioners under the Inclosure Acts.

Powers of laying out portions of settled estates as public streets, gardens, &c., are given by the Settled Estates Acts, 1877 and 1882, 40 & 41 Vict. c. 18, s. 21, 45 & 46 Vict. c. 38, s. 16.

Ownership of highways.

The freehold of a highway and a public bridge is in the owner of the land over which they pass; he is entitled to the subsoil absolutely and to the surface, subject only to the right of user by the public (*i. e.*, to pass and repass along the road with or without horses, cattle, vehicles, &c.), and all profits such as trees belong to him, 2 Inst. 705, Roll. Abr. *tit.* Chimin Private (B.) 2: *Turner* v. *Ringwood Board*, L. R. 9 Eq. 418, 21 L. T. N. S. 745, 18 W. R. 424; *R.* v. *Pratt*, 24 L. J. M. C. 113 (where a man standing on a highway was convicted of *trespassing* in pursuit of game). And see *Lade* v. *Shepherd*, 2 Str. 1004, *Dovaston* v. *Payne*, 2 H. Bl. 527; and as to this last case, see *Rangeley* v. *Midland Ry.*, L. R. 3 Ch. 306, 37 L. J. Ch. 313, 18 L. T. N. S. 69, 16 W. R. 547. As to rights of lord of manor in case of copyholds, see *Doe* v. *Pearsey*, *post*, p. 761. The mines under a highway belong to the owner of the soil: *Goodtitle* v. *Alker*, 1 Burr. 143, and he may carry water pipes under the highway. *Ib. per* Mansfield, C. J. Or make a tunnel under it: *Cattle* v. *Stockton Waterworks Co.*, L. R. 10 Q. B. 453, 44 L. J. Q. B. 139, 33 L. T. N. S. 475. And where a highway ceases to be such by being legally stopped up, &c., the owner is entitled to the soil discharged from the rights of the public to pass over it: *R.* v. *Wallace*, L. R. 4 Q. B. D. 644, 40 L. T. N. S. 518, 28 W. R. 149; and see *Rolls* v. *Vestry of St. George's*, *ante*, p. 118. It is the same with regard to a turnpike road: *Davidson* v. *Gill*, 1 East, 69. Where the lands on either side belong to different owners the presumption is that the soil of the highway *ad medium filum viæ* (*i. e.*, to the centre of the road), belongs to the owner of the land on each side abutting thereon: *Cooke* v. *Green*, 11 Price, 736; *Salisbury* v. *Gt. N. Ry.*, 5 C. B. N. S. 174, 28 L. J. C. P. 40, 5 Jur. N. S. 70; *R.* v. *Edmonton*, 1 M. & R. 24. But this is a *presumption* only, and may be rebutted by evidence that the ownership is in some one else: *Beckett* v. *Leeds Corporation*, L. R. 7 Ch. 421, 26 L. T. N. S. 375, 20 W. R. 454, 36 J. P. 596, and if the presumption is brought in question some other evidence must be given: *Headlam* v. *Hedley*, 1 Holt, 463. And when a close is conveyed with a description by measurement and colour on a plan annexed to and forming part of the conveyance, and the close abuts on a highway, and there is nothing to exclude it, the presumption of law is that the soil of the highway *usque ad medium filum* passes by the conveyance: *Berridge* v. *Ward*, 10 C. B. N. S. 400, 30 L. J. C. P. 218, 7 Jur. N. S. 876; *Lord* v. *Sydney Commissioners*, 12 Moo. P. C 473; but see *Plumstead Board of Works* v. *British Land Co.*, L. R. 10 Q. B. 203, 44 L. J. Q. B. 38, 32 L. T. N. S. 94, 23 W. R. 634.

Waste land adjoining a highway is presumed to belong to the owner of the adjoining inclosed land, whether freeholder, leaseholder, or copyholder, and not to the lord of the

manor: *Steel* v. *Prickett*, 2 Stark, N. P. 463; *Doe* v. *Pearsey*, 7 B. & C. 304, 9 D. & R. 908. As to when such strips pass under a conveyance of the adjacent inclosed land. See *Simpson* v. *Dendy*, 8 C. B. N. S. 433, 7 Jur. N. S. 1058; *Tutel* v. *W. Ham Board*, 28 L. T. N. S. 597. But this presumption may be rebutted by evidence of acts of ownership by the lord of the manor, as taking gravel, &c.; *Anon.*, Lofft. 358, and see *Beckett* v. *Leeds Corporation*, *ante*, p. 760; *Doe* v. *Kemp*, 7 Bing. 332, 5 M. & P. 173, S. C. in error, 2 Scott, 9; *Doe* v. *Hampson*, 4 C. B. 267, 8 L. T. 412; *Hadlam* v. *Hedley*, *ante*, p. 760; *Scoones* v. *Morrell*, 1 Beav. 251. So the presumption may be done away with or narrowed if the narrow strip be contiguous to or communicate with open commons: *Grose* v. *West*, 7 Taunt. 40. And, in the case of copyholds, if the road existed at the time the copyhold was first granted, viz., from time immemorial, the right of property in the road and the waste adjoining might in that case have remained in the lord: *Doe* v. *Pearsey*, *supra*, at p. 306, *per* Bayley, J.

But the soil of roads set out under an Inclosure Act is not presumed to belong to the owners of the adjoining land, but generally remains in the lord of the manor: *Poole* v. *Hutchinson*, 11 M. & W. at p. 830, *per* Parke, B.; *R.* v. *Edmonton*, 1 Moo. & Rob. 24; *R.* v. *Wright*, 3 B. & Ad. 681; and where the herbage of a road becomes vested, by the General Inclosure Act (41 Geo. III. c. 109), section 11, in the proprietor of allotments on each side, no presumption arises that the soil itself belongs to such proprietors: *R.* v. *Inhabitants of Hatfield*, 4 A. & E. 156. But the reservation to the lord of the manor of power to work for minerals is subject to the paramount right of the public to have the highways preserved in a fit condition for their free use, by all the Queen's subjects, and if the lord of the manor cause the surface to sink, he is liable to an action to recover the cost of repairing the roads at the suit of the persons whose duty it is to keep them in repair: *Benfieldside Board* v. *Consett Iron Co.*, L. R. 3 Ex. D. 54, 47 L. J. Ex. 491, 38 L. T. N. S. 530, 26 W. R. 114.

As to the "vesting" of streets, being highways repairabl eby the inhabitants at large, in urban sanitary authorities, see The Public Health Act, 1875, section 149, and notes thereon, *ante*, pp. 117 *et seq.*

Where an ordinary highway runs between hedges, one on each side, the right of passage which the public have along it extends *primâ facie*, and unless there be evidence to the contrary, over the whole space between the fences, the public are entitled to the use of the whole space: *R.* v. *United Kingdom Electric Telegraph Co.* (*Limited*), 31 L. J. M. C. 166, 2 B. & S. 647, 3 F. & F. 73, 6 L. T. N. S. 378, 10 W. R. 538, 9 C. C. C. 137, 174. See also *Hutton* v. *Hamboro*, 2 F. & F. 219; *R.* v. *Wright*, 3 B. & Ad. 681. And where there is a prescriptive highway there may be a prescriptive right to deviate on adjoining lands, if the way be impassable. So that if the public have a right to go on the adjoining land and the owner inclose both sides, he is bound to keep the way in good repair so long as the inclosure lasts, or if he inclose one side, he is bound to repair half the way, and the proceedings to compel repair must be taken against the occupier: 1 Roll. Abr. tit. Chimin Common (A.) (1), (B.) (1), *Absor* v. *French*, 2 Show. 28; *Duncombe's case*, Cro. Car. 366; *Henn's case*, Sir W. Jones, 296; and see *Arnold* v. *Holbrook*, L. R. 8 Q. B. 96, 42 L. J. Q. B. 80, 28 L. T. N. S. 23, 21 W. R. 330; *R.* v. *Ramsden*, El. Bl. & El. 949, 27 L. J. M. C. 296, 5 Jur. N. S. 169; but where there is a limited dedication only, as of a way subject to its being ploughed across, after which the way becomes muddy and foundrous, it would seem there is no right to deviate: *Arnold* v. *Holbrook*, *supra*, though if the way was impassable by reason of an obstruction put on it by the owner of the adjoining land, and not by the action of the elements, there may be a right to deviate: *R.* v. *Oldreeve*, 32 J. P. 271, *per* Willes, J.

As to driving cattle, carriages, &c., over the footpaths on the side of the way, see section 72, *post.*

As to holding fairs and markets on a public highway, see *Elwood* v. *Bullock*, 6 Q. B. 411, 13 L. J. Q. B. 330, 8 Jur. 1044; *R.* v. *Smith*, 4 Esp. 110; *R.* v. *Starkey*, 7 A. & E. 95. As to races on public highway, see *Sowerby* v. *Wadsworth*, 3 F. & F. 734.

The owners of lands forming the boundary of a highway have a right of access to the highway for the purpose of using it at any spot from their own land: *Berridge* v. *Ward*, 2 F. & F. 212, *per* Cockburn, C. J.; *Vestry St. Mary, Newington* v. *Jacobs*, *ante*, p. 759; *Mayor, &c., of Manchester* v. *Chapman*, 18 L. T. N. S. 641; *Fritz* v. *Hobson*, 42 L. T.

Section 5. shall be understood to mean justices of the peace for the county (1), riding, division, shire, city, town, borough, liberty, or place in which the highway may be situate or in which the offence may be committed; and that the word "church" shall be understood to include chapel; and that the word "division" shall be understood to include limit; and that the word "owner" shall be understood to include occupier (2); and "inhabitant" to include any person rated to the highway rate (3); and the words "petty session" or "petty sessions" to mean the petty session or petty sessions held for the division or place (4); and wherever in this Act, in describing or referring to any person or party, animal, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several animals, matters, or things as well as one animal, matter, or thing, respectively, unless there be something in the subject or context repugnant to such construction; and all the powers hereby given to, and notices, matters, and things required for, and duties, liabilities, and forfeitures imposed on surveyors, shall be applicable to all persons, bodies politic or corporate, liable to the repair of any highway (5).

N. S. 225. See, also, *Marshall* v. *Ulleswater Steam Navigation Co.*, L. R. 7 Q. B. 166, 41 L. J. Q. B. 41, 25 L. T. N. S. 793, 20 W. R. 144, 39 J. P. 599, *per* Blackburn, J., and *Metropolitan Board* v. *McCarthy*, L. R. 7 H. L. 243, 43 L. J. C. P. 385, 31 L. T. N. S. 182, 23 W. R. 115.

As to what shall be deemed to be the centre of the highway, see section 63, *post*, p. 797.

"County bridges."

As to county bridges, see the Statute of Bridges, 22 Hen. 8, c. 5, the Statute of Bridges of Anne, 1 Anne, c. 12, and the County Bridges Acts of 1740, 1803, 1812, 1814, 1815, and 1841, viz., 14 Geo. II. c. 53, 43 Geo. III. c. 59, 52 Geo. III. c. 110, 54 Geo. III. c. 90, 55 Geo. III. c. 143, and 4 & 5 Vict. c. 42, collected *post*. See, also, the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 22, *post*, and the Public Health Act, 1875, s. 148, *ante*, p. 115.

"Causeway."

"Causeway" is from the French, *chausee*, a way raised above the rest of the ground and paved. See *R.* v. *Pratt*, L. R. 3 Q. B. 64, 37 L. J. M. C. 23.

Churchways.

As to churchways, see, *ante*. p. 757.

(1) See the Highway Act, 1862, s. 2, *post*.

(2) See *Woodard* v. *Billericay Board*, L. R. 11 Ch. D. 214, 48 L. J. Ch. 535, 27 W. R. 593.

(3) In *R.* v. *Kershaw*, 6 El. & Bl. 999, 26 L. J. M. C. 19, S. C. *Kershaw* v. *Harrop*, 2 Jur. N. S. 1139, it was held under section 6, *post*, that a person occupying property in respect of which he is liable to contribute to the highway rate is entitled to vote whether actually rated or not. See, also, *Wilson* v. *Sunderland*, 34 L. J. M. C. 93, and 2 Coke's Institutes, 702.

(4) See the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 38, *post*.

Liability of the parish to repair highways at common law.

(5) The inhabitants of a parish are *primâ facie* and of common right bound to repair all highways lying within the boundaries of their parish, unless by prescription or otherwise they can throw the burden upon particular persons by reason of their tenure, and if it be sought to charge a particular division of a parish, it must be shown how the inhabitants of that division are bound, and, therefore, where no other persons are bound to repair the parish must do so, 1 Hawk. P. C. c. 76, s. 5, Ventr. 90: *R.* v. *Shoreditch*, March, 26; *R.* v. *Great Broughton*, 5 Burr. 2700; *R.* v. *Sheffield*, 2 T. R. 111 (as to liability to repair by custom, prescription and *ratione tenuræ*, see *post*, pp. 765). This rule of law applies to all highways, whether new or old: *R.* v. *Lordsmere*, 15 Q. B. 696, 19 L. J. M. C. 215, 15 Jur. 82, *per* Campbell, C. J.; *R.* v. *Netherthong*, 2 B. & Ald. 179, *per* Abbott, C. J., but since the present Act the provisions of section 23, *post*, p. 776, must be complied with before the new highway becomes repairable by the inhabitants at large. This *primâ facie* liability attaches to the parish only, and not to any township or other district: *R.* v. *Midville*, 4 Q. B. 240, 3 G. & D. 522; *Aspinall* v. *Brown*, 3 T. R.

265; *R.* v. *Clifton*, 5 T. R. 498. If the parish desire to relieve themselves of the burden they must show that it is cast upon some one else: *R.* v. *St. Andrew's, Holborn*, 1 Mod. 112; *R.* v. *Eastrington*, 5 A. & E. 765, 1 N. & P. 193; *R.* v. *St. Giles, Cambridge*, 5 M. & S. 260, and see *R.* v. *Ashby Folville*, L. R. 1 Q. B. 213, 7 B. & S. 277, 35 L. J. M. C. 154, 12 Jur. N. S. 520, 30 J. P. 116, 10 C. C. C. 269.

As to the meaning of "parish," see note, *ante*, p. 756, and 25 & 26 Vict. c. 61, s. 32, *post*, and see *R.* v. *Central Wingland*, L. R. 2 Q. B. D. 349, 46 L. J. M. C. 282, 36 L. T. N. S. 798, 25 W. R. 876.

As to the liability to repair diverted highway without reference to its parochial locality, see section 92, *post*.

As to the adoption by the parish of a way dedicated to the public in order to render the parish liable to repair. See *Cubitt* v. *Maxse*, *ante*, p. 759; *A.-G.* v. *Biphosphated Guano Co.*, *Ib.*; *R.* v. *St. Benedict*, 4 B. & Ald. 447; *R.* v. *Mellor*, 1 B. & Ad. 32; *R.* v. *Leake*, 5 B. & Ad. 469, 5 N. & M. 595; *R.* v. *French*, L. R. 4 Q. B. D. 507, 48 L. J. M. C., 41 L. T. N. S. 63, *per* Bramwell, L. J.; *R.* v. *Lyon*, 5 D. & R. 497; and now see section 23, *post*, p. 776, the Highway Act, 1862, ss. 11, 42, *post*, and the Public Health Act, 1875, s. 152, *ante*.

The parish cannot by agreement with any person whatever take off the charge which is laid upon them to repair, though as between the parties to the agreement it may be binding, but by *prescription* or statute the liability may be thrown on individuals or a township or part of the parish, 1 Ventr. 90. Burn's Justice, tit. Highways, p. 997, 30th Edn.: *R.* v. *Liverpool*, 3 East, 86; *R.* v. *Scarisbrooke*, 6 Ad. & E. 509, 6 L. J. M. C. 103; *R.* v. *St. Giles, Cambridge*, 5 M. & S. 260: *Dawson* v. *Willoughby*, 5 B. & S. 920, 34 L. J. M. C. 37, 11 Jur. N. S. 240, 11 L. T. N. S. 597; *sub nom. R.* v. *Dawson;* but *quære* whether in point of law a parish can be bound by prescription to repair highways in another parish: *R.* v. *Ashby Folville*, *supra*. Where the various townships in a parish have by immemorial custom repaired all roads within their district, it is not necessary to show any consideration for the custom, but each township will be bound to repair in the same way as a parish, and it is not neeessary to prove that a particular highway has hitherto been repaired by a township, but the custom may be proved by other evidence: *R.* v. *Ecclesfield*, 1 B. & A. 348; *R.* v. *King's Newton*, 1 B. & Ad. 826; *R.* v. *Bishop Auckland*, 1 Ad. & El. 744; *R.* v. *Scarisbrooke*, 6 Ad. & El. 509; *R.* v. *Ardsley*, L. R. 3 Q. B. D. 255, 47 L. J. M. C. 65, 38 L. T. N. S. 71, 26 W. R. 405, 42 J. P. 262. If, however, the custom be not proved the parish will be liable: *R.* v. *Kingsmoor*, 2 B. & C. 190; *R.* v. *Pendyrryn*, 2 T. R. 513.

Where the township or tything, &c., by immemorial custom repairs the highways within its own district, it is presumably not liable to contribute to the repair of the highways in the rest of the parish: *Freeman* v. *Reed*, 4 B. & S. 174, 32 L. J. M. C. 226, and see *R.* v. *Rollett*, L. R. 10 Q. B. 469, 44 L. J. M. C. 190, 24 W. R. 26, 32 L. T. N. S. 769; *nom. Rollett* v. *Corringham*. But a township which contains no highways repairable by its inhabitants cannot, it would seem, claim to be exempt from liability to contribute to the repair of the highways in the remainder of the parish. See *R.* v. *Barnoldswick*, 4 Q. B. 499, 12 L. J. M. C. 44, 3 G. & D. 545: *Great W. Ry.* v. *Denchworth*, 25 J. P. 342; *R.* v. *Freeman*, 33 L. T. 220, 7 W. R. 556; *Freeman* v. *Read*, *R.* v. *Ardsley*, and *R.* v. *Rollett*, *supra*. And see the Highway Act, 1864, s. 15, and the Highways and Locomotives Amendment Act, 1878, s. 25, *post*.

Although by statute the duty of repairing certain highways is cast upon others, as in the case of paving commissioners, trustees of turnpike roads, &c., still the parish may remain liable: *R.* v. *St. George, Hanover Square*, 3 Camp. 223; *R.* v. *Sheffield*, 2 T. R. 106; Anon. 1 Ld. Raym. 725; *Little Bolton* v. *R.*, 12 L. J. M. C. 104; *R.* v. *Lordsmere*, *ante*, p. 762, and see section 94, *post*. The parish, however, if proceeded against or put to expense has its remedy over against the commissioners or trustees, &c., *ibid*. And as to the remedy of the parish over against the trustees in the case of a turnpike road, see 3 Geo. IV. c. 126, s. 110, and 4 & 5 Vict. c. 59.

Where a highway forms the boundary between parishes, each parish is bonnd to repair *ad medium filum viæ*, to the centre of the road: *R.* v. *Landulph*, 1 M. & R. 393, 8 El. & Bl. 900, 27 L. J. M. C. 100; *Bridgwater Trustees* v. *Bootle*, L. R. 2 Q. B. 4, 36 L. J. Q. B. 41, 7 B. & S. 348; *R.* v. *St. Pancras*, 1 Peake N. P. 220. And as to apportionment

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of the highway for the purposes of repair between the parishes, see section 58, *post*, p. 794.

Extent of repairs.

The parish is bound, with stone or other hard substances, if necessary, to put the road in such repair as to be reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year: *R.* v. *High Halden*, 1 F. & F. 678 *per* Blackburn, J., and as to the practice of not discharging a parish from an indictment until the road has undergone a winter's wear after the repairs made: see *R.* v. *Witney*, 5 Dowl. 728. The parish is not excused from putting the road into good and substantial repair by the circumstance that it has never been repaired with hard materials: *R.* v. *Claxby*, 24 L. J. Q. B. 223, 1 Jur .N. S. 710, 24 L. T. 103; *Hamilton* v. *St. George, Hanover Square*, L. R. 9 Q. B. 42, 43 L. J. M. C. 428, 29 L. T. N. S. 41, 22 W. R. 86. But see *R.* v. *Cluworth*, 1 Salk. 358, 6 Mod. 163. But the parish is not bound to widen a road or to clean it from mud: *R.* v. *Stretford*, 2 Ld. Raym. 1169, 11 Mod. 56; *R.* v. *Walton*, 4 Jur. 195, or to do repairs where from the nature of things they must always be ineffectual, as where the road crosses the bed of a river which washes over it at every tide leaving a deposit of mud: *R.* v. *Landulph*, and *Duke of Bridgwater's Trustees* v. *Bootle-cum-Linacre*, *ante*, p. 763. So where the site of a highway has been completely destroyed by the sea or a landslip, &c., the parish are not bound to rebuild the site: *R.* v. *Paul*, 2 Moo. & Rob. 307; *R.* v. *Bamber*, 5 Q. B. 279, 13 L. J. M. C. 13, 8 Jur. 309, 1 Dav. & M. 397; *R.* v. *Hornsea*, 23 L. J. M. C. 59, 18 Jur. 315, 1 Dear. C. C. R. 291, 6 Cox, C. C. 299. Whether the site has been so destroyed as to relieve the parish from liability is a question of fact; the mere fact that in consequence of a landslip or a flood the surface of a metalled road is filled up or covered over, or a quantity of gravel or *débris* is thrown from above on a highway, the line of the old road remaining, does not remove the liability to repair: *R.* v. *Greenhow*, L. R. 1 Q. B. D. 703, 45 L. J. M. C. 141, 35 L. T. N. S. 363, 40 J. P. 324.

Maintenance of fences.

In the absence of prescriptive or statutory obligation, there is no general law imposing upon the owners of land adjoining a public road the duty of maintaining the fences: *Potter* v. *Perry*, 23 J. P. 644. As to permitting landowners to erect fences without incurring liability to repair the highway, see 25 & 26 Vict c. 61, s. 46, *post*. Trustees under a turnpike Act, who have diverted a road and made fences are not bound to repair them, unless the Act requires it: *R.* v. *Llandilo*, 2 T. R. 232.

Cleansing ditches.

It seems that he who has land adjoining a highway is bound of common right to cleanse the ditches: 1 Hawk. P. C. c. 32, Brooke's Abr. "Nuisance," 28, Bac. Abr. "Highways," D, *Anon*, Lofft. 359. As to power of the highway authority to cleanse, &c., ditches, see section 67, *post*, and Public Health Act, 1875, ss. 48, 91 (2), and 102.

Liability of township or lesser district than parish to repair by *custom*.

Primâ facie, as has been shown, *ante*, p. 762, the parish is bound to repair the highways within it. But by immemorial custom a township or other district less than a parish may be bound to repair all the highways within such township, &c., and evidence of the custom may be conclusive, though there be no consideration for it, and though, the highway having been in use before this Act, the highway is not proved to have ever been repaired by the particular township, &c.: *R.* v. *Bishop Auckland*, 1 Ad. & El. 744; *R.* v. *Ecclesfield*, 1 B. & A. 348; *R.* v. *King's Newton*, 1 B. & Ad. 826; *R.* v. *Scarisbrooke*, *ante*, p. 763; *R.* v. *Newbold*, 19 L. T. N. S. 656, 33 J. P. 114; *R.* v. *Ardsley*, *ante*, p. 763, 2 Co. Rep. Part IV. 32a note H. There must be some evidence of the custom, otherwise the parish will be liable: *R.* v. *Kingsmoor*, *ante*, p. 763; *R.* v. *Freeman*, 7 W. R. 556, 33 L. T. 220; *Freeman* v. *Read*, 32 L. J. M. C. 226, 10 Jur. N. S. 149, 4 B. & S. 174, and see *R.* v. *Rollett*, L. R. 10 Q. B. 469, 44 L. J. M. C. 190, 24 W. R. 26, S. C. *nom.*; *Rollett* v. *Corringham*, 32 L. T. N. S. 769. If the custom be proved the township, &c., will be liable, though there be but one road within it, and that a newly made one: *R.* v. *Barnoldswick*, *ante*, p. 763; *R.* v. *Netherthong*, 2 B. & Ald. 179, *R.* v. *Hatfield*, 4 B. & Ald. 75. And now as to the repair of new roads, see section 23, *post*.

It seems that a parish or district cannot by prescription be bound to repair a way lying in another parish or district: *R.* v. *Ashby Folville*, L. R. 1 Q. B. 213, 35 L. J. M. C. 154, 7 B. & S. 277, 12 Jur. N. S. 520, 30 J. P. 116, 10 C. C. C. 269; *R.* v *Bishop Auckland*, 1 A. & E. 744; *R.* v. *Denton*, 18 Q. B. 761, 21 L. J. M. C. 208 n., 17 Jur. 453, 1 Dear. C. C. 3, and see *R.* v. *Machynleth & Pennegoes*, 2 B. & C. 166.

If the immemorial custom be established, the township, &c., may remain liable,

although the constitution of the township or district has been altered within living memory: *R.* v. *Oswestry*, 6 M. & S. 361.

If the township, &c., be relieved of its liability by Act of Parliament the liability falls upon the parish: *R.* v. *Sheffield*, 2 T. R. 106; *R.* v. *St. George, Hanover Square*, 3 Camp. 222.

As to extra-parochial places see the Highway Acts, 1862 and 1864, 25 & 26 Vict. c. 61, s. 32, and notes, and 27 & 28 Vict. c. 101, s. 9, *post*, and *R.* v. *Midville*, 4 Q. B. 240, 3 G. & D. 522.

Liability of individuals or corporations to repair by *prescription* and *ratione tenuræ*.

Corporations, temporal or spiritual, may by prescription be liable to repair a highway: 6 Co. Rep. 436, note (B). As to the difference between *custom* and *prescription*, see 2 Co. Rep. 369, note (H). It is enough to show that the corporation has always done so, without showing any consideration for it: *R.* v. *St. Giles*, 5 M. & S. 260. Nor will the corporation be relieved because its constitution has been altered within living memory: *R.* v. *Oswestry*, *supra*. To render an individual liable, a consideration for his liability must be shown, as by his holding lands subject to the burden: *R.* v. *Ecclesfield*, 1 B. & A. 348; *R.* v. *Bucknall*, Ld. Raym. 792, 804; *R.* v. *Kerrison*, 1 M. & S. 435. And as to a gift of land to a person or persons and their heirs for the reparation of highways, bridges, causeways, &c., see *Porter's case*, 1 Co. Rep. 26a and Com. Dig. "Uses" N. 4. Proof that the individual and those who held the lands before him have been for a considerable period used to repair the road will be good evidence of the liability: *R.* v. *Skinner*, 5 Esp. 220; *Chad* v. *Tilsed*, 2 Bro. and B. 403, 5 Moore, 185. It seems that if the tenement in respect of which the liability is sought to be imposed originated within the time of legal memory there can be no liability: *R.* v. *Hayman*, 1 Moo. & M. 403; *R.* v. *Middlesex*, 3 B. & Ad. 201; 2 Wms. Saund. 158, c. 9, but see *R.* v. *Beeby*, 8 L. J. M. C. 38; *R.* v. *Sheffield Canal Co.*, 13 Q. B. 926. Corporations as well as individuals may be liable to repairs in respect of the tenure of lands, but a number of persons not incorporated cannot be so liable: *R.* v. *Machynlleth & Pennegoes*, 2 B. & C. 166; *R.* v. *Ecclesfield*, *supra*. A similar liability to repair may be imposed expressly or impliedly by statute: *R.* v. *Sheffield Canal Co.*, 19 L. J. M. C. 44; *R.* v. *Kerrison*, 1 M. & S. 435; *Ib.*, 3 M. & S. 531; *Nicholl* v. *Allen*, 1 B. & S. 916, 31 L. J. Q. B. 43, 283; or by charter: *Mayor of Lyme Regis* v. *Henley*, 3 B. & Ad. 77, and see *R.* v. *Sutton*, 8 A. & E. 516.

Where the lands charged are occupied by a person not the owner, the occupier is primarily liable to the public for the repairs, but he may demand reimbursement from the owner: *Baker* v. *Greenhill*, 3 Q. B. 148, 2 G. & D. 435, 6 Jur. 710; *R.* v. *Sutton*, 3 A. & E. 597, 5 N. & M. 353, 1 H. & W. 428; *R.* v. *Watson*, 2 Ld. Raym. 856, S. C. *nom. R.* v. *Watts*, 1 Salk. 357, and see 2 Will. Saund. 158e (9), and query whether the owner who is not the occupier be indictable for non-repair: *R.* v. *Sutton*, *supra*, and Will Saund. *ut supra*.

Where the lands charged are conveyed to different persons, each of them being the occupier of any portion is liable to do all the repairs: 1 Hawk. P. C. 707, *R.* v. *Buccleugh*, 1 Salk. 358; *R.* v. *Buckeridge*, 4 Mod. Rep. 48; *R.* v. *Oxfordshire*, 16 East. 224; see 3 Vin. Abr. 5 (9), "apportionment." But he is entitled to contributions from the owners of the other portions. *Ibid.*

Now, as to converting a highway repairable *ratione tenuræ*, &c., into a parish highway, see s. 62, *post*, and the Highway Acts, 1862 and 1864, 25 & 26 Vict. c. 61, s. 35, and 27 & 28 Vict. c. 101, s. 24, *post*.

Exemption from liability to repair public highways which existed before this Act has not been affected thereby: *R.* v. *Heath*, L. R. 1 Q. B. 218, 35 L. J. M. C. 113, 12 Jur. N. S. 355, 13 L. T. N. S. 669, 14 W. R. 388, 30 J. P. 182.

As to enforcing the repair of highways which any body, politic or corporate, or person, is liable to repair by reason of tenure of any land or otherwise, see the Highway Acts, 1862 and 1864, 25 & 26 Vict. c. 61, s. 34, and 27 & 28 Vict. c. 101, s. 23, *post*.

As to highways in South Wales, see the South Wales Highway Act, 23 & 24 Vict. c. 68, ss. 36, 37, *post*.

See the last clause of this section as to power, duties, &c., of surveyors being applicable to persons, bodies politic or corporate, liable to the repair of highways.

Liability to

Where a road is open to the land on either side of it, if the road become impassable or

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repair *ratione clausuræ.*

incommodious, the public may have a right to go upon the adjoining lands, and in such case, if the owner of the adjoining lands enclose them so as to deprive the public of their right, he is bound to make a perfect good way so long as the enclosure lasts: *Duncomb's case*, 4 Cro. Car. 366; *Henn's case*, Sir W. Jones' Rep. 296; per Roll. C. J. Styles, 364; *R.* v. *Flecknow*, 1 Burr. 465; *R.* v. *Hatfield*, 4 B. & Ald. 83; *R.* v. *Hillarsden*, 1 Keb. 894; 1 Hawk. P. C. 699, 8th ed. by Curwood, 2 Saund. 160, n. 12. Where, however, the way is not immemorial, or the enclosed land has not previously been used for passage by the public, the liability to repair does not attach: *R.* v. *Ramsden*, El. Bl. & El. 949, 27 L. J. M. C. 296, 5 Jur. N. S. 169. And the liability attaches only to the occupier of the lands, and not to the owner. *Ibid.*

If one side only of the way be enclosed, the liability is only to repair half the way to the centre thereof: 1 Hawk. P. C., 8th ed. by Curwood, p. 699; *R.* v. *Stoughton*, 1 Sid. 464, 2 Saund. 160.

Now, by the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 46, *post*, district highway boards may permit landowners to erect fences without incurring liability to repair.

As to enforcing repairs, see the Highway Acts, 1862, 1864, 25 & 26 Vict. c. 61, s. 34, and 27 & 28 Vict. c. 101, s. 23, *post*, and see the last clause of this section.

Compelling repairs of highways.

(1) Statutory provisions.

Where a highway is out of repair proceedings may be taken under ss. 94 and 95 of this Act, *post*. As to highways within the jurisdiction of a highway board, see the Highway Act, 1862, 25 & 26 Vict. c. 61, ss. 18 and 19, *post*. And as to proceedings under the Highways and Locomotives Amendment Act, 1878, see that Act, 41 & 42 Vict. c. 77, s. 10, *post*.

And as to highways boards formed under the Highway Act, 1862, proceedings may be taken under ss. 18, 19, of that Act, *post*. And see also the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 10 *post*.

It seems that 41 & 42 Vict. c. 77, s. 10, does not deprive the parties of their powers under s. 94 of this Act or s. 18 of the Act of 1862. See circular letter of Local Government Board of 18th Sept. 1878, amongst the circulars, &c., *post*.

As to powers of the Local Government Board with reference to urban sanitary authorities, see the Public Health Act, 1875, ss. 299—302, *ante*.

The repair of a highway by a person or body liable *ratione tenuræ* may be enforced under s. 94, *post*, or under the Highway Acts, 1862, 1864, 25 & 26 Vict. c. 61, ss. 34, 35, and 27 & 28 Vict. c. 101, s. 23, *post*.

(2) By indictment at common law.

The statutory provisions do not, however, abrogate the common law and an indictment at common law for neglect of the duty to repair. See 1 Russ. on Crimes, p. 489, 5th ed., 1 Hawk. P. C., p. 700, 8th ed. by Curwood; and *R.* v. *Sandon*, 23 L. J. M. C. 129, per Lord Campbell, C. J.

The indictment may be preferred by any person not disqualified by reason that he is incompetent to become a witness: 1 Chitt. Crim. Law, pp. 1, 2.

Indictments against a parish or township for non-repair of a highway, or against a county for non-repair of a bridge, may be laid against the inhabitants of the parish, &c., without naming any individual: 2 Hawk. P. C. 317, 2 Roll. Abr. 79. But an indictment in respect of a road repairable *ratione tenuræ*, ought to mention the names of the persons bound to repair. See *R.* v. *Birmingham & Gloucester Ry.*, 3 Q. B., at p. 226, 227. And in the case of a corporation the indictment is against them in their corporate name: *R.* v. *Birmingham & Gloucester Ry.*, 3 Q. B. 223, 9 Car. & P. 469, 3 Ry. Cas. 148.

As to the form and contents of the indictment, and the rules relating thereto, and as to the pleadings and evidence, see Archbold's Criminal Pleading, 19th ed., pp. 970—985; Crown Circuit Companion, 9th ed., 361; 1 Hawk. P. C., c. 32, 8th ed., by Curwood, pp. 703, *et seq.;* 1 Russ. on Crimes, p. 493, *et seq.*, 5th ed.; Woolrych Crim. Law, p. 1261, *et seq.*

Criminal information.

Another mode of compelling the repair of a highway is by criminal information granted by the Queen's Bench Division. But this will only be granted where the grand jury have been guilty of gross misbehaviour in not finding a bill; nor will it be granted where the highway is not much used and there is another convenient highway in good repair: 1 Russ. Crimes, p. 493, 5th ed.

Mandamus.

The courts will not entertain an application for a mandamus to repair a road: *R.* v. *Trustees of Oxford and Witney Turnpike Roads*, 12 A. & E. 427, 4 P. & D. 154, 6 Jur.

216 n.; and see *R.* v. *Severn & Wye Ry.*, 2 B. & A. 646. As to enforcing by mandamus performance of duty by defaulting local authority, see Public Health Act, 1875, s. 299, *ante.* **Section 5.**

As to actions against highway authorities for damages caused by non-repair, &c., of highway, see note to section 109, *post.* Action.

Generally as to nuisances, see notes at pp. 87, 88, *ante.* Nuisances to highways at common law.

In the case of an ordinary highway, although it may be of varying and unequal width, running between fences, one on each side, the right of passage or way, *primâ facie*, and unless there be evidence to the contrary, extends to the whole space between the fences; and the public are entitled to the use of the entire of it as the highway and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers. See *R.* v. *United Kingdom Electric Telegraph Co.*, *ante*, p. 761; *R.* v. *Wright*, 3 B. & Ad. 681; and any permanent obstruction erected upon it without lawful authority and which renders the way less commodious than before to the public, is a public nuisance at common law: *Ib.*, and 1 Hawk. P. C. Bk. I., Ch. 32, p. 700, 8th ed. by Curwood; *R.* v. *Burney*, 31 L. T. N. S. 828, 39 J. P. 599. Thus a telegraph company who permanently erected telegraph posts upon the side of a highway, were held liable to an indictment: *R.* v. *United Kingdom Electric Telegraph Co.*, *supra.* But now see the Telegraph Acts, 1863, 1868, 1878, 26 & 27 Vict. c. 112, ss. 9—20, 31 & 32 Vict. c. 110, ss. 2, 4, 41 & 42 Vict. c. 76, ss. 3—5. As to obstruction by leaving an agricultural roller on the side of a road, between the hedge and the metalled part, so that a horse shied at the roller and caused damages, see *Wilkins* v. *Day*, L. R. 12 Q. B. D. 110, 49 L. T. N. S. 399, 32 W. R. 123, 48 J. P. 6.

But a merely temporary obstruction, such as unloading carts or putting up hoards during repairs, which acts are necessary for the enjoyment of the adjoining property: *Fisher* v. *Prowse*, 31 L. J. Q. B. 212, 2 B. & S. 770, 6 L. T. N. S. 711, 8 Jur. N. S. 1208, 1 Hawk. Bk. I., Ch. 32, p. 701, 8th ed. by Curwood; *Bush* v. *Steinman*, 1 B. & P. 407; *R.* v. *Ward*, 4 A. & E. 405; but see *R.* v. *Loughton Gas Co.*, *infra*, or a merely trivial obstruction, see *R.* v. *Charlesworth*, 16 Q. B. 1012, is not a nuisance for which an indictment can be preferred. Nor can an *injunction* be obtained in such cases: *Mott* v. *Schoolbred*, L. R. 20 Eq. 22, 44 L. J. Ch. 380, 23 W. R. 545; *A.-G.* v. *Cambridge Gas Co.*, L. R. 4 Ch. 71, 38 L. J. Ch. 94, 19 L. T. N. S. 508; *Wandsworth Board* v. *London & S. W. Ry.*, 31 L. J. Ch. 854. But the obstruction must not be continued an unreasonable time: *R.* v. *Jones*, 3 Campb. 230; and see *R.* v. *Cross*, 3 Campb. 224, and *R.* v. *Russell*, 6 East, 427.

It is an indictable nuisance to obstruct or employ others to obstruct a public highway or footway, by placing earth and bricks thereon, taking up the pavement and opening trenches for the purpose of laying down service pipes for the supply of gas from public mains to private houses, unless under parliamentary powers: *R.* v. *Longton Gas Co.*, 2 El. & El. 651, 29 L. J. M. C. 118, 2 L. T. N. S. 14, 6 Jur. N. S. 601, 8 Cox C. C. 317, S. C. *nom. R.* v. *Knight*, 8 W. R. 293. Such acts cannot be justified by the occupiers of houses as an exercise of the right of every householder to make such a temporary obstruction of a highway or footway as may be necessarily incident to the enjoyment of his property: *Ib.* And it seems that this is so, even though the permission of the highway board be obtained: *A.-G.* v. *Sheffield Gas Co.*, 3 De G. M. & G. 311, 22 L. J. Ch. 811, 21 L. T. 49. But an agreement by a highway board with a gas company to permit the latter to open a highway upon condition that they made it good again and paid a certain sum per yard in respect of the highway broken up is not invalid: *Edgeware Highway Board* v. *Harrow Gas Co.*, L. R. 10 Q. B. 92, 44 L. J. Q. B. 1, 31 L. T. N. S. 402. See, however, the provisions of the Water and Gas Clauses Acts, 1847, and the Electric Lighting Act, 1882, *ante.*

As to nuisance in obstructing a highway by causing crowds to collect, see *R.* v. *Carlile*, 6 C. & P. 636; *R.* v. *Moore*, 3 B. & Ad. 184; *Walker* v. *Brewster*, L. R. 5 Eq. 25, 37 L. J. Ch. 33, 17 L. T. N. S. 135, 16 W. R. 59 (case of injunction). But where a place has been used for a fair for above twenty years, persons so using the place are not liable to be indicted for a nuisance as for obstructing the highway: *R.* v. *Smith*, 4 Esp. 110.

Length of time, however, will not legalise a nuisance. See *R.* v. *Cross*, 3 Campb. 224, per Ld. Ellenborough; *Gerring* v. *Barfield*, 16 C. B. N. S. 597, 11 L. T. N. S. 270. But

Section 5. a way may be dedicated subject to an obstruction, and so an immemorial right to obstruct may be made out: *Fisher* v. *Prowse*, *ante*, p. 767; and see *Gerring* v. *Barfield*, *supra*.

It is no defence to an indictment for a nuisance in obstructing a highway that the inconvenience caused thereby is counterbalanced by superior advantages to the public: *R.* v. *Ward*, 4 A. & E. 384. See, also, *R.* v. *Train*, 2 B. & S. 640, 31 L. J. M. C. 169, 6 L. T. N. S. 380, 10 W. R. 539, 8 Jur. N. S. 1151, 26 J. P. 469, 9 C. C. C. 180; *A.-G.* v. *Terry*, L. R. 9 Ch. 423, 30 L. T. N. S. 215, 22 W. R. 395 (case of an injunction).

As to form, contents, &c., of indictment, see *ante*, p. 766.

Strictly speaking, at common law there is no such thing as a diversion of a highway, for a highway cannot be diverted, but must always continue in the same place as it was, however it be obstructed, and a new way made in another place; and, therefore, the indictment must be for an obstruction: 1 Hawk. P. C., c. 32, 8th ed. by Curwood, p. 705, s. 16.

As to diversion of a highway upon condition of making another way as convenient as the former, see *R.* v. *Scott*, 3 Q. B. 543, 2 G. & D. 729, 6 Jur. 1084, 4 Ry. Cas. 187.

It is a nuisance to suffer ditches adjoining a highway to be foul, by reason of which it is impaired: 1 Hawk. P. C., c. 32, 8th ed. by Curwood, pp. 698, 701. See, also, the Public Health Act, 1875, ss. 48, 91 (2), *ante*, and see sections 67 and 68 of this Act *post*.

So, to suffer the boughs of trees growing near a highway to hang over the road in such a manner as thereby to incommode the passage is a nuisance at common law: 1 Hawk. P. C., p. 701, *ut supra*. See section 65 and note thereto, *post*.

It is indictable at common law to permit a house adjoining a highway to be so much out of repair as to be ready to fall upon the passers by: *R.* v. *Watson*, 2 Ld. Raym. 856, S. C. nom.; *R.* v. *Watts*, 1 Salk. 357 (in this case the defendant was only a tenant at will).

As to excavations near a highway, see section 70 and notes thereto, *post*.

As to nuisances to public rivers or public ferries, see *R.* v. *Ward*, *supra*; *A.-G.* v. *Terry*, *supra*; *White* v. *Phillips*, 15 C. B. N. S. 245, 33 L. J. C. P. 33, 9 L. T. N. S. 388, 10 Jur. N. S. 425; *R.* v. *Stephens*, 7 B. & S. 710, 35 L. J. Q. B. 251; *Payne* v. *Partridge*, Show. 256, 1 Salk. 12, S. C. nom.; *Pain* v. *Patrick*, 3 Mod. Rep. 289

Remedies in case of nuisance to highway.

The usual remedy is by indictment; and if the nuisance is continued by further indictment: 1 Russ. on Crimes, pp. 440, 443, 491, 5th ed.; *R.* v. *Stead*, 8 T. R. 142; and see *Bagshaw* v. *Buxton Local Board*, L. R. 1 Ch. D. 220, 45 L. J. Ch. 260, 34 L. T. N. S. 112, 24 W. R. 231, 40 J. P. 197, per Jessel, M. R. As to form, &c., of indictment, see p. 766, *ante*.

As to criminal information and mandamus, see p. 766, *ante*.

Abatement of nuisance. *Private individual.*

A private person cannot abate a public nuisance unless he can show an absolute necessity for his doing so in order to use the highway: *Bateman* v. *Bluck*, 18 Q. B. 870, 21 L. J. Q. B. 406, 17 Jur. 386; *Mayor of Colchester* v. *Broooke*, 7 Q. B. 339, 15 L. J. Q. B. 173; *Dimes* v. *Petley*, 15 Q. B. 276, 19 L. J. Q. B. 449; *Bagshaw* v. *Buxton Local Board*, *supra*. See, also, *R.* v. *Mathias*, 2 F. & F. 570; and *Roberts* v. *Rose*, L. R. 1 Ex. 82, 4 H. & C. 103, 35 L. J. Ex. 62, 13 L. T. N. S. 471, 12 Jur. N. S. 78.

Surveyor of highways, &c.

But it seems that a person or body, who acts on behalf of the public has a right upon reasonable notice, *when the right has been decided*, to remove a nuisance, although no special statutory powers have been given for the purpose. See *Bagshaw* v. *Buxton Local Board*, *supra*; *Turner* v. *Ringwood Board*, L. R. 9 Eq. 418, 21 L. T. N. S. 424, 18 W. R. 745. But see *Mill* v. *Hawker*, L. R. 10 Ex. 92, 44 L. J. Ex. 49, 33 L. T. N. S. 177, 23 W. R. 348; and in *Denny* v. *Thwaites*, L. R. 2 Ex. D. 21, 46 L. J. M. C. 141, 35 L. T. N. S. 628, 41 J. P. 164, it was held that a surveyor of highways, who *bonâ fide* removed a drain and brickwork which was a nuisance and obstruction to a highway, could not rightly be convicted of committing malicious damage, &c., to property under 24 & 25 Vict. c. 97, s. 52. See, further, the Towns Improvement Clauses Act, 1847, ss. 69 and 70, *post*.

Where a private individual suffers some particular damage by reason of a nuisance upon a highway, he may maintain an action for damages: see *Wilkins* v. *Day*, *ante*, p. 767. But, in order to maintain such an action, the plaintiff must suffer some direct

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Surveyor to be elected annually.

May be re-elected.

6. And be it further enacted, that the inhabitants of every parish (1) maintaining its own highways, at their first meeting in vestry for the nomination of overseers of the poor in every year (2), shall proceed to the election of one or more persons to serve the office of surveyor in the said parish for the year then next ensuing (3): Provided always, that any outgoing surveyor shall continue to

and substantial damage peculiar to himself beyond that suffered by the rest of the public who use the way: *Winterbottom* v. *Lord Derby*, L. R. 2 Ex. 316, 36 L. J. Ex. 194, 16 L. T. N. S. 771 (where the cases are referred to); *Benjamin* v. *Storr*, L. R. 9 C. P. 400, 43 L. J. C. P. 162, 30 L. T. N. S. 362, 22 W. R. 631; and see *Ricket* v. *Metropolitan Ry.*, *ante*, p. 212. In *Clark* v. *Chambers*, L. R. 3 Q. B. D. 327, 47 L. J. Q. B. 427, 38 L. T. N. S. 454, 26 W. R. 613, it was held that the defendant, having unlawfully placed a dangerous instrument (a barrier armed with spikes) in a road, was liable in respect of injuries occasioned by it to the plaintiff, who was lawfully using the road, notwithstanding the fact that the immediate cause of the accident was the intervening act of a third person in removing the dangerous instrument from the carriageway, where the defendant had placed it, to the footpath. See, further, Addison on Torts, p. 564, *et seq.*, 5th ed. And as to nuisances arising from neglect of statutory duties, as of railway companies to erect and maintain bridges over highways or to properly manage gates placed across public carriage roads, see *ibid.*, pp. 568, 569, *et seq.* As to negligence on the part of gas works or water works companies in pursuing their statutory powers, see notes, *ante*, pp. 190, 432, 441.

A reversioner cannot maintain an action for a nuisance unless it is of such a permanent character as to injure his reversion: *Mott* v. *Schoolbred*, L. R. 20 Eq. 22, 44 L. J. Ch. 380, 23 W. R. 545; and *Cooper* v. *Crabtree*, L. R. 20 Ch. D. 589, 51 L. J. Ch. 544, 47 L. T. N. S. 5, 30 W. R. 649 (case of injunction). See Addison on Torts, p. 375, *et seq.*, 5th ed.

Injunction.

A private individual may have a remedy for a nuisance by obtaining an injunction, but in such cases a plaintiff must show not only that the defendants are committing or intend to commit a wrong, but also that the wrong complained of does or will occasion special loss or damage to him: *Mayor of Liverpool* v. *Chorley Waterworks Co.*, 2 De G. M. & G. 852; *Ware* v. *Regent's Canal Co.*, 3 De G. & Jo. 212. Where water-pipes had, without the consent of the owner of the soil, been laid in the soil of a highway, an injunction to restrain the continuance of the pipes was granted, the owner of the soil not being left to his remedy at law and not being required to establish his right at law; and the facts that the soil under the highway was of no value to the owner, and that his motive for applying to the court was not connected with the enjoyment of his land, were held not to be reasons against the granting of an injunction: *Goodson* v. *Richardson*, L. R. 9 Ch. App. 221, 43 L. J. Ch. 790, 30 L. T. N. S. 142, 22 W. R. 337, 38 J. P. 436.

A reversioner, in order to obtain an injunction, must show that the injury is of such a permanent charactor as to affect the reversion: *Cooper* v. *Crabtree*, *supra*.

(1) See the definition of "parish" in section 5, *ante*; and as to the liability of the parish to repair highways, see note (1), *ante*, p. 762.

(2) The appointment of overseers is to be made on the 25th of March, or within fourteen days next after that day. See 43 Eliz. c. 2, s. 1, and 54 Geo. 3, c. 91. But this provision is directory merely and not imperative: *R.* v. *JJ. of Staffordshire*, 10 L. J. M. C. 166, S. C. *nom. R.* v. *Sneyd*, 9 Dowl. 1001, 5 Jur. 962.

(3) In urban sanitary districts the urban authority has all the powers of vestries: See Public Health Act, 1875, s. 144, *ante*, p. 115.

By the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 25, *post*, a surveyor may be appointed for a parish which does not maintain any highways.

If the inhabitants neglect or refuse to nominate and elect a surveyor, the justices at a special sessions may appoint: See section 11, *post*.

As to the conduct of proceedings at vestries, see 58 Geo. III. c. 69, *post*, and the amending Act, 59 Geo. III. c. 85, *post*. 13 & 14 Vict. c. 57, makes provision for preventing the holding of vestry meetings in parish churches or chapels, or the vestry rooms attached thereto in the case of parishes, the population of which exceeds two

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act until his successor shall be appointed, and shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding, and in such case notice of such election shall be given by the chairman to the person elected, and to the outgoing surveyor (1): Provided always, that in any parish where there is no meeting in the year for the nomination of overseers of the poor, the inhabitants contributing (2) to the highway rate shall meet at their usual place of public meeting upon the twenty-fifth day of March, or if that should happen to be a Sunday or Good Friday, then on the day next following, or within fourteen days next after the said twenty-fifth day of March in every year, to elect one or more persons to serve the office of surveyor for the said parish, which surveyor shall repair and keep in repair the several highways in the said parish for which he is appointed and which are now or hereafter may become liable to be repaired by the said parish.

Qualification of surveyor.

7. And be it further enacted, that any person living within the parish or any adjoining parish, and having an estate in houses, lands, tenements, or hereditaments lying within such parish, in his own right or in right of his wife, of the value of ten pounds by the year, or a personal estate of the value of one hundred pounds (such person not living within the parish being willing to serve the office), or being an occupier or tenant of houses, lands, tenements, or hereditaments (whether resident within the parish or within any adjoining parish), of the yearly value of twenty pounds, shall be eligible to be elected a surveyor for the purposes of this Act: Provided nevertheless, that no person who is now exempted by law from serving the office of overseer of the poor shall be compellable to serve the office of surveyor (3): Provided also, that any person who may be chosen and elected to serve the said office of surveyor may provide a sufficient

thousand persons, and for holding such meetings in rooms or places to be provided for the purpose.

As to the notices of meetings, see note, *ante*, p. 757.

The rector or incumbent of the parish has a right to preside at a vestry meeting, and as presiding officer to fix the time and place for taking polls, and for their adjournment, if necessary: *R.* v. *Rector of St. Mary, Lambeth*, 9 L. J. M. C. 113, S. C. *nom. R.* v. *D'Oyly*, 12 Ad. & El. 139; *Wilson* v. *McMath*, 3 Phill. Eccles. Rep. 67, 3 B. & Ald. 244n. There is at common law a right to demand a poll. See *R.* v. *How*, *post*, p. 774, and *R.* v. *Wimbledon Local Board*, L. R. 8 Q. B. D. 459, 51 L. J. Q. B. 219, 46 L. T. N. S. 47, 30 W. R. 400 (where the cases are cited), and if no poll is taken after it has been duly demanded, the proceedings are void: *R.* v. *Cooper*, L. R. 5 Q. B. 457, 39 L. J. Q. B. 273. The poll may be demanded after the chairman has declared the result of the show of hands: *Campbell* v. *Maund*, 5 Ad. & El. 865; but the poll must be demanded immediately upon the declaration of the show of hands, and not later: *R.* v. *Thomas*, 11 Q. B. D. 282, 52 L. J. Q. B. 671, 47 J. P. 792. All qualified inhabitants, whether present or not at the show of hands, have a right to vote during the poll: *R.* v. *Rector of Lambeth*, *supra*.

As to the appointment of a surveyor with a salary, see section 9, *post*.

As to appeal against appointment of surveyor, see section 105, *post*, and *R.* v. *JJ. of St. Albans*, 3 B. & C. 698.

(1) See the form of notice, *post*, p. 828.

(2) See *R.* v. *Kershaw*, *ante*, p. 762.

(3) Peers and members of parliament, justices of the peace, aldermen of London, clergymen, dissenting ministers, practising barristers and solicitors, members of the College of Physicians, members of the College of Surgeons, apothecaries, officers of the courts of law, officers of the army and navy, even on half-pay, officers of the customs and excise, are exempt from serving the office of overseer; and persons concerned in contracts to supply goods to the workhouse, or for the use of the poor, are disqualified to be overseers: Archbold's Poor Law, 13th ed., p. 78. By section 30 of the Dentists Act, 1878, 41 & 42 Vict. c. 33, persons registered under the Act are exempt, if they so desire, from serving all corporate, parochial, ward, hundred and township offices.

deputy, such deputy to be approved of by the justices at a special sessions (1) for the highways, who shall by writing under their hands testify their consent thereto.

Penalty on surveyor not acting when chosen.

8. And be it further enacted, That if any person who shall be so chosen and elected, and who is not exempt as aforesaid from serving the said office, shall refuse or neglect to take upon himself the office of surveyor, or to provide a sufficient deputy, to be approved of as aforesaid, he shall forfeit on conviction before any two justices any sum not exceeding twenty pounds, unless he can show to the said justices good and sufficient cause why he should not be called upon to serve the said office: Provided also, that every deputy so provided and approved of shall have the same powers and authorities, and be subject to the discharge of the same duty, and be liable to the same penalties, as any surveyor appointed under the authority of this Act.

Surveyor may be appointed with a salary.

9. And be it further enacted, that instead of electing such surveyor as hereinbefore mentioned, it shall be lawful for the majority of the inhabitants so assembled as aforesaid (2) in any parish for the election of surveyors as aforesaid to nominate and elect any one person of skill and experience to serve the said office of surveyor of such parish, and to fix such salary for the execution of such office as they shall think fit, which said appointment shall be in writing on paper without stamp, and signed by the chairman of such meeting (3), and such surveyor, when so appointed, shall be invested with the same powers, and subject to the same duties, forfeitures, and penalties, as any surveyor appointed under the authority of this Act would have been; and such salary shall be paid out of the money raised under the authority of this Act, at such times and in such manner as shall have been agreed upon between the inhabitants so assembled as aforesaid and the person so nominated and elected as aforesaid: Provided, nevertheless, that if such surveyor shall cease to act, and be dismissed in the manner hereinafter described, such salary shall also in like manner cease and determine (4).

Surveyor, on verifying his accounts, to name his successor.

10. And be it further enacted, that the surveyor or surveyors, at the time of passing his or their accounts as herein mentioned (5), shall deliver to the justices a statement in writing of the name and residence of the person appointed to succeed him or them as surveyor or surveyors (6).

Power to justices in certain cases to appoint a surveyor.

11. And be it further enacted, that in case it shall appear on oath to the justices at a special sessions (7) for the highways that the inhabitants of any parish have neglected or refused to nominate and elect a surveyor or surveyors in manner and for the purposes aforesaid (8), or that the outgoing surveyor, except he had been directed by the inhabitants so to do, has delivered no statement of the name and residence of his or their successor or successors (9), or that the surveyor is dead, or has ceased to possess the qualification (10), or is or has become disqualified in any manner herein mentioned, or that he has neglected to act, or refused to carry into operation the duties imposed upon him by this Act, it shall and may be lawful for such justices, and they are hereby authorised and required, by writing under their hands, at their next succeeding special sessions (11) for the highways, to dismiss

(1) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

(2) See section 6, *ante*.

(3) For form of appointment, see the schedule, Form No. 2, *post*.

(4) By the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 42, *post*, this section does not apply to any parish within any district formed under that Act.

(5) See section 44, *post*, which is now wholly repealed by the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, *post*.

(6) By the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 42, *post*, this section does not apply to any parish within any district formed under that Act.

(7) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

(8) See sections 6 and 9, *ante*.

(9) See section 10, *ante*.

(10) See section 7, *ante*.

(11) An appointment of a surveyor by justices at the *same* sessions at which it is made to appear to them that there is a vacancy in the office is void, there must be an interval between the two proceedings: *R.* v. *Best*, 5 D. & L. 40, 16 L. J. M. C. 102, S. C. *nom. R.* v. *JJ. of Surrey*, 11 Jur. 489.

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such surveyor so neglecting to act, or refusing to carry into operation the duties imposed upon him by this Act, and to appoint any person whom they may think fit to be a surveyor for such parish till the annual meeting then next ensuing for the nomination of overseers, or for the election of surveyors as aforesaid, and with or without such salary as to the said justices shall seem fit and proper (1), and the said surveyor when so appointed shall be invested with the same powers and be subject to the same duties, forfeitures, and penalties, as any surveyor elected by the inhabitants of any parish as aforesaid would have been.

When parish is situate in more than one county.

12. And be it further enacted, that when a parish is situated in more than one county, division, or liberty, the surveyor so to be appointed as last aforesaid shall be appointed by the justices at a special sessions (2) for the highways assembled in that county, division, or liberty in which the church of the said parish shall be situate.

Parishes may direct application to be made to justices at sessions for forming them into districts.

13. And whereas it is expedient that in many cases parishes should be formed into districts for the purpose of having one sufficient person to be the district surveyor, who should have the superintendence and management of the funds to be raised and levied under the provisions of this Act in each parish forming part of such district: Be it therefore enacted, that it shall and may be lawful for the inhabitants of any parish in vestry assembled (3), if they shall think fit, to empower and direct one of the churchwardens of such parish, or the chairman of the said vestry, to make application to the justices assembled at the quarter sessions for the county, or where the parishes to be united shall be situated in the same division, at some special sessions (4) for the division in which such parish shall be situate, for the purpose of being united with one or more parishes to form a district for the purposes aforesaid, and at the same time to nominate one fit and proper person to be returned to the said justices to be appointed as such district surveyor, together with the amount of the yearly salary which the said inhabitants in such vestry assembled shall agree to pay to such district surveyor, which application, with the name of such last-mentioned person, shall be forthwith made in writing signed by the churchwardens of the said parish, or by the chairman of the said vestry as aforesaid, and forwarded to the clerk of the peace in and for the said county or to the clerk of the justices in and for the said division, as the case may be, who shall lay the same before the justices at the quarter sessions then next holden in and for the said county or at the special sessions as aforesaid (5).

Justices at sessions may unite such parishes into districts, and select and appoint a district surveyor.

14. And be it further enacted, that on such application as aforesaid being made by two or more parishes to the said justices, they are hereby authorised, at the said quarter sessions or at some special sessions as aforesaid, to take the same into their consideration, and to unite such and so many of the parishes so applying as aforesaid as they shall think fit, into a district or districts for the purposes of this Act; and the said justices shall select and appoint out of the persons so nominated as aforesaid by the several parishes so united into one district one fit and competent person to be the surveyor for such district composed as aforesaid, which appointment shall be in writing (5).

As to whether the justices, if they omit to make the appointment at the next succeeding sessions may do so at any subsequent time, if necessary, see *R.* v. *Justices of Denbighshire*, 4 East. 142, and *R.* v. *Justices of Leicester*, 7 B. & C. 6, 9 D. & R. 772. It would seem that the words are directory only, and that they may do so. *Ibid.*

(1) For form of appointment, see the schedule, Form No. 3, *post.*

As to appeal, see section 105, *post;* and as to *certiorari*, see section 107, *post*, and *R.* v. *JJ. of St. Albans*, 3 B. & C. 698.

(2) See now the Highway Act, 1862, 27 & 28 Vict. c. 101, s. 46, *post.*

(3) See note, *ante*, p. 757.

(4) See now the Highway Act, 1862, 27 & 28 Vict. c. 101, s. 46, *post.*

(5) By the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 42, *post*, sections 13, 14, 15, 16, 17, 18 and 19 do not apply to any parish within any district formed under that Act. But highway boards may combine to appoint a district surveyor. See the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 6, *post.*

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15. And be it further enacted, that the names of the said parishes so united, and the name of the person so appointed as district surveyor, shall be reduced into writing, signed by the chairman of the said quarter sessions, or by the majority of the magistrates present at such special sessions, and shall be transmitted by him or them to the clerk of the peace, who shall lay the same before the justices assembled at the quarter sessions in and for the said county, or at some adjournment thereof, who are hereby authorised and required to cause the same to be enrolled with the records of the court; and a copy thereof shall be sent by such clerk of the peace to each of the churchwardens or the surveyor of each of the said parishes so united; and such parishes so united shall continue to form a district for the purposes of this Act for the space of three years then next following, and from thenceforward until the churchwarden of any one of the said parishes so united, or the chairman of the vestry, shall, by direction and in pursuance of a resolution of the inhabitants in vestry assembled, give twelve months' notice to the churchwardens and surveyor of each of the other parishes, and to the said district surveyor appointed by the said justices, and to the clerk of the peace of the county in which the said parishes are situate, of the intention of the said parish to cease to form a part of the said district; in which case, from and after the expiration of the said twelve months' notice, the union of the said parishes into such district as aforesaid, and the appointment of the said district surveyor, shall cease and determine, so far as may concern or be binding on the said parish so giving such notice as aforesaid (1).

Names of parishes and of district surveyor to be recorded, and a copy thereof sent to each churchwarden, &c.

Parishes when united to form a district for three years, and until twelve months after any one parish shall give notice of intention to cease to form one of said district.

16. And be it further enacted, that such district surveyor when so appointed shall, for all the purposes of this Act, except the making, assessing, and levying the rate in and by this Act authorised to be made, assessed, and levied, have, as far as the same are applicable, the same powers, and be subject and liable to the same duties, penalties, and forfeitures, as any surveyor elected under the provisions of this Act is invested with and liable to, and shall have the laying out and application of all the funds raised and levied under the authority of this Act: Provided, nevertheless, that such district surveyor shall not expend any moneys levied in any one of the said united parishes except for the use and benefit of the parish in which it is so levied, unless with the consent of the inhabitants of such parish in vestry assembled, for the purpose of carrying on repairs or beneficial improvements under the provisions of this Act for the common benefit of the said united parishes; and such district surveyor shall annually receive from each of the parishes composing his district respectively such salary as shall have been agreed upon by the several parishes in manner aforesaid, which salary shall be paid to such district surveyor by the surveyor of the highways out of the money raised in each of such parishes under the authority of this Act; and in case of nonpayment thereof the same shall be recoverable from the surveyors of the highways of such parishes, to and for his own use, in the same manner as any forfeiture is recoverable under this Act (1).

District surveyor to have power, &c., of surveyor except in levying rate.

Salary of district surveyor how to be paid.

17. And be it further enacted, that in each of the parishes so united into a district as aforesaid a surveyor shall be elected as herein mentioned, in addition to the district surveyor so appointed as aforesaid: Provided nevertheless, that such surveyor shall only be authorized and required to make, assess, and levy the rate herein directed to be made, assessed, and levied, and from time to time pay over the money arising therefrom to such district surveyor (2).

When parishes are united, a surveyor to be appointed to make rate, &c.

18. And whereas it is expedient in large and populous parishes that the repairs of the highways should be under the direction and control of a certain number of inhabitants, to be chosen and appointed as a board for that purpose, with necessary powers: Be it therefore further enacted, that in any parish (3) where the popula-

Appointment of a board directing repairs in large parishes.

(1) See note (5), *ante*, p. 772.

As to recovery of forfeitures under the Act, see sections 101, 103, *post*.

(2) See note (5), *ante*, p. 772.

As to appointment of surveyor, see sections 6, 9, *ante*.

As to making the rates, see section 27, *post*.

(3) Where a parish consists of several tithings, each of which has immemorially repaired its own highways, it cannot form a board under this section: *R.* v. *Bush*, 9 Ad. & El. 820, 8 L. J. M. C. 39.

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tion by the then last census taken from the returns made to Parliament exceeds the number of five thousand, if it shall be determined by a majority of two thirds of the votes of the vestrymen present at such meeting (1) as aforesaid to form a board for the superintendence of the highways of the said parish, and for the purpose of carrying the provisions of this Act into effect, it shall be lawful for the said vestry to nominate and elect any number of persons not exceeding twenty, nor less than five, being respectively householders (2), and residing in and assessed to the rate for the relief of the poor of the said parish, and also liable to be rated to the repair of the highways in the said parish, under and by virtue of this Act, to serve the office of surveyors of the highways for the year ensuing; and such persons so to be nominated and elected as such surveyors, or any three of them, shall and are hereby authorised to act as a board, and to be called "the board for repair of the highways in the parish of " (as the case may be), and to carry into effect the powers, authorities, and directions in this Act contained; and such board are hereby authorised to appoint a collector, or any number of collectors of the rates, to be made under the authority of this Act, and also to employ a person of skill and experience to act as an assistant surveyor (3) to the said board, and also a clerk to attend the said board, and to keep the accounts and minutes of the proceedings thereof, such assistant surveyor and clerk to be paid such reasonable salaries out of the said rates as the said board shall determine; and upon such board being so nominated and elected as aforesaid, all and every the powers and authorities given and created by this Act and granted to or vested in the vestry, and in any person or persons as surveyor, shall for the purposes of the parish so nominating and electing such board, be and the same are hereby declared to be vested in the said persons so to be elected, or any three of them, acting as such board as aforesaid; and such persons, or any three of them, at a meeting to be convened for that purpose, may, and they are hereby authorised to nominate and appoint a fit and proper person to be treasurer (4) for the deposit of the monies to be collected for the purposes of this Act, and to take from such person good and sufficient security for the monies to be deposited in his hands as aforesaid; and all monies to be drawn from such treasurer for the purposes of this Act shall be drawn by drafts or cheques to be signed by the said persons so to be nominated and elected as aforesaid, or any three of them, at some one of their meetings to be held under this Act, and such drafts shall be respectively signed and entered in their books by the said clerk to be appointed as aforesaid: Provided always, and it is hereby declared, that upon the expiration of the year for which such board shall be elected as aforesaid, and before or on the day for the nomination and election of persons as surveyors under the authority of this Act, the said board shall and are hereby directed to present to the vestry of the parish for which they shall have acted copies of all their accounts and also of the minutes of their proceedings during the preceding year (5).

Powers of the Board.

Board may hire or purchase premises.

19. And be it further enacted, that it shall and may be lawful to and for such board to rent, or, with the consent of the vestry of any parish, to purchase, a fit and convenient piece of ground or other premises for the keeping of the implements and materials necessary for the reparation of the highways, or for the preparing the materials for the same respectively, and to determine and direct how and in what manner the highways in the said parish, or any or either of them, or any and what part or parts thereof shall be curbed or paved with stone or otherwise (6).

(1) But a poll may be demanded, and if refused, an appointment of a board by the meeting is invalid: *R.* v. *How*, 33 L. J. M. C. 53, 9 L. T. N. S. 385, 27 J. P. 773.

(2) See *R.* v. *Hall*, 1 B. & C. 123.

(3) The functions of the assistant surveyor do not include those of an accountant: *Adams* v. *Lakeman*, El. Bl. & El. 615, 27 L. J. M. C. 307.

(4) It seems that the giving security is not a condition precedent to the enjoyment of the office, or to the liability to account by the treasurer: *R.* v. *Patteson*, 4 B. & Ad. 9.

(5) See note (5), *ante*, p. 772.

As to audit of the accounts of highway districts and parishes, see the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, and the notes thereto, *post*.

(6) See note (5), *ante*, p. 772.

Secs. 20, 21.

Penalty on surveyor, &c., for neglect of duty.

20. And be it further enacted, that if any surveyor, or district surveyor, or assistant surveyor, shall neglect his duty in anything required of him by this Act, for which no particular penalty is imposed, he shall forfeit for every such offence any sum not exceeding five pounds (1).

As to repair of highway adjoining bridges hereafter to be built.

Raised causeways, &c.

21. And be it further enacted, that if any bridge shall hereafter be built which bridge shall be liable by law to be repaired by and at the expense of any county, or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law before the erection of the said bridge bound to repair the said highways: Provided nevertheless, that nothing herein contained shall extend or be construed to extend to exonerate or discharge any county, or any part of any county, from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof (2).

(1) By 25 & 26 Vict. c. 61, s. 42 (5), the penalty imposed by this section shall not apply to a highway board constituted under that Act.

As to recovery of penalties, see sections 101, 103, *post*.

Particular penalties are imposed by sections 40, 42, 46, 55, 56, 57, 72, 94, *post*. Where a particular penalty is so imposed, the surveyor, &c., can only be proceeded against under the section imposing the penalty, and the requirements, if any, of the section must be pursued. See *Robinson* v. *Stevenitt*, 38 L. T. N. S. 611.

A surveyor, who, though directed by magistrates to do so, refuses to remove a certain nuisance from a highway and to fence a dangerous pit, cannot be convicted for a neglect of duty under this or section 73, *post*, for the Act imposes no obligation on him to do these works: *Morgan* v. *Leach*, 10 M. & W. 558, 12 L. J. M. C. 4.

A surveyor is not liable to an action in respect of damage resulting from an accident caused by his neglect to repair the highway: *Young* v. *Davis*, 7 H. & N. 760, 31 L. J. Ex. 250, 6 L. T. N. S. 363, 8 Jur. N. S. 286, affirmed 2 H. & C. 197, 9 L. T. N. S. 145, 10 Jur. N. S. 79; but "a positive obstruction of, or nuisance on, a road, whether caused by a surveyor of highways or any other person, would no doubt render responsible the person who caused the obstruction or nuisance." *Ibid.*, *per* Pollock, C. B.

(2) The county is bound at common law to repair its bridges precisely as the parish is bound to repair its highways: *R.* v. *Inhabitants of Oxfordshire*, 4 B. & C. 194, 2 Co. Inst. 700, 22 Hen. VIII. c. 5, s. 2, *post*, and see 43 Geo. III. c. 59, s. 5, *post;* unless it can be shown that somebody or person is bound to repair *ratione tenuræ* or by prescription; *Ibid.*, and see note (5), *ante*, p. 762. And as to what is a public bridge, see *R.* v. *Bucks*, 12 East, 202; *R.* v. *Salop*, 13 East, 95; *R.* v. *Southampton*, 21 L. J. M. C. 205, and *R.* v. *Chart & Longbridge*, L. R. 1 C. C. R. 239, 39 L. J. M. C. 107, 22 L. T. N. S. 416, 34 J. P. 454, 11 C. C. C. 502.

As to the power of urban authorities to construct or adopt public bridges, &c., over or under canals, &c. See Public Health Act, 1875, s. 147, and as to their power to enter into agreements for the repair of roads over and approaches to bridges, see *ibid.*, section 148.

As to the construction and maintenance of railway bridges and their approaches when such bridges are carried over or under turnpike roads or highways, see Railways Clauses Consolidation Act, 1845, 8 Vict. c. 20, s. 46, and *Newcastle-under-Lyme & Leek Turnpike Trustees* v. *N. Staffordshire Ry.*, 5 H. & N. 160, 29 L. J. Ex. 239, S. C. *nom. Leech* v. *N. Staffordshire Ry.*, 1 L. T. N. S. 332; *Great N. of England Ry.* v. *Langbaurgh*, 24 L. T. N. S. 544, 35 J. P. 581, and *N. Staffordshire Ry.* v. *Dale*, 8 El. & Bl. 836, 27 L. J. M. C. 147, 4 Jur. N. S. 631. But though a railway company in carrying their railway *over* a highway by a bridge have altered the level of the highway, they are not bound to keep the slope of the road in repair as being part of the approaches of the bridge: *London & N. W. Ry.* v. *Skerton*, 5 B. & S. 559, 33 L. J. M. C. 158, 10 L. T. N. S. 648, 12 W. R. 1102. As to *mandamus* to compel railway company to repair roadway over bridge: See *R.* v. *S. E. Ry.*, 32 L. T. N. S. 858, 40 J. P. 200.

As to "causeway," see note, *ante*, p. 762.

Secs. 22, 23.

Powers for getting materials and preventing nuisances to extend to county bridges and roads at the ends thereof.

22. And be it further enacted, that the several powers and authorities hereby vested in the surveyor of highways, as well for the getting of materials (1) as the preventing and removing of all nuisances and annoyances, shall be and the same are hereby vested in the surveyor of county bridges (2), and the roads at the ends thereof repairable therewith; and the several penalties, forfeitures, matters, and things in this Act contained relating to highways shall be, and the same are, hereby extended and applied, as far as the same are applicable to such bridges, and the roads at the ends thereof as aforesaid, the said surveyor or surveyors of county bridges, making satisfaction and compensation for all trespass and damage done in the execution of the powers of this Act, in such and the same manner as the surveyors of highways are required to make under the provisions of this Act (3).

When new highways are to be kept in repair by parishes.

23. And be it further enacted, That no road or occupation way made or hereafter to be made (4) by and at the expense of any individual or private person, body politic or corporate (5), nor any roads already set out or to be hereafter set out as a private driftway or horsepath in any award of commissioners under an inclosure Act, shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable or liable to repair (6), unless the person, body politic or corporate, proposing to dedicate such highway to the use of the public shall give three calendar months previous notice (7) in writing to the surveyor of the parish of his intention to dedicate such highway to the use of the public, describing its situation and extent, and shall have made or shall make the same in a substantial manner and of the width required by this Act (8), and to the satisfac-

(1) See sections 46—57, *post.*

(2) See 22 Hen. VIII. c. 5, s. 4, *post.*

(3) See *R.* v. *Merionethshire*, 6 Q. B. 343, 13 L. J. M. C. 158, 8 Jur. 778; *R.* v. *Brecon*, 15 Q. B. 813, 18 L. J. M. C. 123, 13 Jur. 422.

(4) The term "made" here must apply to a road formed or made, but not completely dedicated by user or otherwise at the passing of the Act: *R.* v. *Westmark*, 2 Moo. and R. 305, *per* Maule, J. And so, where before the passing of this Act a new street was formed and dedicated to the public by the owner of the soil in a place where a local improvement Act was in force under which the commissioners, upon certain conditions being fulfilled, might declare new roads to be public highways, it was held that the new street, though it had since its dedication been used as a public highway, was not a highway repairable by the inhabitants at large, as it had not been declared such by the commissioners: *Wallington* v. *White*, 10 C. B. N. S. 128, 30 L. J. M. C. 209, 4 L. T. N. S. 290, 7 Jur. N. S. 1013, affirmed 13 C. B. N. S. 865, 32 L. J. C. P. 86.

(5) A road made by turnpike trustees is not within the section: *R.* v. *Thomas*, 7 El. & Bl. 399, 28 L. T. 303, 21 Jur. 713, 5 W. R. 321. "I never heard it laid down that all roads were included in the enactment in section 23," *ibid.*, *per* Coleridge, J. See, further, *R.* v. *Lordsmere*, *ante*, p. 762.

As to streets in urban sanitary districts, see Public Health Act, 1875, section 152, *ante.*

(6) As to the liability of the parish to repair, see note, *ante*, p. 762. And see the Public Health Act, 1875, s. 150, and notes thereto, *ante.*

As to whether an ancient highway repairable by the parish, which has been straightened and widened and set out under the award of Inclosure Commissioners, but no steps taken under this section is still repairable by the parish. See *R.* v. *East Hagbourne*, 1 Bell C. C. 135, 28 L. J. M. C. 71, 32 L. T. 338, 23 Jur. 346, 7 W. R. 236, 8 Cox, C. C. 135. But see *R.* v. *Cricklade*, 14 Q. B. 735, 19 L. J. M. C. 169.

(7) See Schedule to this Act, Form No. 6, *post.*

(8) See section 80, *post.*

A road cannot be split up into separate parts, and each called a separate highway for the purpose of obtaining the certificate of the justices under this section, and, therefore, where, though a parish had resolved that a road was of sufficient utility, justices refused to grant their certificate, being of opinion that it was but a part of a road which in another part was not of the requisite width, it was held that the justices were right in their decision: *R.* v. *JJ. of Surrey*, 3 L. J. N. S. 808, 25 J. P. 134.

Secs. 23, 24.

tion of the said surveyor (1) and of any two justices of the peace of the division in which such highway is situate, in petty sessions assembled, who are hereby required, on receiving notice from such person, or body politic or corporate, to view the same, and to certify (2) that such highway has been made in a substantial manner, and of the width required by this Act (3), at the expense of the party requiring such view, which certificate shall be enrolled (4) at the quarter sessions holden next after the granting thereof, then and in such case after the said highway shall have been used by the public, and duly repaired and kept in repair by the said person, body politic or corporate, for the space of twelve calendar months, such highway shall for ever thereafter be kept in repair by the parish in which it is situate: Provided nevertheless, that on receipt of such notice as aforesaid the surveyor of the said parish shall call a vestry meeting (5) of the inhabitants of such parish; and if such vestry shall deem such highway not to be of sufficient utility to the inhabitants of the said parish to justify its being kept in repair at the expense of the said parish, any one justice of the peace, on the application of the said surveyor, shall summon the party proposing to make the new highway to appear before the justices at the next special sessions for the highways (6) to be held in and for the division in which the said intended highway shall be situate; and the question as to the utility as aforesaid of such highway shall be determined at the discretion of such justices (7).

Proviso.

24. And be it further enacted, that the surveyor of every parish, other than a parish the whole or part of which is within three miles of the general post office in the City of London, shall, with the consent of the inhabitants of any parish in vestry assembled, or by the direction of the justices at a special sessions (6) for the highways, cause (where there are no such stones or posts) to be erected or fixed in the most convenient place where two or more ways meet, a stone or post, with inscriptions thereon in large legible letters, not less than one inch in height and of a proper and proportionate breadth, containing the name of the next market town, village, or other place to which the said highways respectively lead, as well as stones or posts to mark the boundaries of the highway, containing the name of the parish wherein situate; and that the surveyor of every parish shall at the several approaches or entrances to such parts of any highways as are subject to deep or dangerous floods, cause to be erected graduated stones or posts as he shall judge to be necessary for the guiding of travellers in the best and safest tract through the floods, and also to secure horse causeways, and foot causeways (8), by

Direction posts, where and how to be erected.

(1) See *R.* v. *Dukinfield*, 4 B. & S. 158, 32 L. J. M. C. 230: Urban authorities are within their district exclusively surveyor of highways: Public Health Act, 1875, s. 144, *ante*, p. .

(2) See the Schedule to this Act, Form No. 7, *post.*

(3) See note (8), *ante*, p. 776.

(4) It would seem that the neglect of enrolment does not vacate the proceedings: *De Ponthieu* v. *Pennyfeather*, 5 Taunt. 633, 1 Marshall 261.

(5) As to vestry meetings, see the note, *ante*, p. 757.

If the surveyor neglects to call a vestry meeting, and to summon the party who seeks to dedicate the road at the next special sessions, a *mandamus* will not lie to the justices after such sessions have passed, and the three mentioned in the notice have expired: *R.* v. *Bagge*, 44 L. J. M. C. 45, 31 L. T. N. S. 585, 23 W. R. 165. But it seems a *mandamus* would lie to the surveyor to summon the vestry meeting, or the party before the special sessions, and, per Blackburn, J., after the three months had expired. *Ibid.*

(6) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post.*

(7) There is an appeal under section 105, *post*, to quarter sessions against the decision of the special sessions: *R.* v. *JJ. of Derbyshire*, El. Bl. & El. 69, 27 L. J. M. C. 189, 31 L. T. 80, 6 W. R. 444.

(8) This section contemplates the erection of posts, &c., against footways, causeways and bridleways *by the side* of carriage ways, for the purpose of protecting them against damage by waggons, &c., but does not require the erection of posts, &c., at the extremities of such ways for the purpose of protecting the causeways, &c., from trespassers;

Secs. 24–27.

posts, blocks, or stones fixed in the ground, or by banks of earth cast up or otherwise, from being passed over and spoiled by waggons, wains, carts, or carriages; and the said surveyor shall be re-imbursed, out of the monies which shall be received by him pursuant to the directions of this Act, the expenses of providing and erecting and of keeping in repair such stones, posts, or blocks already erected or fixed, or which may hereafter be erected or fixed.

Power to use adjoining ground as a temporary road.

25. And be it further enacted, that it shall be lawful for the surveyor to make a road through the grounds adjoining to any ruinous or narrow part of any highway (not being the site or ground whereon any house stands, not being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house or enclosed ground set apart for building ground or as a nursery for trees), to be made use of as a public highway whilst the old road is repairing or widening (1), making such recompense to the proprietor and occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions (2) for the highways assembled may think reasonable, such sum so awarded as a recompense to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act (3).

Surveyor to remove snow, &c.

26. And be it further enacted, that if any impediment or obstruction shall arise in any highways from accumulation of snow, or from the falling down of the banks on the side of such highways, or from any other cause, the surveyor is required from time to time and within twenty-four hours after notice (4) thereof from any justice of the peace of the county in which the parish may be situate, to cause the same to be removed (5).

Surveyor to make rate.

27. And in order to raise money (6) for carrying the several purposes of this

Ellis v. *Woodbridge*, 8 C. B. N. S. 290, 29 L. J. M. C. 183, 2 L. T. N. S. 237, 8 Jur. N. S. 1017, 8 W. R. 437. But by the Highway Rate Assessment and Expenditure Act, 1882, 45 & 46 Vict. c. 27, s. 6, provides that "the expenses incurred by a highway authority in maintaining, replacing, or setting up milestones on any highway, and in fencing by posts and rails, or otherwise, a highway where such fencing is required for the protection of persons travelling thereon against danger, shall be a lawful charge upon the highway rate."

As to power of urban authorities to place and keep in repair fences and posts for the safety of foot passengers, see Public Health Act, 1875, s. 149, *ante*.

As to the right of foot passengers to use the carriage way, and as to the duties of carriages with regard to foot passengers using the carriage way, see *Cotterill* v. *Starkey*, 8 C. & P. 691.

(1) As to the right of the public to deviate from the highway when out of repair upon adjoining land, see *ante*, p. 761.

(2) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

(3) See sections 101, 103, *post*.

(4) For Form, see the Schedule, Form No. 8, *post*.

(5) As to other obstructions, see sections 65, 69, and 73, *post*; and see *Morgan* v. *Leach*, *ante*, decided under section 73.

As to power of urban authorities to make bye-laws for the prevention of nuisances arising from snow, &c., see Public Health Act, 1875, s. 44, *ante*.

(6) Other sources from which money is derivable for carrying the purposes of the Act into execution, are indicated by sections 62 (concluding proviso), 73, 103, *post*. Further, by 20 & 21 Vict. c. 31, s. 12, the proceeds arising from the sale of any manure, soil, ashes, rubbish, &c., wilfully deposited upon any town or village greens, not awarded under the "Acts for the Inclosure, &c., of Land," as a place for exercise and recreation, and any penalty imposed under the section shall be applied in aid of the rates for the repair of the public highways in the parish. And by 8 & 9 Vict. c. 118, s. 72, it is enacted that "the valuer acting in the matter of any enclosure shall allot to the surveyor of the highways for the time being of the parish in which the land proposed to be inclosed or any part thereof shall be situated, and to his successors for ever, such part of the land proposed to be inclosed, as by the instructions given to such valuer shall have been directed to be appropriated for supplying stone, gravel, or other materials for the repairs of roads and ways, as aforesaid, or in case no such instructions shall have been given in

Act into execution, be it further enacted, that a rate shall be made (1), assessed, and levied (2) by the surveyor upon all property now liable to be rated and assessed to the relief of the poor (3); provided that the same rate shall also extend

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this behalf, and the valuer shall think an allotment necessary for the purposes aforesaid, such part as the valuer shall think fit, and such allotments shall be inclosed and fenced as the valuer shall direct, and shall from the confirmation of the award be vested in the surveyor of the highways within the said parish for the time being in trust for the purposes aforesaid; and the grass and herbage of such allotments shall belong to such persons as by the valuer shall be directed, and if he shall make no such direction, then such surveyor shall from time to time let any such allotment, reserving the right to get and take away such stone, gravel, and other materials when and as he shall think fit for the most money that can be obtained for the same, and shall apply the rents and profits towards the repair of the public roads or highways within the said parish, and the said surveyor shall account for such rents and profits in the same manner as he is by law accountable for other monies that shall come to his hands in the capacity of surveyor of the highways, and shall be subject to the like penalties for the neglect thereof.

As to the mode of defraying expenses of highway boards under the Highway Act, 1862, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 33, *post*. And as to defraying the cost of repairs of highways in urban sanitary districts, where the expenses of the authority are defrayed out of the district fund and general district rates, and no other mode is directed by any local Act, see the Public Health Act, 1875, section 216, *ante*.

Rate, how made.

(1) As to the form and amount of the rate, see section 29, *post*, and as to the accounts to be kept by the surveyor, see section 39, *post*.

It is a general rule with respect to parish rates that they are not to be made retrospectively: *R.* v. *Dursley*, 5 A. & E. 10, at p. 15, *per* Lord Denman, C. J., and see *R.* v. *Read*, 13 Q. B. 524. But this general rule may be modified by statute: *Ib.* For instance, see 45 & 46 Vict. c. 27, s. 5, *post*, p. So, also, there are other necessary exceptions, as the costs of litigation, which cannot be taken into an estimate till the suit is over: *R.* v. *Read*, *supra*.

A rate is bad which is made for a period for which a rate has already been made and not quashed: *R.* v. *Fordham*, 11 A. & E. 73; but a second rate may be made where a former rate for the same purpose has not been wholly collected, the Court will not presume from rates being co-existent that they are made for the same period of time: *R.* v. *Best*, 5 D. & L. 40, 16 L. J. M. C. 102, 2 New Sess. Cas. 655: S. C. *nom. R.* v. *JJ. of Surrey*, 11 Jur. 489.

(2) See section 34, *post*.

Property liable to be rated to the poor.

(3) The liability to be rated to the relief of the poor depends on 43 Eliz. c. 2, s. 1, which directs the overseers of the poor of the parish "to raise, weekly or otherwise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, or propriations of tithes, coal mines (or saleable underwood) in the parish in such competent sum and sums of money as they shall think fit," and see 14 Car. II. c. 12, ss. 21, 22. The statute of Elizabeth is repealed as to saleable underwood by the Rating Act, 1874, s, 14, *post*. "Inhabitant or other" in the above statute means resident within the parish: *R.* v. *Nicholson*, 12 East. 330; *R.* v. *North Curry*, 4 B. & C. 953, 7 D. & R. 424. It is perfectly immaterial what interest the occupier has in the lands: *R.* v. *Bell*, 7 T. R. 598; *Bute* v. *Grindall*, 1 T. R. 338, at p. 343, *per* Buller J.

Where a person receives, without risk, part of the produce extracted from the bowels of the earth, he is an occupier of land; but where he merely receives a rent or money payment, there the Court has held, as in *R.* v. *Bishop of Rochester*, 12 East. 353, that he is not an occupier: *R.* v. *Baptist Mill Co.*, 1 M. & S. 612, at p. 619, *per* Le Blanc, J., and see *R.* v. *Skingle*, 7 T. R. 549; *R.* v. *Wellbank*, 4 M. & S. 222; and *R.* v. *Vanderwall*, 2 Burr. 991, 1 W. Bl. 212. A mere right of fishing or way-leave, or right of common, unconnected with any interest in the soil is not rateable: *R.* v. *Ellis*, 1 M. & S. 652; *R.* v. *Joliffe* 2 T. R. 90; *R.* v. *Churchill*, 4 B. & C. 750, 6 D. & R. 635; *R.* v. *Alnwick*,

Section 27. to such woods, mines, and quarries of stone, or other hereditaments, as have

9 Ad. & E. 444; but allotments made under inclosure Acts in lieu of rights of common are rateable: *Kemp* v. *Spence*, 2 W. Bl. 1245, and so is a waggon-way or towing-path with the right to the exclusive occupation of the ground: *R.* v. *Bell*, *ante*, p. 779.

The right to kill game affects the rateable value of the occupation of land. See *R.* v. *Thurstone*, 1 E. & E. 502, and *R.* v. *Williams*, *ib.*, at p. 510; but see now The Rating Act, 1874, 37 & 38 Vict. c. 54, s. 3, *post*.

A person holding property in its nature rateable is not discharged from liability, because he does so at a loss: *R.* v. *Parrot*, 5 T. R. 593; *R.* v. *Vange*, 3 Q. B. 242; *Governors of the Bristol Poor* v. *Wait*, 5 Ad. & E. 1.

Corporations seised in fee for their own profit are liable to the poor rate in their corporate capacity: *R.* v. *Sudbury*, 1 B. & C. 389, 2 D. & R. 651; *R.* v. *Gardner*, Cowp. 79.

As to cost-book companies, see *Kittow* v. *Liskeard*, L. R. 10 Q. B. 7, 44 L. J. M. C. 23, 31 L. T. N. S. 601, 23 W. R. 72.

An exemption from all taxes is an exemption from the poor rate: *R.* v. *London Gaslight Co.*, 8 B. & C. 54, 2 M. & R. 12. It is not necessary, in order to create a statutory exemption from poor rates, that the Act should in express terms exempt from such particular rates, but it is sufficient if by a fair construction of the words of the Act, the exemption clearly appears: *R.* v. *Barnby Dun*, 4 N. & M. 436, 2 Ad. & E. 551.

Now by 59 Geo. III. c. 12, it is enacted as follows:—

Section 19. And whereas in many parishes, and more especially in large and populous towns, the payment of the poor's rates is greatly evaded by reason that great numbers of houses within such parishes are let out in lodgings, or in separate apartments, or for short terms, or are let to tenants who quit their residences, or become insolvent before the rates charged on them can be collected; and it hath been found that in many instances the persons letting such houses do actually charge and receive much higher rents for the same upon the ground and expectation that the occupiers thereof cannot be effectually assessed to the poor's rate, and will not be charged with, or required to pay such rates, and do thus obtain an undue advantage to themselves, and by means of the premises the other inhabitants of such parishes are unjustly compelled to pay much more than their fair and due proportions of the charges of relieving and maintaining the poor; For remedy thereof be it further enacted, that from and after the first day of January, one thousand eight hundred and twenty, it shall be lawful for the inhabitants of any parish, in vestry assembled, and they are hereby empowered to resolve and direct that the owner or owners of all houses, apartments, or dwellings in such parishes being the immediate lessor or lessors of the actual occupier or occupiers, which shall respectively be let to the occupiers thereof at any rent or rate not exceeding twenty pounds, nor less than six pounds by the year, for any less term than one year, or on any agreement by which the rent shall be reserved or made payable at any shorter period than three months, shall be assessed to the rates for the relief of the poor for or in respect of such houses, apartments, or dwellings, and the outhouses and curtilages thereof instead of the actual occupiers; and the inhabitants so assembled in vestry may, and they are hereby authorised from time to time to rescind, renew, vary, and amend every such resolution and direction as they shall see occasion, so as no such resolution or direction shall extend to assess or charge the owner of any house, apartment, or dwelling which shall, with the outhouses and curtilages thereof, be let at a greater rent than twenty pounds, or less than six pounds as aforesaid; and the churchwardens and overseers of the poor of every such parish are hereby empowered and required to carry into effect all such resolutions and directions of the inhabitants in vestry assembled, and in pursuance and execution thereof, in all rates to be by them made for the relief of the poor, to assess by a fair and equal pound rate the owner or owners being the immediate lessor or lessors of the actual occupier or occupiers of every house, apartment, or dwelling, to which such resolution and direction shall extend, for or in respect of the same according to the actual rent at which every such house, apartment or dwelling shall be let, after making a reasonable deduction from such rent not exceeding in any case one half of the same; and upon nonpayment of the sum or sums so to be assessed, the same may and shall be levied upon and the payment thereof be enforced against such owner and owners, lessor and lessors,

so to be assessed, and his and their goods and chattels in like manner, as rates for the relief of the poor may by law be levied and recovered, and the payment thereof enforced, upon and against any actual occupier on whom the same are charged.

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Section 23. Provided, and be it further enacted, that nothing in this Act contained shall extend, or be construed to extend to give any power or authority, to assess the owner (not being the occupier) of any house, apartment, or dwelling, in any city, borough, or town corporate, in which the right of voting for the election of members to serve in Parliament shall depend upon the assessment of the voter to the poor rate, or to vary or affect the manner of assessing and charging any of the inhabitants or occupiers of the houses, lands, or tenements within such city, borough, or town corporate.

By 17 Geo. II. c. 38, s. 12, it is enacted that, whereas persons frequently remove out of parishes and places without paying the rates assessed on them, and other persons do enter and occupy their houses or tenements part of the year, by reason whereof great sums are annually lost to such parishes and places: Be it therefore enacted by the authority aforesaid, that where any person or persons shall come into or occupy any house, land, tenement, or hereditaments, or other premises out of or from which any other person assessed shall be removed, or which at the time of making such rate was empty or unoccupied, that then every person so removing from, and every person coming into or occupying the same, shall be liable to pay such rate in proportion to the time that such person occupy the same respectively, in the same manner and under the like penalties of distress as if such person so removing had not removed, or such person so coming in or occupying, had been originally rated and assessed in such rate; which said proportions, in case of dispute, shall be ascertained by any two or more of His Majesty's justices of the peace.

As to rating lands vested in the Secretary of State for War, see 23 & 24 Vict. c. 112, s. 33.

By 6 & 7 Will. IV. c. 71, the Act for the Commutation of Tithes in England and Wales, s. 69, every rent-charge payable instead of tithes is to be liable to parochial and county rates, in like manner as the tithes commuted were before the Act.

A parson is liable as well for tithes in his own occupation as for those he has let out at a certain rent. See *R.* v. *Turner*, 1 Bott. P. L. 5th edition, 126; *R.* v. *Shingle*, *ib.* 127. The proprietors of fish titheable by custom are liable to be rated, *R.* v. *Carlyon*, 3 T. R. 385. Payments in lieu of tithes settled under a compromise and confirmed by Act of Parliament, and a modus for tithes are rateable: *Rann* v. *Pickin*, Cald. 196, Doug. 406, n. But see *R.* v. *Shaw*, 12 Q. B. 419.

As to the principle upon which a commutation tithe rent-charge is to be assessed. See *R.* v. *Goodchild*, El. Bl. & El. 1, 27 L. J. M. C. 233, 4 Jur. N. S. 1050.

By 7 Will. IV. and 1 Vict. c. 69, s. 8, it is enacted that "all rates and charges to which any rent-charge payable in lieu of tithes shall be liable may be assessed upon the owner of the rent-charge, and the whole or any part thereof may be recovered from any one or more of the occupiers of the lands out of which such rent-charge shall issue, in case the same shall not be sooner paid by the owner of the rent-charge upon whom the same shall be assessed; in like manner as any poor rate assessed on such occupier or occupiers in respect of such lands may be recovered upon giving to such occupier twenty-one days' notice in writing previous to any one of the half-yearly days of payment of the rent-charge, and the collector's receipt for the payment of such rates and charges, or any part thereof, shall be received in satisfaction of so much of the rent-charge by the owner thereof; but no occupier shall be liable to pay at any one time, in respect of such rates and charges, any greater sum than the rent-charge payable in respect of the lands occupied by him in the same parish shall amount to for the current half year in which such notice shall have been given.

Woods, rights of shooting, &c., and mines.

As to rating of (1) land used for a plantation, or wood, or growth of saleable underwood and not subject to rights of common; (2) rights of killing game, &c., fishing, &c.; and (3) mines, see the Rating Act, 1874, 37 & 38 Vict. c. 54, s. 3, *post*.

It had previously been held that the express mention of coal mines in the 43 Eliz. c. 2, s. 1, excluded all other mines, and that *iron* and *lead* mines and their machinery were not rateable: *Morgan* v. *Crawshay*, L. R. 5 H. L. 304, 40 L. J. M. C. 202, 24 L. T. N. S. 889, 20 W. R. 554, where the cases are cited.

Section 27. heretofore been usually (1) rated to the highways; and provided also, that every such rate shall be signed by the said surveyor, and allowed (2) by two justices of

Whether particular works are a *mine* or not is a question of *fact: R.* v. *Dunsford*, 2 Ad. & E. 568, 4 N. & M. 349; *R.* v. *Brettell*, 3 B. & Ad. 424; *R.* v. *Sedgley*, 2 B. & Ad. 65.

As to the principle upon which mines are to be rated, see the Rating Act, 1874, 37 & 38 Vict. c. 54, ss. 7, 8, 9, 10, 13, *post;* and *Devonshire* (*Duke*) v. *Barrow Hæmatite Steel Co.*, L. R. 2 Q. B. D. 286, 46 L. J. Q. B. 345, 36 L. T. N. S. 355, 25 W. R. 469; *Chaloner* v. *Bolckow*, L. R. 3 App. Cas. 933, 47 L. J. C. P. 562, 39 L. T. N. S. 134, 26 W. R. 541; *Tyne Coal Co.* v. *Wallsend*, 46 L. J. M. C. 185, 35 L. T. N. S. 854; *Guest* v. *Eastdean*, L. R. 7 Q. B. 334, 41 L. J. M. C. 129, 26 L. T. N. S. 422, 20 W. R. 332; *R.* v. *Granville*, 9 B. & C. 188, 4 M. & R. 171; *R.* v. *Attwood*, 6 B. & C. 277, 9 D. & R. 328; *R.* v. *Parrot*, 5 T. R. 593.

Railway companies.

As to the principle upon which railway companies are to be assessed, see *R.* v. *London & S. W. Ry.*, 1 Q. B. 558, 11 L. J. M. C. 93, 2 G. & D. 49, 6 Jur. 686, 2 Rail. Cas. 629; *S. E. Ry.* v. *Dorking*, 3 El. & Bl. 491, 23 L. J. M. C. 84; *R.* v. *Grand Junction Ry.*, 4 Q. B. 18; *R.* v. *Brighton Ry.*, 15 Q. B. 313, 20 L. J. M. C. 124; *N. Stafford Ry.* v. *Rushton Spencer*, 30 L. J. M. C. 68, 7 Jur. N. S. 363, 9 W. R. 235; *R. Fletton*, 3 E. & E. 450, 30 L. J. M. C. 89, 9 W. R. 309; *London & N. W. Ry.* v. *Irthlingborough*, 35 L. T. N. S. 327; *E. London Ry.* v. *Whitechurch*, L. R. 7 H. L. 81, 43 L. J. M. C. 159, 30 L. T. N. S. 421, 22 W. R. 665. And as to branch lines, see *S. E. Ry.* v. *Dorking, supra; R.* v. *Great W. Ry.*, 15 Q. B. 1085; *R.* v. *London & N. W. Ry.*, L. R. 9 Q. B. 134, 29 L. T. N. S. 910, 22 W. R. 263, S. C. *nom.; R.* v. *Bedford Union Assessment Committee*, 43 L. J. M. C. 81.

Canals.

The proprietors of a canal or navigation are rateable in respect of the land covered with water in the particular parish in which the land lies: *R.* v. *Trent and Mersey Canal Co.*, 1 B. & C. 545, 2 D. & R. 752; *R.* v. *Milton*, 3 B. & Ald. 112; *R.* v. *Palmer*, 1 B. & C. 546; *R.* v. *Lower Mitton*, 9 B. & C. 810, 4 M. & R. 711. They are rateable in each parish in proportion to the profits which that part of the land covered with water which lies in the parish produces: *R.* v. *Kingswinford*, 7 B. & C. 236; *R.* v. *Woking*, 4 Ad. & E. 40, 5 L. J. M. C. 17; *R.* v. *Lower Mitton, supra.* If the profit vary in different parishes the rate must also vary: *Ibid.* As to how the expenses of repairing and maintaining the works are to be ascertained for the purposes of deduction, see *R.* v. *Coventry Canal Co.*, 1 El. & El. 572, 28 L. J. M. C. 102. As to how the value of the land is to be ascertained, see *R.* v. *Oxford Canal Co.*, 6 D. & R. 86; *R.* v. *Glamorganshire Canal Navigation*, 3 E. & E. 186, 29 L. J. M. C. 238, 6 Jur. N. S. 1146, 8 W. R. 690; *Regent's Canal Co.* v. *Hendon*, 6 El. & Bl. 852, 3 Jur. N. S. 208. But where the proprietors of a navigation possess a mere *easement* in a river they are not rateable: *R.* v. *Mersey Navigation*, 9 B. & C. 95, 4 M. & R. 84; *R.* v. *Aire and Calder Navigation*, 9 B. & C. 820, 4 M. & R. 728. But see *R.* v. *Chelsea Waterworks*, 5 B. & Ad. 156, 2 L. J. M. C. 98; *R.* v. *Thomas*, 9 B. & C. 114, S. C. *nom. R.* v. *Avon Co.*, 4 M. & R. 23.

Towing paths. Docks.

As to towing-paths, see *Bruce* v. *Willis*, 11 Ad. & E. 463, 3 P. & D. 220; *R.* v. *Mayor of London*, 4 T. R. 21. And as to docks, see *R.* v. *Hull Dock Co.*, 1 T. R. 219; *R.* v. *Bristol Dock Co.*, 1 Q. B. 535, 10 L. J. M. C. 105.

As to gas and water pipes, see *R.* v. *Brighton Gas Co.*, 5 B. & C. 466, 8 D. & R. 308; *R.* v. *Cambridge Gas Light Co.*, 8 Ad. & E. 73, 7 L. J. M. C. 50, 3 N. & P. 262, 2 Jur. 742; *R.* v. *Rochdale Waterworks Co.*, 1 M. & S. 634; *R.* v. *Chelsea Waterworks Co., supra.*

Exemptions.

Property in the occupation of the Crown is exempt from rating: see *Mersey Docks* v. *Cameron*, and *Jones* v. *Mersey Docks*, 11 H. L. Cas. 443, 35 L. J. M. C. 1. So, too, by statute, several descriptions of property are specially exempted, as, personal property, 3 & 4 Vict. c. 89; turnpike tolls, 3 Geo. IV. c. 126, s. 7; churches and chapels, 3 & 4 Will. IV. c. 30; scientific societies, &c., 6 & 7 Vict. c. 36; lunatic asylums, 16 & 17 Vict. c. 97, s. 35, &c.

Generally as to rating, see Castle on Rating.

By section 33, *post*, certain persons are exempt from the highway rate.

(1) The words "usually rated" refer not to legal rateability, but to the practice of rating in the particular parish: *R.* v. *Rose*, 6 Q. B. 153, 13 L. J. M. C. 155, 8 Jur. 777, 1 D. & M. 300. The words "such as" mean "of such description as:" *R.* v. *Randall*, 4 El. & Bl., 564, S. C. *nom.; R.* v. *Saunders*, 24 L. J. M. C. 57, 1 Jur. N. S. 255.

(2) A rate is not complete and valid until allowance and publication: *Bushell* v. *Luckett*, 2 C. B. 111.

the peace, and published (1) in the same way as poor rates are now allowed and published.

Secs. 27–29.

Surveyor may inspect rate book and obtain copies or extracts.

28. And in order to enable the surveyor (2) to form a proper judgment of any rate to be made in pursuance of this Act, be it further enacted, that it shall be lawful for the surveyor, and he is hereby authorised and empowered, at all reasonable times (3) to inspect, or by writing signed by him to grant authority to any person appointed by him to inspect, any of the rates made towards the relief of the poor of the parish of which he is surveyor, or the books wherein the assessments thereto shall be entered, without fee or reward (4); and the surveyor or person by him authorised as aforesaid shall be allowed to make a copy of such rate or books, or to take any extracts therefrom; and if any person in whose custody or power any of the said rates or books shall be, shall, when thereunto required in manner aforesaid, refuse or neglect to produce the same to the surveyor or person so by him authorised as aforesaid, as the case may be, or to allow such copy or extract to be made or taken, at all reasonable hours in the daytime, he shall for every such offence forfeit and pay any sum not exceeding five pounds.

Form and amount of rate.

29. And be it further enacted, that every rate shall contain the names of the occupiers, the description of the premises or property they occupy, and the full annual value (5) of such premises or property, and shall also specify the sum in the pound at which it is made (6); and no rate to be levied or assessed as aforesaid shall exceed at any one time the sum of tenpence in the pound, or the sum of two shillings and sixpence in the pound in the whole in any one year (7):

By 43 Eliz. c. 2, s. 1, the poor rate is to be made by and with the consent of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the parish or division. The consent is a mere ministerial act which is to be done by them as a matter of form, without exercising any discretion as to the propriety of the rate: *R.* v. *Edwards*, 1 W. Bl. 637; *R.* v. *Kynaston*, 2 East, 118; *R.* v. *Yarborough*, 12 Ad. & E. 416, 3 P. & D. 491, 4 Jur. 627. A *mandamus* will lie to compel justices to sign: *R.* v. *Dorchester*, 1 Str. 393. In allowing a rate two justices may act separately: *R.* v. *Hamstall Ridware*, 3 T. R. 380, at p. 381, *per* Ld. Kenyon, C.J.

(1) It is sufficient publication of a poor rate if a copy of it be affixed, before divine service on the Sunday next after its allowance, on the principal or most usual door of all the churches and chapels of the established church within the parish in which divine service is performed. See 17 Geo. II. c. 3, s. 1, and 7 Will. IV., and 1 Vict. c. 45, s. 2, *post*; *Ormerod* v. *Chadwick*, *ante*, p. 167; *R.* v. *Yarborough*, *supra*; and see the note (6), *ante*, p. 167.

The publication may be good, though it does not state the allowance by the justices: *Bennett* v. *Edwards*, 7 B. & C. 586.

As to consequence of omission to publish a highway rate, see *Le Feuvre* v. *Miller*, *ante*, p. 167.

As to appeal against rate, see section 105, *post*.

(2) See the interpretation clause, *ante*, p. 756.

(3) See *Spencely* v. *Robinson*, 3 B. & C. 658; *Bennett* v. *Edwards*, 7 B. & C. 586, S. C. in Exch. Ch.; *Edwards* v. *Bennett*, 6 Bing. 230. "Reasonable time" is a question of fact: *Tennant* v. *Bell*, 9 Q. B. 684, 16 L. J. M. C. 31, 10 J. P. 756.

(4) See the Highway Rate Assessment and Expenditure Act, 1882, 45 & 46 Vict. c. 27, s. 4, *post*.

(5) This is defined by 6 & 7 Will. IV. c. 96, s. 1. See the definition, *ante*, p. 45, and see note (2) there.

(6) See the form in the Schedule, Form No. 4, *post*. And see the order for accounts for boards for repair of the highways, *post*.

A rate ought to show for what purpose and by what authority it is made: *R.* v. *Eastern Counties Ry.*, 5 El. & Bl. 974.

As to South Wales, see the South Wales Highway Act, 23 & 24 Vict. c. 68, s. 48.

(7) But see sections 82 and 111, *post*.

A rate is bad which is made for a period for which a rate has already been made and

Secs. 29–33.

Provided nevertheless, that, with the consent of four-fifths of the inhabitants of any parish contributing to the highway rate assembled at a meeting specially called for that purpose, ten day's previous notice of the same having been given by the surveyor of the said parish, the rate to be levied and assessed as aforesaid may be increased to such sum as the said inhabitants so assembled may think proper (1).

30. [*Surveyor to have power to enforce composition in certain parishes* (2).]

Errors in rates may be rectified.

31. And be it further enacted, that whenever it shall appear to the said surveyor as aforesaid that there has been any omission or error in any rate or assessment made in pursuance of this Act of or in the name of any person, parson, or vicar, or of any house, shop, warehouse, coach-house, stable, cellar, vault, building, workshop, manufactory, garden ground, land, tenement, wood, tithe, mines, pits, or quarries of any mineral, stone, or other matter whatsoever, or hereditament liable to be rated for the purposes of this Act, it shall be lawful for the said surveyor as aforesaid, with the consent and approbation of the justices at a special sessions for the highways, to cause to be added or corrected in the said rate or assessment the name of the person, parson, or vicar omitted or erroneously stated, and a description of the property in respect of which he ought to be rated; and every such addition or correction made in any of the said rates, and signed by such justices, shall be as valid and effectual as if the same had been part of the original rate at the time when it was first made.

Persons may be excused by justices from payment of highway rate.

32. And be it further enacted, that it shall and may be lawful for the justices at the special sessions for the highways (3), on application made to them by any person rated to any rate under the authority of this Act to be discharged therefrom, on proof of his inability through poverty to pay such rate, the surveyor having been first summoned to appear on the part of the parish, to order and direct that such person shall be excused from the payment of such rate, and which order of the said justices is hereby declared to be final with respect to such rate (4).

Certain persons not liable to payment of highway rate.

33. And be it further enacted, that when property, or the owner or occupier in respect thereof, has, previous to the passing of this Act, been legally exempt from the performance of statute duty, or from the payment of any composition in lieu thereof, or of highway rate, the said property and the owners and occupiers thereof shall be exempt from the payment of the rate hereby imposed (5).

not quashed: *R.* v. *Fordham*, 11 Ad. & E. 73. But it seems a second rate may be made where a former rate for the same purpose has not been wholly collected. Rates will not be presumed to be made for the same period of time from the fact that they are co-existent: *R.* v. *Best and Others, JJ. of Surrey*, 16 L. J. M. C. 102, 11 Jur. 489, 5 D. & L. 40.

As to highway districts, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 33, *post*.

(1) This proviso does not apply to a parish formerly maintaining its own highways, part of which is included within an urban district, and which falls within section 216 (2) of the Public Health Act, 1875, *ante*: *Dyson* v. *Greetland Board*, 48 L. T. N. S. 636, 47 J. P. 552.

(2) Repealed. See the Highway Rate Assessment and Expenditure Act, 1882, 45 & 46 Vict. c. 27, s. 3, and notes, *post*.

(3) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

(4) If the occupier is excused on account of poverty, the owner cannot be rated: *R.* v. *Hull Dock Co.*, 3 B. & C. 516, 5 D. & R. 359.

(5) See *R.* v. *Heath*, L. R. 1 Q. B. 218, 35 L. J. M. C. 113, 13 L. T. N. S. 669, 14 W. R. 388, 30 J. P. 182, and *Freeman* v. *Read*, 4 B. & S. 174, 32 L. J. M. C. 226.

After a highway rate has been regularly made and assessed, and the time for appealing has passed, and no appeal has been made, the person so assessed cannot afterwards set up a claim of exemption: *R.* v. *JJ. of Oxfordshire*, 18 L. J. M. C. 222, 14 Jur. 575, and a rule may be obtained to compel justices to issue a distress warrant for the amount of the rate: *Ib.* Where the justices refuse to enforce payment an appeal under 20 & 21 Vict. c. 43, s. 2, is not the proper proceeding: *Walker* v. *Great W. Ry.*, 29 L. J. M. C. 107

See, also, *Fawcett* v. *Fowlis*, 7 B. & C. 394, 1 Moo. & R. 102.

Rates how to be recovered.

34. And be it further enacted, that for levying and recovering the said rate by this Act authorised to be made the surveyor shall have the same powers, remedies, and privileges as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor (1).

Ratepayers may divide among themselves the conveyance of stone, &c. for repair of highways which shall be paid for by the surveyor.

35. And be it further enacted, that it shall be lawful for two ratepayers of any parish, within six days next after the annual appointment of the surveyor, by a notice in writing, to require the said surveyor to call a meeting of the ratepayers of the said parish for the purpose hereafter mentioned, and the said surveyor shall call such meeting within eight days after the receipt of such notice, and shall give six days previous intimation of such meeting; and if at such meeting a majority of the ratepayers then and there assembled shall signify their consent thereto, it shall and may be lawful for the ratepayers keeping a team or teams of two or more horses or beasts of draught to divide among themselves, in proportion to the amount of rate to which they may respectively be assessed, the carrying of the material which may be required by the said surveyor for the repairs of the highways within such parish, and they shall be paid by the said surveyor for such carrying or task-work within one calendar month after having performed such service, after such rate per cubic yard of material per mile, and so in proportion for any less distance than a mile, as shall be fixed by the justices at their first meeting in

(1) See the notes to the preceding section.

By 43 Eliz. c. 2, s. 2, "it shall be lawful as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices of peace as is aforesaid to levy as well the said sums of money and all arrearages, of every one that shall refuse to contribute according as they shall be assessed by distress and sale of the offender's goods as the sums of money or stock which shall be behind upon any account to be made as aforesaid, rendering to the parties the overplus." See this statute, *ante*, p. 779. This statute is the foundation of the proceeding to recover poor rates. The subsequent Acts dealing with the same subject, viz., 17 Geo. II. c. 38, ss. 7—11, 41 Geo. III. c. 23, ss. 1—8, 54 Geo. III. c. 170, s. 12, 57 Geo. III. c. 93, s. 1 & C. (extended to highway rates, &c., by 7 & 8 Geo. IV. c. 17) and 12 & 13 Vict. c. 14 will be found, *post*. Further, as to collection and levy of the poor rate, see Archbold's Poor Law, 13 ed., pp. 1007, *et seq*.

By the Bankruptcy Act, 1883, s. 40, "In the distribution of the property of a bankrupt there shall be paid in priority to all other debts: (*a*) all parochial or other local rates, due from the bankrupt at the date of the receiving order, and having become due, and payable within twelve months next before such time, and all assessed taxes, land tax, property or income tax, assessed on him up to the 5th day of April next before the date of the receiving order, and not exceeding in the whole one year's assessment. (*b*) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding fifty pounds; and (*c*) all wages of any labourer or workman not exceeding fifty pounds, whether payable for time or piece-work in respect of services rendered to the bankrupt during four months before the date of the receiving order. (2) The foregoing debts shall rank equally between themselves, and shall be paid in full unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves. (3) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. (4) Subject to the provisions of this Act all debts proved in the bankruptcy shall be paid *pari passu*. (5) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four pounds per centum per annum on all debts proved in the bankruptcy. (6) Nothing in this section shall alter the effect of section 5 of the Act 28 & 29 Vict. c. 86, 'to amend the Law of Partnership,' or shall prejudice the provisions of the Friendly Societies Act, 1875."

special sessions (1) for the highways after the twenty-fifth day of March in every year (2), which rate the said justices are hereby required to fix at such special sessions: Provided always, that such carrying or task-work shall be performed at such times and places and in such manner as the said surveyor may direct (the periods of spring, seed-time, and harvest always excepted); and that in case the said surveyor shall not approve of the manner in which such carrying or task-work shall be performed, it shall be lawful for the justices at a special sessions for the highways to hear the complaint of such surveyor in that respect, and to award such pecuniary redress or forfeiture against the party offending as to them shall appear reasonable (3).

Surveyor, with consent of vestry, may appoint collector of rates.

36. And be it further enacted, that the surveyor of any parish, the consent of the majority of the inhabitants in vestry assembled (4) being first had and obtained, may from time to time appoint any number of collectors of the said rates, and may remove any such collector, and appoint another in his stead, and make such allowance to such collector, out of the monies to be received under this Act, as the said inhabitants in vestry assembled shall think reasonable; and the said collector is hereby declared to have all the same powers, remedies, and privileges for the levying and enforcing the payment of such rates as the surveyor nominated or appointed under the authority of this Act (5).

Security to be taken from collector.

37. And be it further enacted, that it shall be lawful for the said surveyor and he is hereby required to take security from every collector appointed by virtue of this Act for the due execution of his office of collector, which security shall be to the full amount of the sum likely to be in the hands of the said collector at any one time, and shall be by bond without stamp (6).

Collector to make out accounts of all monies received under this Act, &c.

38. And be it further enacted, that every collector appointed by virtue of this Act shall under his hand, and at such time and in such manner as the surveyor may direct, deliver to the said surveyor as aforesaid true and perfect accounts in writing of all moneys which shall have been by such collector received by virtue of this Act, and also a list of the names of all such persons as shall have neglected or refused to pay their respective rates, and of the moneys due from them respectively; and that every such collector shall pay all such moneys as shall remain due from him to the said surveyor as aforesaid; and if any such collector shall refuse or neglect to make and render such account, or to produce and deliver up the list of persons neglecting and refusing to pay their rates as aforesaid, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said surveyor as aforesaid, or to such person as he shall appoint to receive the same, within three days after being thereunto required by the said surveyor as aforesaid, by notice in writing under his hand given to or left at the usual place of abode of such collector, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said surveyor as aforesaid, respecting the same, then and in every such case, upon complaint made by the said surveyor as aforesaid of any such refusal or wilful neglect as aforesaid to any justice of the peace, such justice may and he is hereby authorized and

(1) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post.*

(2) This provision as to time is directory only: *R.* v. *JJ. of Leicestershire*, 7 B. & C. 6.

(3) Team-labour should not be made the subject of deduction from rate, but be met by specific payments and entered in that portion of "repairs expenditure account" appropriated to team-labour. See Letter of Local Government Board of 27th May, 1879, amongst the Circulars, &c., *post.*

(4) As to vestry meetings, see the notes to section 6, *ante*; as to places where there is no vestry see section 5, *ante.*

(5) See section 34, *ante.*

(6) It would seem that the appointment may be complete, though the security has not been given: *R.* v. *Patteson*, 4 B. & Ad. 9.

As to right of guardians to recover against surety to a bond by a collector of poor-rates, though overseers have neglected to call upon collector to account, see *Guardians of Mansfield Union* v. *Wright*, L. R. 9 Q. B. D. 683, affirming S. C. 46 J. P. 200, Williams, J. See, also, *Peppin* v. *Cooper*, 2 B. & Ald. 431; *Mayor of Cambridge* v. *Dennis*, E. B. & E. 660.

required to issue a summons under his hand for the collector so refusing or neglecting to appear before any two justices of the peace; and upon the said collector appearing, or having been so summoned and not appearing, without some sufficient or reasonable excuse, or not being found, it shall be lawful for the said two justices to hear and determine the matter; and if upon confession of the party, or by the testimony of any credible witness on oath, it shall appear to such justices that any moneys remain due from such collector, such justices may and they are hereby authorized and required, upon non-payment thereof, by warrant under their hands to cause such money to be levied by distress and sale of the goods and chattels of such collector; and if no goods and chattels of such collector shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, then and in every such case such justices, shall and they are hereby required to commit such offender to the Common Gaol or House of Correction for the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding six calendar months, or until he shall have paid such moneys as aforesaid or compounded with the surveyor as aforesaid for such money (which composition the said surveyor, with the consent of the inhabitants in vestry (1), or, in any parish where they do not meet in vestry, with the consent of the inhabitants contributing to the highway rate (2), at a public meeting assembled, is hereby empowered to make and receive); or if it shall appear to such justices that such collector had refused or wilfully neglected to render and give such accounts, or to produce and deliver the list of persons neglecting and refusing to pay their rates as aforesaid, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such collector, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such collector shall, on conviction thereof, forfeit for such offence any sum not exceeding twenty pounds, and in default of payment thereof shall be committed to the Common Gaol or House of Correction for the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding four calendar months, or until he shall have given a true and a perfect account as aforesaid, and delivered such list as aforesaid, and delivered up such books, papers, and writings, or given satisfaction in respect thereof to the said surveyor: Provided always, that no conviction or imprisonment of such collector as aforesaid shall exonerate or discharge any security taken from him on his appointment as aforesaid (3).

Separate accounts to be kept.

39. And be it further enacted, that the surveyor in every parish shall keep separate and distinct accounts of the moneys levied for the highway rate; and such accounts shall specify the different sums and the times when and the persons to whom and by whom the same shall have been collected and paid (3).

Surveyor to keep books and account of moneys received, &c.

40. And be it further enacted, that the said surveyor, district surveyor, or assistant surveyor (4), as the case may be, shall and he is hereby required from time to time to keep a book, in which shall be entered a just and true and particular account of all money which shall have come to his hands as surveyor, district surveyor, or assistant surveyor of the parish for the purposes of this Act, and to whom, and on what occasion, and for what work, and in what place, and on what day he shall have paid or applied the same, and also an account of all

(1) See notes to section 6, *ante*. (2) See section 5, *ante*.

(3) Further as to accounts, see the Orders of the Local Government Board as to accounts, *post*. And see *Taylor* v. *Stansfield*, 6 L. T. N. S. 26. See, also the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 18, *post*, and the District Auditors Act, 1879, 42 Vict. c. 6, s. 3, *post*.

As to audit of accounts, see the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, *post*.

This and the following sections, viz., sections 39, 40, 43, 44, 45, relating to surveying accounts, do not apply to the highway board of any district formed under the Highway Act, 1862; see that Act, 25 & 26 Vict. c. 61, s. 42 (8), *post*.

(4) See *Adams* v. *Lakeman*, E. B. & E. 615.

Secs. 40–43.

to be open to inspection of rated inhabitants.

tools, materials, implements, and other things provided by him for the repair of the said highways (1); and such books shall at all reasonable times be open to the inspection of every inhabitant rated to the highway rate of the parish, or of any of the parishes united into a district, without fee or reward, and every such inhabitant may take copies or extracts from the said book, or any part thereof, without paying for the same; and in case the said surveyor, district surveyor, or assistant surveyor shall neglect to provide such book, or to enter therein every sum received or paid by him within one week after the same shall have been received or paid, or shall refuse to permit or shall not permit any such inhabitant as aforesaid at any reasonable time to inspect the same, or take copies or extracts, as aforesaid, such surveyor, district surveyor, or assistant surveyor shall forfeit and pay any sum not exceeding five pounds for each default, to be levied and applied in manner herein provided (2).

The property in all books, &c. to be vested in surveyor for the time being.

41. And be it further enacted, that all the said books, papers, writings, and accounts, and all materials, tools, and implements, which shall be provided in pursuance of this Act, for repairing or preserving the highways, and also the scrapings of the said highways, shall be vested in the surveyor for the time being; or in case a district surveyor shall be appointed, then all such books, papers, writings, and accounts, and all materials, tools, implements, and scrapings, shall be invested in the district surveyor (3).

Surveyor on quitting office, to deliver books, &c. to succeeding surveyor.

42. And be it further enacted, that the said surveyor, district surveyor, or assistant surveyor (4), shall, within fourteen days after leaving his office, deliver such books and accounts, verified as herein directed, together with all such sums of money (5) as shall be due from him, and likewise all tools, materials, implements, and other things as aforesaid, to his successor in office, or retain the same in his hands, and account for them in his next account, if he shall be continued surveyor or district surveyor of such parish in the succeeding year; and in case such surveyor or district surveyor shall neglect to deliver within such time as aforesaid the said books, papers, writings, and accounts, and such tools, materials, implements, and other things, in manner aforesaid, he shall for every such offence forfeit any sum not exceeding five pounds; and in case he shall make default in the paying or accounting for the money so due from him within the time and according to the directions aforesaid he shall forfeit double the money so due (6).

Penalty for neglect.

In case of death of surveyor, executors to account.

43. And be it further enacted, that in case of the death of any such surveyor, district surveyor, or assistant surveyor, before he shall have paid and fully satisfied all the moneys which he shall have received by virtue of this Act, then and in every such case the executors or administrators of such surveyor, district surveyor, or assistant surveyor so dying shall pay and satisfy the same, out of his estate and effects, unto the succeeding surveyor, district surveyor, or assistant surveyor, in

(1) See note (3), *supra*.

(2) Further as to custody of vestry books, see 58 Geo. III. c. 69, s. 6, and 13 & 14 Vict. c. 57, s. 7.

(3) By 7 Geo. IV. c. 64, s. 16, in any indictment or information for any felony or misdemeanour committed on or with respect to any materials, &c., it shall be sufficient to aver that such things are the property of the surveyor for the time being of the parish, &c., and it shall not be necessary to specify the name of such surveyor; and by 11 & 12 Vict. c. 43, s. 5, in any information or complaint or proceedings thereon in which it shall become necessary to state the ownership of any property, it shall be sufficient to describe it as the property of the surveyor or surveyors for the time being, without naming him or them.

As to vesting of property after formation of highway board, see the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 11, *post*.

(4) See *Adams* v. *Lakeman*, *ante*, p. 787.

(5) See section 103, *post*.

(6) See *Hendebourck* v. *Langton*, 10 B. & C. 546, 3 C. & P. 566.

As to recovery of penalties, see section 103, *post;* and see *Collier* v. *Kilham*, 21 L. J. Q. B. 65, 15 Jur. 1175.

This section does not apply to the highway board of any district formed under the Highway Act, 1862. See 25 & 26 Vict. c. 61, s. 42 (8), *post*.

like manner as other debts are directed by law to be discharged by such executors or administrators, and also shall deliver up all books, papers, writings, assessments, tools, materials, and implements, and other things concerning his office, which shall have come to the hands of such executors or administrators who shall and may plead such payment in any action or suit which may be brought against them on account of the said estate and effects, and give the same in evidence; and in case of the non-payment of such moneys, or the non-delivery of such books, papers, writings, assessments, tools, materials, implements, and things, for the space of one calendar month after demand made thereof in writing by or on behalf of the said succeeding surveyor, it shall be lawful for the said succeeding surveyor to commence and prosecute an action or actions in any of His Majesty's Courts of Record at Westminster against such executors or administrators, for the recovery of the said moneys, or for the recovery of damages for the detention of such books, papers, writings, assessments, tools, materials, implements, and things, in which action or actions full costs of suit shall be recovered by the said succeeding surveyor (1).

44. [*Yearly accounts to be made by Surveyors, &c., and laid before the justices at a special sessions for the highways. Subject to appeal. Surveyors appointed under the Act of* 13 *Geo. III., to pass their accounts at special sessions after* 25*th March*, 1836] (2).

Justices to hold special sessions for purposes of this Act.

45. And be it further enacted, that it shall and may be lawful for the justices of the peace within their respective divisions, or any two or more of them, and they are hereby required to hold not less than eight, nor more than twelve, special sessions (3) in every year for executing the purposes of this Act, the days of the holding thereof to be appointed at a special sessions to be held within fourteen days after the twentieth day of March in every year: Provided always, that it shall not be necessary to cause any notice to be given or sent to any justice acting and residing within such limits of the day or time of the holding thereof (4). [*At such sessions surveyor to verify his accounts, and make returns of the state of the roads, &c.* (5).

Surveyor may contract for getting and carrying materials

46. And be it further enacted, that in every parish the surveyor may and is hereby authorised, with the consent of the inhabitants in vestry (6) assembled, to contract for purchasing, getting, and carrying the materials required for the repair of the highway (7); and if any surveyor shall have any part, share, or interest,

(1) This section does not apply to the highway board of any district formed under the Highway Act, 1862. See 25 & 26 Vict. c. 61, s. 42 (8), *post.*

(2) Repealed. See Statute Law Revision Act, 1874, 37 & 38 Vict. c. 35, and Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, *post.*

(3) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post.* As to South Wales, see 23 & 24 Vict. c. 68, s. 42.

(4) This section does not apply to the highway board of any district formed under the Highway Act, 1862. See that Act, 25 & 26 Vict. c. 61, s. 42 (8), *post.*

(5) Repealed by Highway Accounts Returns Act, 1879, 42 & 43 Vict. c. 39, s. 3, *post.*

(6) As to places where there is no vestry meeting, see section 5, *ante.*

As to vestry meetings, see the note to section 6, *ante.*

(7) By the Stamp Act, 1870, 33 & 34 Vict. c. 97, Schedule Part I. tit. "Agreement or Contract," the stamp upon any "agreement or contract made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways" is sixpence.

As to vesting of materials in the surveyor for the time being, see section 41, *ante.* And as to penalty for taking away materials belonging to surveyor, see the next section.

As to land allotted under Inclosure Acts to the parish for materials, see section 48, and notes, *post.*

As to surveyor obtaining materials in waste or common ground, rivers or brooks, &c., within the parish, see sections 51, *et seq.*, *post.*

As to whether surveyor obtaining materials and appropriating them to his own use may be indicted for obtaining goods by false pretences or for larceny, see *R.* v. *Richardson*, 1 F. & F. 488.

Secs. 46–48.

but not to share in any contract, or let to hire any team, or dispose of any timber, stones, &c., without licence from two justices. Penalty.

directly or indirectly, in any contract or bargain for work or materials to be made, done, or provided upon, for, or on account of any of the highway or other works whatsoever under his care or management, or shall upon his own account, directly or indirectly, use or let to hire any team (1), or use or sell or dispose of any materials to be used or employed in making or repairing such highway or other works as aforesaid (unless a licence in writing for the sale of any such materials, or to let to hire any such team, be first obtained from two justices of the peace in special sessions (2) assembled), he shall forfeit for every such offence, on conviction, any sum not exceeding ten pounds, and be for ever after incapable of being employed as a surveyor with a salary under the authority of this Act (3).

Penalty on taking away materials belonging to surveyor.

47. And be it further enacted, that if any person shall, without the consent of the surveyor, take away materials which shall have been purchased, gotten, dug, or gathered for the repair or use of any highway, or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any highway, before the surveyor and his workmen shall have discontinued working therein for the space of six weeks (except the owner of any private grounds, and persons authorised by such owner to get materials in such quarry for his own private use, and not for sale), every person so offending shall for every such offence forfeit and pay, on conviction thereof, any sum not exceeding ten pounds (4).

Land allotted to the parish for materials when exhausted may be sold.

48. And whereas, under Acts of Parliament heretofore made and which may hereafter be made for the inclosing of waste land, parcels of land have been and may be expressly allotted to parishes or to the surveyor of the highways for the purpose of obtaining materials for the repair of the highways in such parish (5), and the materials in such parcels of land have been and may be exhausted: Be it therefore enacted, that in such cases it shall and may be lawful for the surveyor of such parish for the time being, by and with the consent of the vestry, and he is hereby authorised and required, with the consent in writing of the justices of the peace at a special sessions for the highways, to sell and convey to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, the said parcels of land from which the said materials have been so exhausted as aforesaid, at and for such price as the said justices may deem fair and reasonable (6),

(1) See section 35, *ante;* and see *Marlborough (Duke)* v. *Osborn*, 5 B. & S. 67, 33 L. J. Q. B. 148, 10 L. T. N. S. 28, 12 W. R. 418, 28 J. P. 532.

(2) See now 26 & 27 Vict. c. 101, s. 46, *post.*

(3) This section does not apply to the highway of, or any parish within, any highway district. See 27 & 28 Vict. c. 101, s. 20, *post.* But see 26 & 27 Vict. c. 61, ss. 1, 2, and 27 & 28 Vict. c. 101, s. 20, *post.*

This section makes the contract illegal: *Barton* v. *Piggott*, L. R. 10 Q. B. 86, 44 L. J. M. C. 5, 31 L. T. N. S. 404, 23 W. R. 233, 39 J. P. 454. See further *Fletcher* v. *Hudson*, *ante*, p. 238.

A surveyor, who without the consent of the vestry and without the certificate of justices does work and supplies materials, doing the team work himself, is not entitled to recover for the labour or materials: *Wakefield* v. *Seneschal*, 29 J. P. 375.

As to recovery of penalties, &c., see sections 101, 103, *post.*

(4) See section 41, and notes thereto, *ante.*

(5) See the General Inclosure Act, 1845, 8 & 9 Vict. c. 118, s. 72; and see *Ellis* v. *Bromley Board*, 45 L. J. Ch. 763, 35 L. T. N. S. 182, 24 W. R. 716, W. Notes, 1876, p. 156; *Smith* v. *Stocks*, 10 B. & S. 701, 38 L. J. Q. B. 306, 20 L. T. N. S. 740, 17 W. R. 1135, 34 J. P. 181; *Thew* v. *Wingate*, 10 B. & S. 714, 34 J. P. 183; *Rylatt* v. *Marfleet*, 14 M. & W. 233.

(6) The justices must fix the price fairly as between the adjoining owner and the parish and not with regard to the interests of the parish exclusively; they must take into account not simply what would be given by any body else, but what would be a fair price for the adjoining owner to pay: *R.* v. *Drayton Highway Board*, 1 Q. B. D. 608, 45 L. J. M. C. 126, 40 J. P. 325; S. C. *nom. Griffin* v. *Drayton Board*, 35 L. T. N. S. 251.

As to sale to surveyor, see *R.* v. *JJ. of Cambridgeshire*, 4 Ad. & E. 111.

and with the money arising therefrom, and with such consent as aforesaid, to purchase other lands in lieu thereof (1).

Tenant for life, &c., may renounce damages.

49. And be it further enacted, that it shall be in the power of tenants for life, ecclesiastical and lay corporations, and the proprietors of entailed estates, and of the trustees and guardians of any person under any legal disability or incapacity, to give up and renounce every claim of damage or compensation for such ground and materials as any highway may occupy on their respective properties, and that such renunciation shall be equally binding on the heirs and successors of such persons: Provided nevertheless, that such renunciation of claim of damage or compensation be in writing, and signed by such tenant for life, proprietor, trustee, or guardian, in the presence of two witnesses, or in the case of corporations in such manner and form as is usually adopted by such corporations respectively; and such renunciation shall be enrolled at the quarter sessions which shall be held next after the signing or execution thereof.

Persons enfeoffed with lands for maintenance of highways, &c., shall let them to farm at the most improved value, with consent of justices.

50. And be it further enacted, that when any lands or tenements have been or shall be given for maintenance of highways, the profits and proceeds of which are to be applied and disposed of for no other use, intent, or purpose whatsoever, all persons who are or shall be enfeoffed or trusted with any such lands or tenements shall, and they are hereby authorised and required to let them to farm at the most improved yearly value, without fine, for any term not exceeding ninety-nine years: Provided nevertheless, that previous to the granting of such lease the consent of the justices at a special sessions (2) for the highways, neither of such justices being interested therein, by writing under their hands, shall be obtained as to the amount of rent to be received and the duration of the term (3).

Materials where and in what manner to be taken by surveyors.

51. And be it further enacted, that it shall and may be lawful for every such surveyor in any waste land or common ground, river, or brook, within the parish for which he shall be surveyor, or within any other parish wherein gravel, sand, stone, or other materials are respectively likely to be found (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish), to search for, dig, get, and carry away the same (4), so that the said surveyor doth not thereby, divert or interrupt the course of such river or brook, or prejudice or damage any building, highway, or ford, nor dig or get the same out of any river or brook within the distance of one hundred and fifty feet above or below any bridge, nor within the like distance of any dam or weir; and likewise to gather stones lying upon any lands or grounds within the parish where such highway shall be, for such service and purpose, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, without making any satisfaction for the said materials, but satisfaction shall be made for all damages done to the lands or grounds of any person or persons by carrying away the same, in the manner hereinafter directed for getting and carrying materials in inclosed lands or grounds (5); but no such stones shall be gathered without the consent of the owner of such lands or grounds, or a licence (6) for that purpose from two justices at a

Power to gather stones without making satisfaction, but satisfaction to be made for damages done by carrying them away.

(1) By 8 & 9 Vict. c. 71, s. 1, the provisions of this section are extended to all lands belonging to parishes, or to surveyors of highways, for the purpose of obtaining materials for repair of highways which had been, or should thereafter be used for that purpose as soon as the material shall have been exhausted.

Now as to sale of exhausted parish lands generally, see the Sale of Exhausted Parish Lands Act, 1876, 39 & 40 Vict. c. 62, *post.*

As to obtaining materials from commons regulated by provisional order of the Inclosure Commissioners, confirmed by Parliament under the Commons Act, 1876, see that Act, viz., 39 & 40 Vict. c. 56, s. 20.

(2) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post.*

(3) As to letting by surveyor of land allotted under the General Inclosure Act, 1845, see the Act, viz., 8 & 9 Vict. c. 118, s. 72.

(4) See sections 46, 48, *ante.*

(5) See section 54 and notes thereto, *post.*

(6) See the Schedule to this Act, Form No. 10, *post.*

Secs. 51–53.

special sessions (1) for the highways, after having summoned such owner to come before him (*sic*) and hear his reasons, if he shall appear and give any, for refusing his consent (2).

Not to extend to sea beach, &c.

52. Provided always, and be it further enacted, that nothing in this Act contained relative to the gathering or getting of stones or other materials shall extend to any quantity of stones or other materials thrown up by the sea commonly called beach, where the removal of the same would cause any damage or injury by inundation to the lands adjoining, or increased danger of encroachment by the sea (3).

Notice to be given before materials are taken from private lands.

53. And be it further enacted, that it shall not be lawful for any surveyor, or any other person acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any highway out of or from any inclosed land or ground (4) until one calendar month's notice in writing, signed by the surveyor, shall have been given to the owner of the premises from which such materials are intended to be taken, or to his known agent, and to the occupier of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or agent, and also of such occupier, to appear before the justices at a special sessions (1) for the highways, to show cause why such material shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorise (5) such surveyor or other person to dig, get, gather, take, and carry away such materials at such time or times as to such justices shall seem proper (6): and if such owner, agent, or occupier shall neglect or refuse to appear by himself or his agent the said justices shall and may (upon proof on oath of the service of such

If the occupier shows cause against the removal, two justices shall decide thereon.

(1) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

(2) See further sections 52, 53, 54, *post*.

As to custom or right by prescription to take stones, gravel, &c., from a person's land for the purpose of repairing highways, see *Padwick* v. *Knight*, 7 Exch. 854, 22 L. J. Ex. 198; *Constable* v. *Nicholson*, 14 C. B. N. S. 230, 32 L. J. C. P. 240, 11 W. R. 698; *Pitts* v. *Kingsbridge Highway Board*, 25 L. T. N. S. 195, 19 W. R. 884.

The justices are entitled under this section to grant a licence to gather stones upon inclosed land within the parish for the repair of its highways, without making any compensation to the owner for the value of the stones. *Alresford Rural Sanitary Authority* v. *Scott*, L. R. 7 Q. B. D. 210, 50 L. J. M. C. 103, 45 L. T. N. S. 73, 29 W. R. 741, 45 J. P. 619.

As to obtaining materials from commons, see note (1), *ante* p. 791.

As to exemption of materials, &c. for repairs of highway from tolls, see 3 Geo. IV. c. 126, ss. 26, 27, 28, 32 and 4 Geo. IV. c. 95, ss. 10 and 25, cited in note to the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 37, *post*; and the following cases: *Deards* v. *Goldsmith*, 40 L. T. N. S. 328; *Osmond* v. *Widdicombe*, 2 B. & Ald. 49; *Lord* v. *Whittaker*, 19 J. P. 742.

(3) See *Padwick* v. *Knight* and *Pitts* v. *Kingsbridge Highway Board*, *supra*; and *Clowes* v. *Beck*, 13 Beav. 347, 20 L. J. Ch. 505, 2 De G. M. & G. 731.

(4) By 4 & 5 Vict. c. 51 it is enacted that "all lands and grounds which shall be in the exclusive occupation of one or more persons for agricultural purposes, shall be deemed and taken to be inclosed lands or grounds within the meaning of the said recited Acts (*i.e.*, 3 Geo. IV. c. 126, An Act for Regulating Turnpike Roads, and 5 & 6 Will. IV. c. 50, s. 53), although the same may not be separated from any adjoining lands or grounds of other persons, or from the highway, by any fence or other enclosure." See *Tapsell* v. *Crosskey*, 7 M. & W. 441, which had been decided previously.

(5) See the Schedule, Form No. 10, *post*.

(6) The authority given by the Act must be construed strictly. The licence cannot be granted for all future time, or indefinitely, but only for a definite occasion or occasion co-extensive with the existing necessity for material: *Manvers* (*Earl*) v. *Bartholomew*, L. R. 4 Q. B. D. 5, 48 L. J. M. C. 3, 39 L. T. N. S. 327, 27 W. R. 167, 43 J. P. 54. See *R.* v. *Manning*, 1 Burr. 382, 2 Ken. 561.

notice) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his agent, had attended.

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If sufficient materials cannot be found in waste lands, &c., surveyor may take them from the several or inclosed lands or grounds, making satisfaction to the owners.

54. And be it further enacted, that it shall be lawful for every such surveyor, for the use aforesaid, by licence in writing (1) from the justices at a special sessions (2) for the highways, to search for, dig, and get materials, if sufficient cannot be had conveniently within such waste lands, common grounds, rivers, or brooks, in or through any of the several or inclosed lands or grounds of any person whomsoever (3) (such lands or grounds not being a garden (4), yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding one hundred acres in extent (5)), within the parish where the same shall be wanted, or within any other parish adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish where such highways lie, or in the waste land, or common grounds, rivers, or brooks of such adjacent parish, and that a sufficient quantity of materials will be left for the use of the parish where the same shall be, and to take and carry away so much of the said materials as by the discretion of the said surveyor shall be thought necessary to be employed in the amendment of the said highways, the said surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands or grounds by the getting and carrying away the same, as shall be settled and ascertained by order of the justices at a special sessions for the highways (6).

If surveyor shall make pits or holes in getting materials, he shall cause them to be filled up or sloped down and fenced off; and in like manner all those already made.

55. And be it further enacted, that if any surveyor or person employed by him shall, by reason of the searching for, digging, or getting any materials for repairing any highways, make any pit or hole in lands, common grounds, rivers, or brooks as aforesaid wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open, and within three days after such pit or hole shall be opened or made, where no materials shall be found, cause the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same, and where any such materials shall be found, within fourteen days after having dug up sufficient materials in such pit or hole, cause the same to be filled up or sloped down and fenced off, if required by the owner of the land or ground, and so continued; and every surveyor shall, within twenty-one days after he shall have been appointed to that office, cause all the said pits and holes which shall then be open and not likely to be further useful to be filled up or sloped down in manner aforesaid, and if they are likely to be further useful he shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle; and in case such surveyor or person shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of ten shillings for every such default; and in case such surveyor or person shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having

Penalties on surveyor for neglect herein.

(1) See the Schedule, Forms Nos. 10, 11, *post.*

(2) See now 27 & 28 Vict. c. 101, s. 46.

(3) See sections 51, 52, 53 and notes thereto, *ante.*

(4) It would seem that this applies to garden grounds used for trade as well as private gardens: *Hughes* v. *Trustees of Morden College*, 1 Ves. Sen. 187, Supp. 108.

(5) These exceptions apply only to the "getting" or "winning" of the materials, and it is no objection to the grant of a licence that the materials, when got, must be carried through a "garden, yard, avenue, &c." *Ramsden* v. *Yeates*, L. R. 6 Q. B. D. 583, 50 L. J. M. C. 135, 44 L. T. N. S. 612, 29 W. R. 628, 45 J. P. 538.

(6) See *Boyfield* v. *Porter*, 13 East. 200; *St. Pancras Vestry* v. *Batterbury*, *ante*, p. 182 and *Peters* v. *Clarson*, *post*, p. 798.

As to the present jurisdiction of justices at petty sessions, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post.*

Secs. 55–58.

right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before the justices at a special sessions (1) for the highways, such surveyor, person or persons, shall forfeit and pay any sum not exceeding ten pounds for such neglect, to be determined and adjudged by such justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, and toward the repair of the roads in the parish where the offence shall be committed, in such manner as the said justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied (2).

Penalty on surveyor allowing any heap of stone, &c., to remain on highway at night.

56. And be it further enacted, that if any surveyor or district surveyor shall lay or cause to be laid any heap of stone or any other matter or thing whatsoever upon any highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the said surveyor to guard against the same, he shall forfeit for every such offence any sum not exceeding five pounds (3).

Surveyor damaging mills, dams, &c., by digging materials to forfeit not exceeding £5.

57. And be it further enacted, that if any surveyor shall dig or cause to be dug materials for the highways, whereby any bridge, mill, building, dam, highway, occupation road, ford, mines, or tin works, or other work may be damaged or endangered, he shall forfeit for every such offence, on conviction, any sum not exceeding five pounds, at the discretion of the justices before whom the complaint thereof shall be made, notwithstanding his liability to any civil action to which he may make himself liable by such act (4).

Where a highway lies in two parishes, the justices to determine what parts shall be repaired by each.

58. And whereas it frequently happens that the boundaries of parishes pass across or through the middle of a common highway, and one side of such highway is situated in one parish and the other side in another parish, whereby great inconveniences often arise in repairing the same: Be it enacted, that the justices at a special sessions (1) for the highways, on complaint (5) of any surveyor of any parish (stating in writing, and on a plan thereunto annexed, that there is such a highway one side whereof ought to be repaired by one parish and the other side by another, and particularly describing the same by metes, bounds, and admeasurement thereof), may issue their summons (6), with a copy of such writing and plan thereunto annexed, to the surveyor of such other parish, to appear before them on a day mentioned in such summons; and if the parties appear such justices may then proceed finally to decide the matter, in manner herein mentioned in case all the parties shall consent thereto; but in case the surveyor summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter for any further time, not more than twenty-one days nor less than fourteen days from the date of such adjournment, of which the surveyor not appearing, or appearing shall require further time, shall have notice, on which day the said justices shall proceed to hear the parties and their witnesses, and, whether the party summoned does or or does not appear, shall proceed to examine and finally determine the matter in form following; (that is to say) that it shall and may be lawful for such justices and they are hereby required to divide the whole of such common highway, by a transverse line crossing such highway, into equal parts, or into such unequal parts and proportions as, in consideration of the soil, waters, floods, and inequality of such highway, or any other circumstances attending the same, they in their discretion shall think just and right, and to declare, adjudge, and order that the whole of such highway on both sides thereof in any of such parts shall be maintained and repaired by one of

(1) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

(2) See sections 101 and 103, *post*.

As to actions against surveyor, see section 109 and notes thereto, *post*.

(3) See further sections 72, 73, *post*, and see *Fearnley* v. *Ormsby*, *post*, p. 805.

As to recovery of penalties and forfeitures, see sections 101, 103, *post*.

As to actions against surveyor, see section 109, *post*, and *Davis* v. *Curling*, 8 Q. B. 286, 15 L. J. Q. B. 56, 10 Jur. 69.

(4) See sections 101, 103, *post*, and as to civil actions, see section 109, *post*.

(5) See the Form in the Schedule to this Act, Form No. 12, *post*.

(6) See the Form in the Schedule to this Act, Form No. 13, *post*.

such parishes, and that the whole thereof on both sides in the other of such parts shall be maintained and repaired by the other of such parishes, and shall cause such their order (1), and a plan of such highway, and the allotment thereof, as before mentioned, to be fairly delineated on paper or parchment, and filed with the clerk of the peace of the county in which such highway shall happen to lie, and shall also cause such posts, stones, or other boundaries to be placed and set up in such highway as in their judgment shall be necessary for ascertaining the division and allotment thereof: Provided nevertheless, that in the case of any such last-mentioned highway the repair of any part of which belongs to any body politic or corporate, or to any person by the reason of tenure of any lands or otherwise howsoever, the same proceedings may be adopted, but the said body politic or corporate, or person, or some one on their behalf, may appear before such justices, and object to such last-mentioned proceedings, in which case the said justices shall, before they divide such highway as aforesaid, hear and consider the objection so made, and determine the same (2).

Proviso in case of highway repaired by party *ratione tenuræ*, &c.

59. And be it further enacted, that from and after such order and plan shall be so filed with the clerk of the peace as aforesaid such parishes and body politic or corporate, or person aforesaid respectively, shall be bound as of common right to maintain and keep in repair such parts of such highways so allotted to them as aforesaid, and shall be liable to be proceeded against for neglect of such duty, and shall in all respects whatsoever be liable and subject to all the provisions, regulations, and penalties contained in this Act, and also shall be discharged from the repair of such part of such highway as shall not be included in their respective allotment (3).

Parishes, &c., bound to repair the part so allotted.

60. And be it further enacted, that all costs, charges, and expenses to be incurred by reason of any of the proceedings last mentioned shall be borne and defrayed by such two parishes or body politic or corporate, or person aforesaid, the same being settled and ascertained and duly apportioned between such parishes by such justices; and in case the said parties shall refuse or neglect to pay and discharge their respective share of such costs and expenses, it shall and may be lawful for the justices at a special sessions for the highways (4) to levy the same by distress and sale, with costs of such distress, on the goods and chattels of any surveyor of

How costs of proceeding shall be defrayed, &c.

(1) See the Form in the Schedule to this Act, Form No. 14, *post*. It should seem that a material variance between the order made and the one filed with the clerk of the peace would be fatal to the whole proceeding: *R.* v. *Washbrook*, 7 D. & R. 221, 4 B. & C. 732.

(2) In order to give the justices jurisdiction under this section, the existence of a boundary on the highway to be divided is a condition precedent, and such question appears to be one of fact to be decided by the justices: *R.* v. *Perkins*, 14 Q. B. 229, 19 L. J. M. C. 105, 14 Jur. 362.

Where two parishes are divided by a highway, the presumption of law is that the highway is divided between them, *ad medium filum*. See *R.* v. *Strand Board of Works*, 4 B. & S. 526, 33 L. J. M. C. 33, 9 L. T. N. S. 371, 12 W. R. 46, 27 J. P. 724.

As to the effect of the Order, see *R.* v. *Inhabitants of Hickling*, 7 Q. B. 880, 14 L. J. M. C. 177.

The existence of a boundary is necessary in a case under the proviso, as well as the enacting part, and the proviso only applies to persons liable to repair *ratione tenuræ*, or under a liability *ejusdem generis*: *R.* v. *Perkins*, *supra*.

As to power of Inclosure or Tithe Commissioners to set out new boundaries of parishes, see the General Inclosure Act, 1801, 41 Geo. III. c. 109, s. 3; the Commons Inclosure Act, 1845, 8 & 9 Vict. c. 118, s. 39; and the Commutation of Tithes Act, 1839, 2 & 3 Vict. c. 62, s. 34.

New boundaries of parishes.

As to alteration of boundaries by the Local Government Board, see the Poor Law Amendment Act, 1867, 30 & 31 Vict. c. 106, s. 3; the Divided Parishes and Poor Law Amendment Acts, 1876, 1882, 39 & 40 Vict. c. 61, and 45 & 46 Vict. c. 58, and the Poor Law Act, 1879, 42 & 43 Vict. c. 54, ss. 4—7, *post*.

(3) See *R.* v. *Inhabitants of Hickling*, *supra*.

(4) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46.

Secs. 60–62.

the parish, or of any body politic or corporate, or person aforesaid, so refusing or neglecting to defray such costs and charges as aforesaid (1.)

Boundary of counties, &c., not to be changed, except for the purpose aforesaid.

61. And be it further enacted, that nothing herein contained shall extend or be construed to extend to affect, change, or alter in any manner whatsoever any boundaries of counties, lordships, hundreds, manors, or any other division of public or private property, nor the boundaries of any parishes or townships, otherwise than for the purpose of amending and keeping in repair such particular portion of the highway in the manner herein mentioned (2).

Highway repaired by party *ratione tenuræ*, &c., may be made a parish highway.

62. And be it further enacted, that any body politic or corporate, or any person, liable to repair any highway by reason of tenure of any lands or otherwise howsoever (3), or the surveyor of the parish in which the said highway is situate, may, if he or either party shall think proper, having first obtained the consent of the inhabitants in vestry assembled (4), apply to any justice for the purpose of making the said highway a parish highway, and to be repaired by the surveyor of the said parish; and the said justice is hereby authorised and required to issue his summons, requiring the said surveyor, or the party so liable to repair the said highway as aforesaid, to appear before the justices at the next special sessions (5) for the highways, and if both parties appear, such justices may then proceed to determine the matter; but in case the surveyor or party summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter to the next special sessions for the highways, of which the said surveyor or party not appearing shall have notice, on which day the justices so assembled at such special sessions shall proceed to hear the parties and their witnesses, and whether the surveyor or party summoned do or do not appear, shall proceed to examine and determine the matter; and in case they decide that the said highway shall become a parish highway, and be thereafter repaired by the surveyor of the said parish, they shall, by an order under their hands, fix the proportion of the expenses of repairing the said highway to be annually paid by such body politic or corporate or person as aforesaid to the surveyor of the said parish; and the order of the said justices shall be binding on the surveyor and the said parish and the said body politic or corporate or person as aforesaid, their heirs, successors, and assigns: Provided nevertheless, that the said justices, instead of fixing the proportion of the expenses of repairing the said highway to be annually paid as aforesaid, may, by an order under their hands, fix a certain sum to be paid by such body politic or corporate or person as aforesaid to the surveyor of the said parish, in full discharge of all claims thereafter in respect of the repairs of such highway; and in default of payment of such last-mentioned sum, or of such annual sum as aforesaid, the said surveyor may proceed for the recovery thereof in the same manner as any penalties and forfeitures are recoverable under this Act: Provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair of such highways shall exceed the sum of one hundred pounds, the said sum when received shall be vested, in the name of the minister, churchwardens, and surveyors of the highways of the parish within which such highway shall be situate, in some public government securities, and the interest and dividends from time to time arising or accruing therefrom shall be applied towards the repairs of the highways within the said parish; Provided also, that when the sum so fixed to be paid in full discharge of all claims as aforesaid shall not exceed the sum of one hundred pounds, the said last-mentioned sum, or any part thereof, on the application by and with the consent of the inhabitants of the parish in vestry assembled, and of the justices in special sessions assembled, shall and may be paid to the surveyor of the said parish, to be applied towards the repair of the highways within the said parish (6).

(1) See section 103, *post.*
(2) See section 58 and notes thereto, *ante.*
(3) See the note, *ante*, p. 765.
(4) As to places where there is no vestry meeting, see section 5, *ante.*
(5) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post.*
(6) As to highways in district under the Highway Act, 1862, see that Act, 25 & 26

Secs. 63–65.

What shall be deemed the centre of the highway.

63. And be it further enacted, that where in this Act any matter or thing is directed or forbidden to be done within a certain distance of the centre of the highway (1), that portion of ground shall be deemed and taken to be the highway which has been maintained by the surveyor as highway (2), and repaired with stones or other materials used in forming highways for the six months immediately preceding, and the centre of the highway shall be the middle of such highway, where, a line being drawn along the highway or a point marked, an equal number of feet of highway which have been so maintained and repaired as aforesaid for twelve months before shall be found on each side of such line or mark.

No tree, &c., allowed to be planted within 15 feet of the centre of the carriageway.

64. And be it further enacted, that no tree, bush, or shrub, shall hereafter be planted on any carriageway or cartway, or within the distance of fifteen feet from the centre thereof (3), but the same shall respectively be cut down, grubbed up, and carried away by the owner or occupier of the land or soil within twenty-one days after notice to him or his agent by the surveyor, on pain of forfeiting for every neglect the sum of ten shillings (4).

Mode of proceeding if highway is prejudiced by hedges, &c.

65. And be it further enacted, that if the surveyor shall think that any carriageway or cartway is prejudiced by the shade of any hedges, or by any trees (except those trees planted for ornament or for shelter to any hop ground, house, building, or court yard of the owner thereof (5), growing in or near such hedges or other fences, and that the sun and wind are excluded from such highway, to the damage thereof, or if any obstruction is caused in any carriageway or cartway by any hedge or tree, it shall be lawful for any one justice of the peace, on the application of the said surveyor, to summon the owner (6) of the land on which such hedges or trees are growing next adjoining to such carriageway or cartway to appear before the justices at a special sessions (7) for the highways, to show cause why the said hedges are not cut, pruned, or plashed, or such trees not pruned or lopped, in such manner that the carriageway or cartway shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such carriageway or cartway to the damage thereof, or why the obstruction caused in such carriageway or cartway should not be removed; and the question as to the cutting, pruning, or plashing such hedges, or the pruning and lopping such trees, or the removal of such obstruction as aforesaid, shall, upon proof of the service of such summons, and whether the said owner attend or not, be determined at the discretion of such last-mentioned justices; and if such justices shall order and direct that such hedges shall be cut, pruned, or plashed, or such trees pruned or lopped, in manner aforesaid, or such obstruction removed, the said owner shall comply therewith within ten days after a copy of such order shall have been left at the usual place of abode of the said owner, or of his steward or agent, and in default thereof shall forfeit, on conviction, a sum not exceeding forty shillings; and the said surveyor, if the order of the said justices is not complied with, shall, and he is hereby

Vict. c. 61, ss. 35, 36, *post*, and the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 24, *post*, and as to South Wales, see the South Wales Highway Act, 23 & 24 Vict. c. 68, s. 37.

As to liability in the case of turnpike roads, see General Turnpike Act, 1882, 7 & 8 Geo. IV. c. 24, s. 17.

As to roads and highways in urban sanitary districts, see the Public Health Act, 1875, ss. 148, 152, *ante*.

As to case of alteration of highway repairable *ratione tenuræ*, see section 93, *post*.

As to recovery of penalties, &c., see sections 101 and 103, *post*.

(1) See sections 64, 69, and 72.

(2) See section 80, *post*.

(3) See the preceding section.

(4) See *Turner* v. *Ringwood*, L. R. 9 Eq. 418, 21 L. T. N. S. 424, 18 W. R. 745.

As to recovery of penalties and forfeitures, see sections 101, 103, *post*.

(5) As to granting injunction to restrain the cutting down, lopping, &c, of ornamental trees until decision of appeal to quarter sessions, see *Frompton* v. *Tiffin*, 2 Jur. 986.

(6) See the definition in section 5, *ante*. "Owner" here means the person in actual occupation: *Woodard* v. *Billericay Highway Board*, L. R. 11 Ch. D. 214, 48 L. J. Ch. 535, 27 W. R. 593, 43 J. P. 224.

(7) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46.

Secs. 65–67.

authorised and required to cut, prune, or plash such hedges, and to prune and lop such trees, for the benefit and improvement of the highway, and to remove such obstruction as aforesaid to the best of his skill and judgment, and according to the true intent and meaning of this Act; and the said surveyor shall be reimbursed by the owner as aforesaid what charges and expenses he shall be at in cutting, pruning, and plashing such hedges, and pruning and lopping such trees, and the removal of such obstruction, over and above the said forfeiture; and it shall and may be lawful for the justices at a special sessions for the highways, upon proof to them made upon oath, to levy as well the expenses of cutting, pruning, and plashing such hedges, or pruning and lopping such trees, or removal of such obstructions as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorized and directed to be levied by virtue of this Act (1).

Time of cutting hedges and trees.

66. Provided always, and be it further enacted, that no person shall be compelled nor any surveyor permitted to cut or prune any hedge at any other time than between the last day of September and the last day of March; and that no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever; except where the highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down or grub up any oak trees growing in such highway or in such hedges except in the months of April, May, or June, or any ash, elm, or other trees in any other months than December, January, February, or March.

Surveyor to make and keep open ditches, &c., and to lay trunks, &c., through lands adjoining highway, paying for damage, if any, incurred.

67. And be it further enacted, that the said surveyor (2), district surveyor (3), or assistant surveyor shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses (4), and also to make and lay such trunks, tunnels, plats, or bridges as he shall deem necessary, in and through any lands or grounds adjoining or lying near to any highway (5), upon paying the owner or occupier of such lands or grounds, provided they are not waste or common, for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein directed to be settled and paid (6).

(1) It would seem that the jurisdiction of justices is confined to cases where trees are growing on land next adjoining the carriageway: *Jenney* v. *Brook*, 6 Q. B. 323, 13 L. J. Q. B. 376. As to the order of the justices stating the extent to which the trees, &c., are to be cut, &c., and as to its showing that the trees, &c., are not planted for ornament, see *Ibid.*

See further *Walker* v. *Horner*, *post*, p. 805.

As to recovery of penalties and forfeitures, see sections 101, 103, *post.*

The court will not grant a rule for a *mandamus* to justices to issue their warrant to levy expenses of cutting, &c., unless a demand has been made for the expenses upon the person to be charged, and the justices have been informed of the demand: *Exp. Whitmarsh*, 8 Dowl. P. C. 431, 4 Jur. 823.

(2) See *ante*. pp. 769, 771. (3) See *ante*, p. 772.

(4) It is a nuisance to allow the ditches adjoining to a highway to be incommoded by reason of the foulness, &c., of the adjoining ditches, and the owner of land next adjoining to the highway ought of common right to scour his ditches; but the owner of land next adjoining to such land is not bound by the common law to do so without a special prescription: Bacon's Abr. "Highways" (D).

(5) As to lands or ditch "adjoining or lying near to" a highway, see *Tutill* v. *West Ham Board*, L. R. 8 C. P. 447, 28 L. T. N. S. 597, 37 J. P. 455. And see *Earl Derby* v. *Bury Imp. Commissioners*, L. R. 4 Ex. 222, 32 J. P. 263.

(6) See section 54, and notes thereto, *ante*, p. 793.

A tender of satisfaction for any damages which may be sustained is not a condition precedent to the right of entry: *Peters* v. *Clarson*, 7 M. & G. 548, 13 L. J. M. C. 153, 8 Jur. 648; *Lister* v. *Lobley*, 7 A. & E. 124.

As to proceedings in action against surveyor, &c., see section 109, *post.*

As to proceedings under the Public Health Act, 1875, in respect of foul ditches, see sections 48 and 91 of that Act, *ante.*

Secs. 68, 69.

Owner, occupier, &c., not to alter such ditches without consent.

68. And be it further enacted, that if any owner, occupier or other person shall alter, obstruct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunk, tunnels, plats, or bridges, after they shall have been made by or taken under the charge of such surveyor or district surveyor, and without his authority and consent, such owner, occupier, or other person shall be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and shall also forfeit any sum not exceeding three times the amount of such charges and expenses (1).

Penalty for encroaching on highway.

69. And be it further enacted, that if any person shall encroach by making or causing to be made any building (2), hedge, ditch, or other fence on any carriageway or cartway within the distance of fifteen feet from the centre (3) thereof, every

As to ditches at the sides of turnpike roads, see General Turnpike Act, 1822, 3 Geo. IV. c. 126, ss. 113, 114, 115; General Turnpike Act, 1823, 4 Geo. IV. c. 95, s. 67; General Turnpike Act, 1827, 7 & 8 Geo. IV. c. 24, s. 17; and *Merivale* v. *Trustees of Exeter Turnpike Road*, L. R. 3 Q. B. 149, 37 L. J. M. C. 40, 16 W. R. 702, 32 J. P. 165, 9 B. & S. 70.

An opinion was given in 1865, by the law officers of the Crown, to the effect that at common law a duty exists on the part of the owner of lands adjoining a highway to cleanse and scour his own ditches to such an extent as to prevent nuisances and obstructions to passengers, but that this duty can only be enforced by indictment; further, that the effect of the sections of this Act, and 25 & 26 Vict. c. 61, *post*, is to empower, but not compel, the highway board to cleanse ditches in a more effectual manner than landowners could be compelled to cleanse them; and that if the materials taken out are claimed by the landowner he is entitled thereto. In order, however, to avoid disputes, the law officers think it would be prudent to give the adjoining occupiers notice to cleanse the ditches, and only to resort to the powers of the Act in the event of their not complying with the notice. See "Justice of the Peace," vol. xxix, p. 319.

A surveyor *bonâ fide* interfering with an obstruction caused by an adjoining landowner to a highway, and thereby injuring the property of the landowner, cannot be convicted of an offence under the Malicious Injury to Property Act, 1861, 24 & 25 Vict. c. 97, s. 52: *Denny* v. *Thwaites*, L. R. 2 Ex. D. 21, 46 L. J. M. C. 141, 35 L. T. N. S. 628, 41 J. P. 164.

(1) As to recovery of penalties and forfeitures, see sections 101, 103, *post*.

(2) See *R.* v. *Gregory*, 2 N. & M. 478, 5 B. & Ad. 555; *Shiel* v. *Mayor of Sunderland*, and cases *ante*, p. 129; and *Goldstraw* v. *Duckworth*, L. R. 5 Q. B. D. 275, 49 L. J. M. C. 73, 42 L. T. N. S. 440, 28 W. R. 504, 44 J. P. 410.

(3) As to what is to be deemed the centre, see section 63, *ante*.

The encroachment to come within this section must be within fifteen feet of the centre and on the road: *Chapman* v. *Robinson*, 1 El. & El. 25, 28 L. J. M. C. 30, 5 Jur. N. S. 434, 23 J. P. 228; *Evans* v. *Oakley*, 1 C. & K. 125. But see now Highway Act, 1864, 27 & 28 Vict. c. 101, s. 51, *post*.

If at the time when a road is dedicated an obstruction exists, the dedication may be taken to be subject to such obstruction, and its continuance in that case will not be an offence: *Fisher* v. *Prowse*, 2 B. & S. 770, 31 L. J. Q. B. 212, 6 L. T. N. S. 711, 8 Jur. N. S. 1208.

As to temporary obstruction by hoardings, see *Fisher* v. *Prowse*, *supra*, and see the Towns Improvement Act, 1847, 10 & 11 Vict. c. 34, s. 80, *post*.

As to bringing forward buildings in urban district, and as to power of urban authority to make bye-laws with regard to width of new street, see the Public Health Act, 1875, ss. 156, 157, *ante*, and see the Towns Improvement Act, 1847, 10 & 11 Vict. c. 34, ss. 66—74, *post*.

But taking up a pavement and digging trenches in the roadway and footway of a public thoroughfare in order to lay down pipes for supply of gas from mains to private houses are not acts which can be justified *at common law* as done in the exercise of the right of every occupier of a house to make such temporary obstruction of the highway as may be necessarily incidental to the enjoyment of his property, and the householder and the persons doing the works without parliamentary powers may be indicted: *R.* v.

Secs. 69, 70.

Encroachment to be taken down by the surveyor.

person so offending shall forfeit, on conviction for every such offence, any sum not exceeding forty shillings (1); and the surveyor who hath the care of any such carriageway or cartway shall and he is hereby required to cause such building, hedge, ditch, or fence to be taken down or filled up, at the expense of the person to whom the same shall belong; and it shall and may be lawful for the justices at a special sessions (2) for the highways, upon proof to them made upon oath, to levy as well the expenses of taking down such building, hedge, or fence, or filling up such ditch, as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorised and directed to be levied by virtue of this Act (3).

Steam engines, &c., not to be erected within a certain distance of roads.

70. And be it further enacted, that from and after the commencement of this Act it shall not be lawful for any person to sink any pit or shaft, or to erect or cause to be erected any steam engine (4), gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards, nor any windmill within fifty yards (5), from any part of any carriageway or cartway, unless such pit or shaft, or steam engine, gin, or other like engine, or machinery, shall be within some house or other building, or behind some wall or fence sufficient to conceal or screen the same (6) from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses, or cattle (7); nor shall it be lawful for any

Longton Gas Co., 29 L. J. M. C. 118, 2 L. T. N. S. 14, 6 Jur. N. S. 601, 8 Cox, C. C. 317; *R.* v. *Knight*, 8 W. R. 293.

A person encroaching on a highway is still liable to be indicted for a nuisance at common law, though the encroachment be more than fifteen feet from the centre of the road, if the part encroached on be in fact highway, which is a question for the jury: *R.* v. *Johnson*, 1 F. & F. 657; *R.* v. *Gregory*, and *Chapman* v. *Robinson*, *ante*, p. 799. And no length of time will legitimate a nuisance: *R.* v. *Cross*, 3 Camp. 224, at p. 226. But the encroachment must be an appreciable one: *R.* v. *Leprue*, 15 L. T. N. S. 158, 30 J. P. 723.

(1) The information must be laid within six months from the time when the encroachment was first made. See 11 & 12 Vict. c. 43, s. 11. But an indictment will lie at any time: *R.* v. *Cross*, *supra*.

(2) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46.

(3) The surveyor is justified, after the conviction, in taking away the obstruction: *Keane* v. *Reynolds*, 2 El. & Bl. 748, 2 C. L. R. 245, 18 Jur. 242. See also, *Denny* v. *Thwaites*, *ante*, p. 799. But as to necessity of previously summoning the owner, so as to give him an opportunity of being heard, see *Cooper* v. *Wandsworth District Board*, *ante*.

As to encroachments on disturnpiked roads, see the Annual Turnpike Acts Continuance Act, 1865, 28 & 29 Vict. c. 107, s. 2, and the General Turnpike Act, 1822, 3 Geo. IV. c. 126, ss. 118, 124.

As to recovery of penalties and forfeitures, see sections 101, 103, *post*.

(4) A portable steam threshing machine travelling on wheels, which are not removed while it is at work, which is set up to work close to a highway is within the section: *Smith* v. *Stokes*, 4 B. & S. 84, 32 L. J. M. C. 199, 8 L. T. N. S. 425, 11 W. R. 753, 27 J. P. 535. But the owner unless he is present or cognisant of the fact of its being so set up within the prohibited distance of the highway, cannot be convicted under the statute: *Harrison* v. *Leaper*, 5 L. T. N. S. 640, 26 J. P. 373.

(5) See the General Turnpike Act, 1822, 3 Geo. IV. c. 126, s. 127, which prohibits the erection of a windmill within 200 yards of a turnpike road.

(6) See *Blakeley* v. *Baker*, 39 L. T. N. S. 359, where it was held that the defendant who had made an excavation within five yards of and fenced it off from a highway was not liable in an action brought by the owner of a horse which being attached to a cart containing a ton weight came into contact with the fence which gave way, and the horse falling into the excavation, was killed.

(7) At common law the owner of land adjoining a highway is under no obligation to fence excavations in his land unless they are so near to the road as to be dangerous to persons lawfully using it: *Binks* v. *S. Yorkshire Ry. Co.*, 3 B. & S. 244, 32 L. J. Q. B.

person to make or cause to be made any fire for calcining or burning of ironstone, limestone, bricks, or clay, or the making of cokes, within the distance of fifteen yards from any part of the said carriageway or cartway, unless the same shall be within some house or other building or behind some wall or fence, sufficient to screen the same from the same carriageway or cartway as aforesaid (1); and in case any person shall offend in any of the cases aforesaid, every such person so offending shall forfeit and pay any sum not exceeding five pounds for each and every day such pit, shaft, windmill, steam engine, gin, machine, or fire shall be permitted to continue contrary to the provisions of this Act; which said penalties shall be levied, recovered, and applied in such and the same manner as any penalty or forfeiture for any other offence on any highway may be levied, recovered, and applied (2): Provided that nothing herein contained shall be construed to restrain any person or persons from using, repairing, rebuilding, or enlarging any windmill, steam engine, gin, or other like machine, or any kiln or other erection used for the purpose of calcining or burning of ironstone, limestone, brick, or clay, or the making of cokes, which may have been erected and may be in existence at the passing of this Act.

71. [*Proprietors of railways to erect gates, &c., where they cross highways* (3).]

26, 7 L. T. N. S. 350, 11 W. R. 66, 27 J. P. 180; *Hounsell* v. *Smyth*, 7 C. B. N. S. 731, 29 L. J. C. P. 203, 6 Jur. N. S. 897, 1 L. T. N. S. 440, 8 W. R. 277, and see *Blakeley* v. *Baker*, *ante*, p. 800.

As to fencing shafts, &c., of abandoned coal or metalliferous mines within fifty yards of highway, see note (1), *ante*, p. 91.

(1) Negligently blasting stone in a quarry and thereby projecting large pieces of stone so as to endanger safety of persons in houses or on the highway adjoining the quarry, is a misdemeanour indictable at common law: *R.* v. *Mutters*, 34 L. J. M. C. 22, 11 L. T. N. S. 387, 10 Cox, C. C. 6. And keeping wood and naphtha in a warehouse near to highways and dwelling-houses in such quantities as to endanger the lives and properties of the persons therein, is indictable as a nuisance at common law: *R.* v. *Lister*, 26 L. J. M. C. 196, 1 D. & B. C. C. 209, 3 Jur. N. S. 572.

(2) As to recovery of penalties and forfeitures, see sections 101, 103, *post*.

As to erections, &c., near turnpike roads, see Annual Turnpike Act Continuance Act, 1864, 27 & 28 Vict. c. 75, s. 1.

(3) Repealed by the Statute Law Revision Act, 1874, 37 & 38 Vict. c. 35.

Now by 2 & 3 Vict. c. 45 (An Act to amend the Act 5 & 6 Will. IV. c. 50), after reciting sections 71 and 113 of this Act, it is enacted that—

Section 1. "Wherever a railroad crosses, or shall hereafter cross, any turnpike road, or any highway, or statute labour road for carts or carriages in Great Britain, the proprietors or directors of the company of proprietors of the said railroad, shall make and maintain good and sufficient gates across each end of such turnpike or other road as aforesaid, at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along such turnpike or highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad, and any complaint for any neglect in respect of the said gates shall be made within one calendar month after the said neglect to any justice of the peace, or if in Scotland to the sheriff of the county, who may summon the party so complained against to appear before them or him at the next Petty Sessions or Court to be holden for the district or division within which such gates are situate, who shall hear and decide upon the said complaint, and the proprietor or director so offending shall for each and every day of such neglect forfeit any sum not exceeding five pounds, together with such costs as to the justices or sheriff depute aforesaid, before whom the conviction shall take place, shall seem fit."

Section 2. "And be it further enacted, that the penalties by this Act imposed, and the costs to be allowed and ordered by the authority of this Act shall in England be recovered and applied in the same manner as any penalties and costs under the said Act, *i.e.*, this Act, 5 & 6 Will. IV. c. 50, and in Scotland shall be recovered and applied to the maintenance of the statute labour roads within the district where the offence is committed."

Section 72.

Penalty on persons committing nuisances by riding on footpaths, &c.;

72. And be it further enacted, that if any person shall wilfully (1) ride upon any footpath or causeway (2) by the side of any road made or set apart for the use

As to recovery of penalties and forfeitures under this Act, see sections 101, 103, *post.*

Further, the Regulation of Railways Act, 1842, 5 & 6 Vict. c. 55, s. 9 (after reciting 2 & 3 Vict. c. 45, *supra*), proceeds as follows: "And whereas by the Acts relating to certain railways it is provided that such gates shall be kept constantly closed across the railways, except during the time when carriages or engines passing along the railway shall have to cross such turnpike or other road, and whereas experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike or other road, instead of across the railway, be it therefore enacted, that notwithstanding anything to the contrary contained in any Act of Parliament heretofore passed, such gates shall be kept constantly closed across each end of such turnpike or other roads in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along such turnpike or other road shall have to cross such railway, and such gates shall be of such dimensions, and so constructed, as when closed across the ends of such turnpike or other roads to fence in the railway and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed. Provided always that it shall be lawful for the lords of the said committee in any case in which they are satisfied that it will be more conducive for the public safety that the gates at any level crossing over any such turnpike or other road should be kept closed across the railway, to order and direct that such gates shall be kept so closed instead of across the road, and such order of the lords of the said committee shall be a sufficient authority for the directors or proprietors of any railway company to whom such order is addressed for keeping such gates closed in the manner directed by the lords of the said committee."

Section 13. "And whereas in many cases railways have been made to cross turnpike roads, highways, and private roads and tramways on the level, and the companies to whom such railways belong, would in some cases be willing, at their own expense, to carry such roads and tramways over or under such railways, by means of a bridge or archway, for the greater safety of the public, but have no authority so to do. And whereas it would promote the public safety if railway companies were enabled under the sanction and authority of the lords of the said committee to substitute bridges or archways for such level crossings as aforesaid, be it therefore enacted, That in all cases where any railway company shall be willing at their own expense to carry any turnpike road, highway, or private road or tramway, over or under their railway by means of a bridge or arch in lieu of crossing the same on the level, it shall be lawful for the lords of the said committee on the application of the said company, and after hearing the several parties interested, if it shall appear to the lords of the said committee that such level crossing endangers the public safety and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, to give the said company full power and authority for removing the danger at their own expense, either by building a bridge, or by such other arrangement as the nature of the case shall require subject to such condition as the lords of the said committee shall direct."

See, further, the Railways Clauses Consolidation Act, 1845, 8 Vict. c. 20, ss. 46, 47, and 61—67, *post*, and the Railways Clauses Consolidation Act, 1863, 26 & 27 Vict. c. 92, ss. 5—8, *post.*

The above enactments do not apply to a private railway on private property made and used exclusively for the proprietor's own purposes, and not for passenger traffic: *Matson* v. *Baird*, L. R. 3 App. Cas. 1082, 39 L. T. N. S. 304, 26 W. R. 835, 43 J. P. 90.

A railway company is bound under 5 & 6 Vict. c. 55, s. 9, *supra*, to keep the gates at level crossings closed against all persons or cattle upon the highway, whether lawfully there or not, and they are liable to an action for any injury arising from the breach of duty: *Fawcett* v. *York and N. Midland Ry.*, 16 Q. B. 610, 20 L. J. Q. B. 222, 15 Jur. 173.

As to liability for injury arising through rails being higher than highway, and duty of railway company to keep the part of the way used by the public in suitable repair. See *Oliver* v. *N. E. Ry.*, L. R. 9 Q. B. 409, 43 L. J. Q. B. 198.

(1) See *Walker* v. *Horner*, and *Gully* v. *Smith*, *post*, p. 805.

(2) See the definition, *ante*, p. 762.

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by injuring the road;

or accommodation of foot passengers (1); or shall wilfully (2) lead or drive any horse, ass, sheep, mule, swine, or cattle, or carriage of any description, or any truck or sledge, upon any such footpath or causeway (3); or shall tether any horse, ass, mule, swine, or cattle on any highway, so as to suffer or permit the tethered animal to be thereon (4); or shall cause any injury or damage to be done to the said highway, or the hedges, posts, rails, walls, or fences thereof (5); or shall

(1) This enactment applies only to footpaths and causeways by the side of roads and not to footpaths in general: *R.* v. *Pratt*, L. R. 3 Q. B. 64, 37 L. J. M. C. 23, 16 W. R. 146, 32 J. P. 246.

See section 24, *ante*.

(2) See *Walker* v. *Horner*, and *Gully* v. *Smith*, *post*, p. 805.

(3) See *R.* v. *Pratt*, *supra*.

(4) See, further, the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 25, *post*.

(5) A footway across a field may be a highway within the meaning of this enactment: *Brackenborough* v. *Thorsby*, 19 L. T. N. S. 692, 33 J. P. 565. But a way may be dedicated to and accepted by the public, subject to the inconvenience of being occasionally ploughed up, &c.: *Mercer* v. *Woodgate*, 39 L. J. M. C. 21, 21 L. T. N. S. 458. See *Harrison* v. *Danby*, 34 J. P. 759, and *Vestry of St. Mary, Newington* v. *Jacobs*, *ante*, p. 759.

It seems that the jurisdiction of the magistrate is not barred merely by a claim of right to do the act complained of: *Ex parte Whitaker*, 23 J. P. 84. The remedy for a person dissatisfied with the decision of the justices is not *certiorari*, but by requiring the justices to state a case: *Ib.*

As to injuring the pavement, &c., fences, parts of or trees in a street vested in an urban authority, see the Public Health Act, 1875, s. 149, *ante*, p. 119.

As to liability of gas and water companies breaking up streets for purpose of laying their pipes, &c., see *ante*, pp. 420, 441.

In *Hawkins* v. *Robinson*, 37 J. P. 662, the manager of a gas company, not established by statute, was held liable under this enactment for causing injury and damage to a highway by taking up the street to lay pipes, although the company had obtained the consent of the local board: But see *Edgware Highway Board* v. *Harrow District Gas Co.*, *ante*, p. 767.

By the Malicious Injuries to Property Act, 1861, 24 & 25 Vict. c. 97, it is provided as follows:—

Section 25. "Whosoever shall unlawfully and maliciously cut, break, throw down, or in anywise destroy any fence of any description whatsoever, or any wall, stile, or gate, or any part thereof respectively, shall, on conviction thereof before a justice of the peace for the first offence, forfeit and pay over and above the amount of the injury done such sum of money not exceeding £5, as to the justices shall seem meet; and whosoever having been convicted of any such offence either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section beforementioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months, as the convicting justice shall think fit."

Section 33. "Whosoever shall unlawfully and maliciously pull or throw down, or in anywise destroy any bridge (whether over any stream of water or not), or any viaduct or aqueduct, over or under which bridge, viaduct, or aqueduct any highway, railway, or canal shall pass or do any injury with intent, and so as thereby to render such bridge, viaduct, or aqueduct, or the highway, railway, or canal passing over or under the same, or any part thereof dangerous or impassable, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years [now five years, 27 & 28 Vict. c. 47, s. 2], or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping."

Section 34. "Whosoever shall unlawfully and maliciously throw down, level, or otherwise destroy in whole or in part any turnpike gate or toll-bar, or any wall, chain, rail,

Section 72. wilfully obstruct the passage of any footway (1), or wilfully destroy or injure the surface of any highway; or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said surveyor as herein directed (2); or dig or cut down the banks which are the securities and defence of the said highways (3); or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or

post, bar, or other fence belonging to any turnpike gate or toll-bar, or set up or erected to prevent passengers passing by without paying any toll directed to be paid by any Act of Parliament relating thereto, or any house, building, or weighing engine erected for the better collection, ascertainment, or security of any such toll, shall be guilty of a misdemeanour."

Section 51. "Whosoever shall unlawfully and maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, the damage, injury, or spoil being to an amount exceeding £5, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour; and in case any such offence shall be committed between the hours of nine of the clock in the evening and six of the clock in the next morning, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding five years [now five years, 27 & 28 Vict. c. 47, s. 2] and not less than three, or be imprisoned for any term not exceeding two years, with or without hard labour."

Section 52. "Whosoever shall wilfully or maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, for which no punishment is hereinbefore provided, shall, on conviction thereof before a justice of the peace at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only or to be imprisoned and kept to hard labour for any term not exceeding two months, or else shall forfeit and pay such sum of money not exceeding £5, as to the justice shall seem meet, and also such further sum of money as shall appear to the justice to be a reasonable compensation for the damage, injury, or spoil so committed not exceeding the sum of £5, which last-mentioned sum of money shall, in the case of private property, be paid to the party aggrieved, and in the case of property of a public nature, or wherein any public right is concerned, the money shall be applied in the same manner as every penalty imposed by a justice of the peace under this Act, and if such sum of money, together with costs (if ordered), shall not be paid either immediately after the conviction or within such period as the justice shall, at the time of the conviction, appoint, the justice may commit the offender to the common gaol or house of correction, there to be imprisoned only or to be imprisoned and kept to hard labour, as the justice shall think fit, for any term not exceeding two months, unless such sums and costs be sooner paid: Provided that nothing herein contained shall extend to any case where the party acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass not being wilful and malicious committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this Act had not been passed."

Section 53. "The provisions in the last preceding section contained shall extend to any person who shall wilfully or maliciously commit any injury to any tree, sapling, shrub, or underwood, for which no punishment is hereinbefore provided."

In *R.* v. *Towgood*, 35 J. P. 791, where defendant removed the top rail of a fence and on being summoned under section 52, *supra*, claimed the right to destroy the top rail, and that the whole fence was illegal, and called evidence in support of both points, it was held that the magistrate could not rightly convict as the claim was made *bonâ fide*. See also *Denny* v. *Thwaites*, *ante*, p. 799.

(1) See note (7), *post*, p. 805. (2) See section 24, *ante*.

(3) See sections 24 and 26, *ante*.

As to action by reversioner of land, adjoining a highway, against surveyor for injury to part of plaintiff's bank or fence, see *Alston* v. *Scales*, 2 Moo. & Sc. 5, 9 Bing. 3.

deface the same (1); or pull down, destroy, obliterate, or deface any mile stone or post, graduated or direction post or stone, erected upon any highway; or shall play at football or any other game (2) on any part of the said highways, to the annoyance of any passenger or passengers (3); or if any hawker, higgler, gipsy, or other person travelling shall pitch any tent, booth, stall, or stand, or encamp upon any part of any highway; or if any person shall make or assist in making any fire (4), or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever within fifty feet of the centre of such carriageway or cartway; or bait, or run for the purpose of baiting, any bull upon or near any highway (5); or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon (6); or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any house, building, erection, lands, or premises adjacent thereto, or shall in any way wilfully obstruct the free passage of any such highway (7); every person so offending in any of the cases aforesaid

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by damaging banks, causeways, direction posts, mile stones, &c.; by making fires; by baiting bulls; by laying timber, &c.; by running of filth.

(1) See 24 & 25 Vict. c. 97, s. 33, *ante*, p. 803, note.

(2) See *Pappin* v. *Maynard*, 9 L. T. N. S. 327, 27 J. P. 745.

(3) See *Woolley* v. *Corbishley*, 24 J. P. 773, where it was held that it was unnecessary to call the persons actually annoyed to give evidence; and where evidence of two horses drawing carts having been frightened was held sufficient to sustain a conviction under this enactment. But see *Stinson* v. *Browning*, *infra*.

(4) A fire lighted by a wheelwright for the purposes of his business, such fire being fed by lifting a lid in the wall on the outside of the premises is not within the enactment: *Stinson* v. *Browning*, L. R. 1 C. P. 321, 35 L. J. M. C. 152, 13 L. T. N. S. 799, 12 Jur. N. S. 262, 14 W. R. 395, 30 J. P. 312. To make the act done an offence within this enactment, it must be shown that some injury is done to the highway or some danger or annoyance occasioned to persons using it: *Ibid.*

The General Turnpike Act, 1822, 3 Geo. IV. c. 126, s. 121, requires the windows of blacksmith's shops near a turnpike road to be sufficiently closed and barred after twilight.

See further, *R.* v. *Mutters* and *R.* v. *Lister*, *ante*, p. 801; and see the Petroleum and Explosives Acts, 34 & 35 Vict. c. 105, 42 & 43 Vict. c. 47, and 38 Vict. c. 17, *post*.

(5) See *Stinson* v. *Browning*, *supra*.

See, further, the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, s. 36, *post*.

(6) See *Stinson* v. *Browning*, *supra*.

Where a surveyor of highways, in repairing a road, placed stones thereon and allowed them to remain all night insufficiently fenced and without sufficient light to warn the public against the obstruction, it was held that he might properly be convicted under this enactment, notwithstanding that he might also have been guilty of an offence under section 56, *ante*: *Fearnley* v. *Ormsby*, L. R. 4. C. P. D. 136, 27 W. R. 823, 43 J. P. 384.

As to removing matters laid on or near a highway, see section 73, *post*.

(7) In *Walker* v. *Horner*, L. R. 1 Q. B. D. 4, 45 L. J. M. C. 34, 33 L. T. N. S. 601, 24 W. R. 95, 39 J. P. 773, it was held by Mellor and Quain, J.J. (Cockburn, C.J., dissenting), that the defendant in suffering trees on his land to grow over and across a way so as to be an obstruction, did not "wilfully obstruct" the way within this enactment. But it has been held that it is not necessary that there should be any act of commission, and that an offence may be complete on the part of a person whose duty it is to remove an obstruction to do so after notice: *Gully* v. *Smith*, L. R. 12 Q. B. D. 121, 53 L. J. M. C. 35, 48 J. P. 309 (where *Walker* v. *Horner* is distinguished).

It is not a "wilful obstruction" to undo the unauthorised and unjustifiable acts of a surveyor which interferes with the rights of the owner: *Sutcliffe* v. *Sowerby*, 1 L. T. N. S. 7. See further *Smith* v. *Barnham*, 34 L. T. N. S. 774.

The enactment only applies to filth and "offensive matters" of that sort, and does not extend to suffering rain water to flow on to the highway: *Croasdill* v. *Ratcliffe*, 5 L. T. N. S. 834, 26 J. P. 165.

Secs. 72–75. shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby (1).

Matters laid on or near highway, so as to be a nuisance, to be removed on notice; or on failure, surveyor to dispose of the same by order of a justice.

73. And be it further enacted, that if any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever shall be laid upon any highway so as to be a nuisance, and shall not, after notice given by the surveyor (2), assistant surveyor, or district surveyor, be forthwith removed, it shall and may be lawful for the surveyor, assistant surveyor, or district surveyor, by order in writing from any one justice, to clear the said highway by removing the said stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing as aforesaid, and to dispose of the same and to apply the proceeds arising therefrom towards the repairs of the highway within the parish in which such highway may be situated (3): Provided nevertheless, that if any soil, ashes, or rubbish shall be laid on any highway, and such soil, ashes, or rubbish shall not be of sufficient value to defray the expense of removing them, the person who laid or deposited such soil, ashes, or rubbish shall repay to the said surveyor, assistant surveyor, or district surveyor the money which he shall have necessarily expended for the removal thereof, which money, in case the same shall not be forthwith repaid, shall be levied as forfeitures are herein directed to be levied (1).

74. [*Surveyor to impound cattle found straying on highways until the penalty herein imposed and the charges are paid* (5).]

Punishing persons guilty of pound-breach.

75. And be it further enacted, that in case any person shall release or attempt to release any horse, ass, sheep, swine, or other beast or cattle which shall be seized for the purpose of being impounded under the authority of this Act, from the pound or place where the same shall be so impounded, or in the way to or from any such pound or place, or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release, any distress or levy which shall be made under the authority of this Act, until or before such horse, ass, sheep, swine, or other beast or cattle seized or so impounded, or such distress or levy so made, shall be discharged by due course of law, every person so offending shall, upon conviction thereof before any two of His Majesty's justices of the peace, either upon confession of the party or parties offending or upon oath of one credible witness, forfeit and pay any sum not exceeding twenty pounds, at

As to whether a *bonâ fide* claim of right bars the jurisdiction of the justices, see *Gerring* v. *Barfield*, 16 C. B. N. S. 597, 11 L. T. N. S. 270; *Simpson* v. *Wells*, L. R. 7 Q. B. 214, 41 L. J. M. C. 105, 26 L. T. N. S. 163, 37 J. P. 774; and *In re Whitaker*, *ante*, p. 803.

See further as to nuisances of the description mentioned in this section and similar nuisances the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, ss. 64—83, *post*, and the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, sections 21—29, *post*. See also the Vagrant Act, 5 Geo. IV. c. 83, and the Vagrant Act Amendment Act, 1873, 36 & 37 Vict. c. 38, s. 3.

(1) As to recovery of penalties and forfeitures, see sections 101, 103, *post*.

(2) For form of notice see the Schedule to this Act, Form No. 15, *post*.

(3) As to offences by obstructing highway, see sections 56 and 73, *ante*.

Upon an application to justices for an order under this section, they have jurisdiction to try whether the *locus in quo* is a highway or only an occupation road: *Williams* v. *Adams*, 2 B. & S. 312, 31 L. J. M. C. 109, 5 L. T. N. S. 790, 8 Jur. N. S. 816, 26 J. P. 180. And the order is as against the person whose property is ordered to be removed conclusive that the *locus in quo* is a highway: *Mould* v. *Williams*, 5 Q. B. 469, D. & M. 631; *Aldridge* v. *Haines*, 2 B. & Ad. 395.

Where justices direct a surveyor of highways to remove a nuisance from a highway or to fence a dangerous pit, if he neglects to do so, they are not justified in convicting him under this section or section 20, *ante*, of wilfully neglecting his duty in not removing, &c.: *Morgan* v. *Leach*, 10 M. & W. 558, 12 L. J. M. C. 4.

As to scavenging and cleansing streets, &c., under the Public Health Act, 1875, see sections 42, *et seq.*, of that Act, *ante*, pp. 65, *et seq.*

(5) Repealed by Highway Act, 1864, 27 & 28 Vict. c. 101, s. 25, *post*, which see.

the discretion of the said justices, and in default thereof be committed by such justices by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour for any time at the discretion of the justices, not exceeding three calendar months (1).

Names of owners to be painted on all waggons, &c., in the manner herein mentioned.

76. And be it further enacted, that the owner of every waggon, cart, or other such carriage (2) shall paint or cause to be painted in one or more straight line or lines, upon some conspicuous part of the right or off-side of his waggon, cart, or other such carriage, or upon the off-side shafts thereof, before the same shall be used on any highway, his Christian name and surname, or the style and title by which he is commonly designated, and the place of his trade or abode, or the Christain and surname and place of trade or abode of a partner or owner thereof, at full length, in large legible letters in white upon black, or black upon white, not less than one inch in height, and continue the same thereupon so long as such waggon, cart, or other such carriage shall be used upon any highway; and every owner of any waggon, cart, or other such carriage who shall use or allow the same to be used on any highway without the name and descriptions painted thereon as aforesaid, or who shall suffer the same to become illegible, or who shall paint or cause to be painted any false or fictitious name or place of trade or abode on such waggon or cart or other such carriage, shall forfeit and pay, on conviction, for every such offence, a sum not exceeding forty shillings, with or without costs, as to the justices before whom the conviction shall take place shall think fit (3).

One driver may take charge of two carts, provided they are drawn only by one horse each.

77. And be it further enacted, that no person shall act as the driver of more than two carts, waggons, or other such carriages on any highway: Provided always, that it shall and may be lawful for any one person to act as the driver of two carts, waggons, or other such carriages, on any highway, and for such carts topa ss and travel on any highway, being only under the care and superintendence of such single person: Provided always, that such carts, waggons, or other carriages, when under the care of only one person, shall not be drawn by more than one horse each, and the horse of the hinder cart, waggon, or other carriage shall be attached by a rein in length not exceeding four feet to the back of the cart, waggon, or other carriage which shall be foremost (4); and in case the said horse shall not be so attached the driver of the said carts, waggons, or other carriages shall forfeit, on conviction, the sum of twenty shillings, to be recovered as other penalties are by this Act to be recovered (5).

Drivers of waggons or carts not to ride thereon unless some other person guide them.

78. And be it further enacted, that if the driver of any waggon, cart, or other carriage of any kind (6) shall ride upon any such carriage, or upon any horse or horses drawing the same, on any highway, not having some other person on foot or on horseback to guide the same (such carriages and carts as are driven with

(1) As to expense of removing animal to pound, see the Highway Act, 1864, 27 & 28 Vict. c. 101, section 25, *post.*

As to recovery of penalties and forfeitures, see sections 101, 103, *post.*

(2) The words "cart or carriage" refer to vehicles *ejusdem generis* with "waggon." Therefore, justices were held to be right in holding that a light spring cart with two wheels used by defendant in his business as an agricultural implement maker, in which he frequently carried agricultural implements to market and drove his family about from place to place was not within the section: *Danby* v. *Hunter*, L. R. 5 Q. B. D. 20, 49 L. J. M. C. 15, 41 L. T. N. S. 622, 28 W. R. 228, 44 J. P. 283.

(3) As to the penalty on driver of carriage without owner's name, who will not discover the name, see section 78, *post.*

As to turnpike roads, see the General Turnpike Act, 1823, 4 Geo. IV. c. 95, s. 15.

(4) See *Robertson* v. *Birkett*, 32 L. T. 105, 22 J. P. 753.

See further the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, s. 28, *post*, incorporated with the Public Health Act, 1875, as to urban districts by section 171 of that Act, *ante.*

(5) As to recovery of penalties and forfeitures, see sections 101, 103, *post.*

(6) Note the introduction here of the words "of any kind," and see *Taylor* v. *Goodwin*, *post*, p. 808. See note (2), *supra.*

Section 78.

Drivers causing hurt or damage to others or quitting the road, or driving carriage without owner's name, or not keeping the left or near side, or interrupting free passage, if not the owner to forfeit £5; if he be the owner, £10.

reins and are conducted by some person holding the reins of all the horses drawing the same, excepted (1)); or if the driver of any carriage whatsoever on any part of any highway shall by negligence or wilful misbehaviour cause any hurt or damage to any person, horse, cattle, or goods conveyed in any carriage passing or being upon such highway (2), or shall quit the same, and go on the other side of the hedge or fence inclosing the same, or negligently or wilfully be at such distance from such carriage or in such a situation whilst it shall be passing upon such highway that he cannot have the direction and government of the horses or cattle drawing the same, or shall leave any cart or carriage on such highway, so as to obstruct the passage thereof, or if any person shall drive or act as the driver of any waggon, cart, or other such carriage, not having the owner's name as hereby required (3) painted and remaining legible thereon, and shall refuse to tell or to discover the true Christian and surname of the owner or principal owners of such waggon, cart, or carriage (4); or if the driver of any waggon, cart, or other carriage whatsoever, or of any horses, mules, or other beast of draught or burden, meeting any other waggon, cart, or other carriage, or horses, mules, or other beasts of burden, shall not keep his waggon, cart, or carriage, or horses, mules, or other beasts of burden, on the left or near side of the road; or if any person shall in any manner wilfully prevent any other person from passing him, or any waggon, cart, or other carriage, or horses, mules, or other beasts of burden, under his care, upon such highway, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any person, waggon, cart, or other carriage, or horses, mules, or other beasts of burden, on any highway, or shall not keep his waggon, cart, or other carriage, or horses, mules, or other beasts of burden on the left or near side of the road, for the purpose of allowing such passage (5), or if any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously so as to endanger the life or limb of any passenger (6); every person so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a justice, or by the oath of one or more credible witnesses before any two justices of the peace, shall, in addition to any civil action to which he may make himself liable, for every such offence forfeit any sum not exceeding five pounds, in case such driver shall not be the owner of such waggon, cart or other carriage, and in case the offender be the owner of such waggon, cart, or other carriage, then any sum not exceeding ten pounds, and in either of the said cases shall, in default of payment, be committed to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding six weeks, unless such forfeiture shall be sooner paid (7); and every such driver offending in either of the said cases shall and may, by the authority of this

(1) "A driver seen riding upon his waggon is *primâ facie* a fit subject for punishment; but if he showed that he was compelled to do so from a sudden fit of illness, or from some accident, which prevented him from walking, he would avoid the penalty.' *R.* v. *Smith*, 13 L. J. Q. B. 166, at p. 171, *per* Lord Denman, C. J.

(2) See *Wemyss* v. *Hopkins*, L. R. 10 Q. B. 378, 44 L. J. M. C. 101, 33 L. T. N. S. 9, 23 W. R. 691, 39 J. P. 549.

(3) See section 76, *ante*. (4) See *Jones* v. *Owens*, 2 D. & R. 600.

(5) See, also, section 72, *sub fin.*, *ante*, as to wilfully obstructing the free passage of a highway.

(6) A person "riding" furiously may be convicted under this section, although the word "rider" is not mentioned in the penal clause, *infra*, *Williams* v. *Evans*, L. R. 1 Ex. D. 277, 35 L. T. N. S. 864, 41 J. P. 151.

A person riding a bicycle on a highway at such a pace as to be dangerous to the passers by, may be convicted of furiously driving a carriage under this section, for the words are comprehensive to include any kind of vehicle which may be propelled at such a speed as to be dangerous: *Taylor* v. *Goodwin*, L. R. 4 Q. B. D. 228, 48 L. J. M. C. 104, 40 L. T. N. S. 458, 27 W. R. 489, 43 J. P. 653.

As to bye-laws to regulate the use of bicycles, see the Highways and Locomotives (Amendment) Act, 1878, 41 & 42 Vict. c. 77, s. 26, *post*.

(7) As to recovery of penalties and forfeitures, see sections 101, 103, *post*.

Act, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be conveyed before any justice of the peace, to be dealt with according to law; and if any such driver in any of the cases aforesaid shall refuse to discover his name (1), it shall and may be lawful for the said justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding three months, or to proceed against him for the penalty aforesaid by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name (2).

Secs. 78–81.

Proceeding if driver will not discover his name.

79. And whereas offences may be committed against this Act by persons whose names are unknown to the surveyor, assistant surveyor, or district surveyor: Be it therefore enacted, that it shall be lawful for the surveyor, assistant surveyor, or district surveyor, or any person acting under his authority, and such other person as he shall call to his assistance, or any other person witnessing the commission of the offence, without any other authority than this Act to seize and detain such unknown person who shall commit any such offence, and take him forthwith before any justice of the peace, who shall proceed and act with respect to such offence according to the provisions of this Act (3).

For securing unknown offenders.

80. And be it further enacted, that the said surveyor shall and he is hereby required to make, support, and maintain, or cause to be made, supported, and maintained, every public cartway leading to any market town twenty feet wide at the least, and every public horseway eight feet wide at the least, and to support and maintain every public footway by the side of any carriageway or cartway three feet at the least, if the ground between the fences including the same will admit thereof (4): Provided nevertheless, that nothing herein contained shall require any surveyor to make or form any public footway without the consent of the inhabitants in vestry assembled (5).

Cartways to be twenty feet wide, horseways eight feet, and footways three feet.

81. And be it further enacted, that if any gate across any public cartway shall be less than ten feet wide, or any gate across any public horseway shall be less than five feet wide, clear between the posts thereof, then and in every such case, upon notice in writing from the surveyor to the person to whom such gate shall belong, left at the dwelling house of such person or his steward or agent, requiring him to enlarge the same, if such person shall neglect for the space of twenty-one days after such notice shall have been left as aforesaid to remove or enlarge such gate, he shall forfeit a sum not exceeding ten shillings for every day he shall so neglect to remove or to enlarge such gate as aforesaid (6).

Width of gates across public cartways and horseways.

(1) See section 79, *post*, and *Jones* v. *Owens*, *ante*, p. 808.

(2) See, further, the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, s. 28, *post*, which is incorporated with the Public Health Act, 1875, as to urban districts by section 171 of that Act, *ante*.

As to offences on turnpike roads, see the General Turnpike Acts, 1822, 1823, 3 Geo. IV. c. 126, s. 132, and 4 Geo. IV. c. 95, s. 76.

As to powers to make bye-laws with respect to highways, see the Highways and Locomotives (Amendment) Act, 1878, 41 & 42 Vict. c. 76, s. 26, *post*.

(3) See the preceding section, *sub fin.*

(4) The surveyor is only required to observe these dimensions if the ground between the fences will admit of his doing so; the section does not authorize him to cut away the bank of a fence by the side of a road: *Alston* v. *Scales*, *ante*, p. 804. See, also, *Lowen* v. *Kaye*, 4 B. & C. 3. As to widening the road, if it be not of sufficient width, see section 82, *post*, and the Highway Act, 1864, 27 & 28 Vict. c. 101, ss. 47—53, *post*, and as to power of urban authority to purchase land for the purpose, see the Public Health Act, 1875, s. 154, *ante*, p. 126.

As to the width of roads in South Wales when they ceased to be turnpike roads, see the South Wales Highway Act, 23 & 24 Vict. c. 68, s. 41, *post*.

(5) See section 5, *ante*, as to inhabitants in vestry assembled.

(6) As to when a gate may lawfully be maintained on a highway, see 1 Hawk. P. C. Ch. 32 (4), s. 9, p. 694, 8th ed., by Curwood: *R.* v. *Bliss*, 1 Jur. 960.

Section 82.

Justices may order narrow highways to be widened.

Surveyor to agree with owners of lands for recompence, and if they cannot agree the same may be assessed by a jury at the quarter sessions.

82. Provided always, and be it further enacted, that where it shall appear, upon the view of two justices of the peace, that any highway (1) is not of sufficient breadth, and might be widened and enlarged, such justices shall and they are hereby empowered, within their respective divisions, to order (2) such highway respectively to be widened and enlarged in such manner as they shall think fit, so that the said highway, when widened and enlarged, shall not exceed thirty feet in breadth, and that neither of the said powers do extend to pull down any house or building, or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue to any house, or any inclosed ground set apart for building ground or as a nursery for trees (3); and for the satisfaction of the person, body politic or corporate, who is seised or possessed of or interested in their own right or in trust for any other person (4) in the said ground that shall be laid into the said highway respectively so to be widened and enlarged, the said surveyor, under the direction and with the approbation of the said justices in writing, shall and is hereby empowered to make an agreement with him for the recompense to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in proportion to their several and respective interests therein, and also with any other person, body politic or corporate, that may be injured by the widening and enlarging such highway, for the satisfaction to be made to him respectively as aforesaid, and if the said surveyor, under the direction and with the approbation of the said justices, cannot agree with the said person, body politic or corporate, or if he cannot be found, or shall refuse to treat or take such recompence or satisfaction as shall be offered to them respectively by such surveyor, then the justices of the peace at any general quarter sessions to be holden for the limit wherein such ground shall lie, upon certificate (5) in writing signed by the justices making such view as aforesaid of their proceedings in the premises, and upon proof of fourteen days' notice (6) in writing having been given by the surveyor of such parish to the owner, occupier, or other person, body politic or corporate, interested in such ground, or to his guardian, trustee, clerk, or agent, signifying an intention to apply to such quarter sessions, for the purpose of taking such ground, shall impannel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and the said jury shall upon their oaths, to the best of their judgment, assess the damages to be given and recompence to be made to the owners and others interested as aforesaid in the said ground for their respective interests, as they shall think reasonable, not exceeding forty years purchase for the clear yearly value of the ground so laid out, and like-

See, further, as to urban districts, the Towns Improvement Clauses Act, 1847, 10 & 11 Vict. c. 34, ss. 69—72, incorporated with the Public Health Act, 1875, by section 160 of that Act, *ante*, p. 131.

As to bye-laws for regulating, erection, &c., of gates across highways, see the Highways and Locomotives (Amendment) Act, 1878, 41 & 42 Vict. c. 77, s. 26, *post.*

(1) The provisions of this Act as to widening, diverting, and stopping up highways are made to apply to highways under local and personal Acts by the Highways Act, 1862, 25 & 26 Vict. c. 61, s. 44, *post.*

(2) See the form of Order in the Schedule to this Act, Form, No. 16.

It would seem that the person interested in the land, &c., to be taken for the purpose of widening the highway should be summoned to show cause against it. See *R.* v. *Guardians of Totnes Union*, 14 L. J. M. C. 148, 9 J. P. 584; and *R.* v. *Bagshaw, infra.*

As to disobeying Order, see *R.* v. *Balme*, Cowp. 648.

(3) See *R.* v. *Newmarket Ry.*, *post*, p. 816.

(4) See section 93, *post.* Consecrated ground cannot be used for the purpose of widening a highway: *St. George's, Hanover Square* v. *Steuart*, Stra. 1126; *Harper* v. *Forbes*, 5 Jur. N. S. 275.

(5) For form of certificate, see the Schedule to this Act, Form, No. 17, *post.*

(6) Under a similar provision in a Turnpike Act, the proceedings were quashed because it did not appear upon the face of them that any notice had been given to the owners of the land: *R.* v. *Bagshaw*, 7 T. R. 363.

Secs. 82, 83.

wise such recompence as they shall think reasonable for the making of new ditches and fences on the side of the said highway that shall be so widened and enlarged, and also satisfaction to any person, body politic or corporate, that may be otherwise injured by the widening and enlarging the said highways respectively (1); and upon payment or tender of the money so to be awarded and assessed to the person, body politic or corporate, entitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit, in case such person, body politic or corporate, cannot be found or shall refuse to accept the same, for the use of the owner of or others interested in the said ground, the interest of the said person, body politic or corporate, in the said ground shall be for ever divested out of them; and the said ground, after such agreement or verdict as aforesaid, shall be esteemed and taken to be a public highway to all intents and purposes whatsoever; saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same which can or may be got without breaking the surface of the said highway (2), and also all timber and wood growing upon such ground to be felled and taken by such owner within one month after such order shall have been made, or in default thereof to be felled by the said surveyor within the respective months aforesaid (3), and laid upon the land adjoining, for the benefit of the said owner; and where there shall not appear sufficient money in the hands of the surveyor for the purpose aforesaid, then the said two justices, in cases of agreement, or the said court of quarter sessions, after such verdict as aforesaid, shall direct the surveyor to make, collect, and levy an equal rate in the same manner as the rate by this Act authorized to be made (4), and to pay the money to the person, body politic or corporate, so interested, in such manner as the said justices or court of quarter sessions respectively shall direct and appoint; and the money thereby raised shall be employed and accounted for, according to the order and direction of the said justices or court of quarter sessions respectively, for and towards the purchasing the land to widen and enlarge the said highway, and for making the said ditches and fences, and also satisfaction for the damages sustained thereby; provided that no such rate to be made in any one year shall exceed one third part of the rate by this Act authorized to be levied, in addition to the rate for the repair of the highways (5).

On payment of money assessed, ground to be deemed a public highway.

Where there is not money sufficient, a further rate may be made by order of the justices at their quarter sessions, not exceeding one third of rate.

83. And be it further enacted, That in case such jury shall give in and deliver a verdict for more moneys as a recompence for the right, interest, or property of any person, body politic or corporate, in such lands or grounds, or for the making such fence, or for such damage or injury to be sustained by him as aforesaid, than what shall have been proposed and offered by the said surveyor before such application to the said court of quarter sessions as aforesaid, that then and in such case the costs and expenses attending the said several proceedings shall be borne and paid by the surveyor out of the moneys in his hands, or to be assessed and levied by virtue and under the powers of this Act: but if such jury shall give and deliver a verdict for no more or for less moneys than shall have been so offered and proposed by the said surveyor before such application to the said court of quarter sessions, that then the said costs and expenses shall be borne and paid by the person, body politic or corporate, who shall have refused to accept the recompence and satisfaction so offered to him as aforesaid.

Costs of proceedings, by whom payable.

(1) Where there are several parties with separate interests, compensation must be given them according to their several interests: an inquest awarding one sum to the whole of the parties was quashed: *R.* v. *Norwich and Watton Roads Trustees*, 1 Nev. & P. 32.

(2) As to right to support of surface of highway, and action by local authority for expenses of repairing in consequence of injury to surface. See *Benfieldside Local Board* v. *Consett Iron Co.*, L. R. 3 Ex. D. 54, 47 L. J. Ex. 491, 38 L. T. N. S. 530, 26 W. R. 114.

(3) See section 66, *ante*.

(4) See sections 27 and 29, *ante*. And see *R.* v. *Uttermere*, *post*, p. 827.

(5) As to widening roads to cemeteries, see the Cemeteries Clauses Act, 1847, 10 & 11 Vict. c. 65, ss. 12—14.

Section 84.

Previous to a highway being stopped up, &c., surveyor to request justices to view the same.

84. And be it further enacted, that when the inhabitants in vestry assembled (1) shall deem it expedient that any highway should be stopped up, diverted, or turned, either entirely or reserving a bridleway or footway (2) along the whole or any part or parts thereof, the chairman of such meeting shall by an order in writing direct the surveyor to apply to two justices to view (3) the same, and shall authorize him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act: Provided nevertheless, that if any other party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall by a notice in writing require the surveyor to give notice to the churchwardens (4) to assemble the inhabitants in vestry, and to submit to them the wish of such person, and if such inhabitants shall agree to the proposal the said surveyor shall apply to the justices as last aforesaid for the purposes aforesaid; and in such case the expenses aforesaid shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act (5); and the said surveyor is hereby required to make such application as aforesaid (6).

(1) See section 5, *ante*, p. 757, and note. As to urban districts, see the Public Health Act, 1875, s. 144, *ante*. And as to highway districts under the Highway Act, 1862, see that Act, 25 & 26 Vict. c. 61, s. 43, *post*.

(2) This removes the doubt expressed in *R.* v. *Winter*, 8 B. & C. 785. Subject to this reservation, it would seem that a portion of a highway cannot be stopped up. See *R.* v. *Milverton*, 5 A. & E. 841, 1 N. & P. 179. But the whole breadth of a highway may be stopped up to a certain point in its length. See *Gwyn* v. *Hardwicke*, 1 H. & N. 49, 25 L. J. M. C. 97, and *R.* v. *Burney*, 31 L. T. N. S. 828, 39 J. P. 599.

(3) The view must be jointly by both justices: *R.* v. *JJ. of Cambridgeshire*, 4 Ad. & E. 111, and *R.* v. *Jones*, 12 A. & E. 684.

(4) See *R.* v. *Powell*, 8 L. R. Q. B. 403, 42 L. J. M. C. 129, 28 L. T. N. S. 697, 21 W. R. 867.

(5) As to recovery of penalties and forfeitures, see sections 101, 103, *post*.

(6) By the common law an ancient highway cannot be changed without the licence of the Crown first obtained upon a writ of *ad quod damnum*, and an inquisition found thereon that such a change will not be prejudicial to the public: 1 Hawk. P. C. Ch. 32, p. 697, 8th ed., by Curwood. This was an original writ, issuing out of and returnable into the Court of Chancery, directed to the sheriff to inquire, by a jury, whether the changing a highway will be detrimental to the public or not. As to its effect, &c., see the following cases: *Ex parte Armitage*, Amb. 294; *Ex parte Vennor*, 3 Atk. 766; *R.* v. *Russell*, 6 B. & C. 600, 9 D. & R. 566. It is questionable whether the writ is not now abolished by the provisions of this Act, which, at any rate, have caused it to fall entirely into disuse.

The provisions of this Act cannot be applied to the diversion of a highway, which by a local Improvement Act is put under the management of Commissioners. See section 113, *post*; and *Wright* v. *Frant*, 4 B. & S. 118, 32 L. J. M. C. 204, 10 Jur. N. S. 39, 27 J. P. 645.

As to declaring unnecessary highways not to be repairable at the public expense, see the Highways and Locomotives (Amendment) Act, 1878, 41 & 42 Vict. c. 77, s. 24, *post*, and the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 21, *post*, whereby highways, without ceasing to be such, may be ordered to cease to be repairable by the parish. As to like provisions with regard to South Wales, see the South Wales Highway Act, 1860, 23 & 24 Vict. c. 67, s. 38.

The provisions of this Act as to widening of a highway extend to all highways which persons are bound to repair *ratione tenuræ*, &c. See section 93, *post*.

As to temporary diversion of way during repairing, &c., see section 25, *ante*, p. 778.

And as to temporary diversion of way during divine service, &c., see the Towns Police Clauses Act, 1847, 10 & 11 Vict. c. 89, ss. 21—23, which are incorporated with the Public Health Act, 1875, by section 171 of that Act, *ante*, as to urban districts.

As to diverting turnpike roads, see the General Turnpike Acts, 1822, 1828, 3 Geo. IV. c. 126, ss. 84—86, and 9 Geo. IV. c. 77, ss. 8, 9.

As to varying and stopping up footpaths over churchyards, see 59 Geo. III. c. 134, s. 39,

Section 85.

Proceedings for diverting &c., certain highways, and stopping up unnecessary highways.

85. And be it further enacted, that when it shall appear upon such view of such two justices of the peace (1), made at the request of the said surveyor as aforesaid, that any public highway may be diverted and turned either entirely or subject as aforesaid, so as to make the same nearer or more commodious (2) to the public, and the owner of the lands or grounds through which such new highway so proposed to be made shall consent thereto by writing under his hand (3), or if it shall appear upon such view that any public highway is unnecessary, the said justices shall direct the surveyor to affix a notice in the form or to the effect (4) of Schedule (No. 19) to this Act annexed, in legible characters, at the place and by the side of each end (5) of the said highway from whence the same is proposed to be turned, diverted, or stopped up, either entirely or subject as aforesaid, and also to insert the same notice in one newspaper published or generally circulated in the county where the highway so proposed to be diverted and turned or stopped up, either entirely or subject as aforesaid, (as the case may be,) shall lie, for four successive weeks next after the said justices have viewed such public highway, and to affix a like notice on the door of the church of every parish in which such highway so proposed to be diverted, turned, or stopped up, either entirely or subject as aforesaid, or any part thereof, shall lie, on four successive Sundays next after making such view; and the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices, and a plan having been delivered to them at the same time particularly describing the old and the proposed new highway, by metes, bounds, and admeasurement thereof, which plan shall be verified by some competent surveyor, the said justices shall proceed to certify (6) under their hands the fact of their having viewed the said highway as aforesaid, and that the proposed new highway is nearer or more commodious (7) to the public; and if nearer, the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so; and if the highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the certificate shall state the reason why it is unnecessary; and the said certificate of the said justices, together with the proof and plan so laid before them as aforesaid, shall, as soon as conveniently may be after the making of the said

55 Geo. III. c. 68, s. 2, and *R.* v. *Stock*, 8 A. & E. 405; *R.* v. *Arkwright*, 12 Q. B. 960, 18 L. J. Q. B. 26, 13 Jur. 300, 13 J. P. 122; *R.* v. *Twiss*, L. R. 4 Q. B. 407, 38 L. J. Q. B. 228, 20 L. T. N. S. 522, 17 W. R. 765.

As to alterations of roads by Inclosure Commissioners, see the General Inclosure Acts, 1801 and 1845, 41 Geo. III. c. 109, ss. 8, 11, and 8 & 9 Vict. c. 118, ss. 62, 63.

See, also, the Defence of the Realm Act, 23 & 24 Vict. c. 112, s. 40, and the Volunteer Act, 1868, 26 & 27 Vict. c. 65, s. 37.

(1) See *R.* v. *JJ. of Cambridgeshire*, and *R.* v. *Jones*, *ante*, p. 812, and *R.* v. *JJ. of Worcestershire*, 8 B. & C. 254; *R.* v. *Downshire* (*Marquis*), 4 A. & E. 698, 5 L. J. M. C. 72; and *R.* v. *Wallace*, L. R. 4 Q. B. D. 641, 40 L. T. N. S. 518, 43 J. P. 493.

(2) See *R.* v. *Phillips*, L. R. 1 Q. B. 648, 7 B. & S. 593, 35 L. J. M. C. 217, 12 Jur. N. S. 920, 14 W. R. 791, overruling *R.* v. *Shiles*, 1 Q. B. 919, 10 L. J. M. C. 157, 6 Jur. 256, 1 G. & D. 304.

(3) For form, see the Schedule to this Act, Form 18, *post*.

It would seem that the consent of the person who is owner at the time when the justices' certificate is made must be obtained: see *R.* v. *JJ. of Denbighshire*, 2 D. & R. 52, S. C. *nom.*; *R.* v. *Kirk*, 1 B. & C. 21; and it would seem that a consent under the hand of a solicitor or agent is insufficient: *R.* v. *JJ. of Kent*, 1 B. & C. 622; *R.* v. *Crewe*, 3 D. & R. 6. And see *R.* v. *JJ. of Surrey*, 26 L. T. N. S. 22.

(4) See *R.* v. *Horner*, 3 B. & Ad. 150; *Davison* v. *Gill*, 1 East. 64.

(5) *R.* v. *JJ. of Surrey*, L. R. 5 Q. B. 466, 39 L. J. M. C. 145.

(6) As to what the certificate must show on the face of it, see *R.* v. *Wallace*, *supra*; *R.* v. *JJ. of Surrey*, 26 L. T. N. S. 22; *R.* v. *Maule*, 41 L. J. M. C. 47, 23 L. T. N. S. 859, 35 J. P. 596; and *R.* v. *Harvey*, L. R. 10 Q. B. 46, 44 L. J. M. C. 1, 31 L. T. N. S. 505, 23 W. R. 231, 39 J. P. 262.

(7) See *R.* v. *Phillips*, *supra*; and *R.* v. *Midgley*, 5 B. & S. 621, 33 L. J. M. C. 188, 10 Jur. N. S. 1125, 28 J. P. 373.

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certificate, be lodged with the clerk of the peace for the county in which the said highway is situated, and shall (at the quarter sessions which shall be holden for the limit (1) within which the highway so diverted and turned or stopped up, either entirely or subject as aforesaid, shall lie, next after the expiration of four weeks from the day of the said certificate of the said justices having been lodged with the clerk of the peace as aforesaid,) be read by the said clerk of the peace in open court; and the said certificate, together with the proof and plan as aforesaid, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, shall be enrolled (2) by the clerk of the peace amongst the records of the said court of quarter sessions: Provided always, that any person whatever shall be at liberty, at any time previous to the said quarter sessions, to inspect the said certificate and plan so as aforesaid lodged with the said clerk of the peace, and to have a copy thereof, on payment to the clerk of the peace at the rate of sixpence per folio, and a reasonable compensation for the copy of the plan.

As to stopping up more than one highway connected together.

86. Provided always, and be it further enacted, that in any case where it is proposed to stop up or divert more than one highway, which highways shall be deemed to be so connected together as that one cannot be separately stopped or diverted without interfering one with the other, it shall be lawful to include such different highways in one order or certificate (3).

Court may confirm order for so doing, wholly or in part.

87. Provided also, and be it further enacted, that in the event of any appeal (4) being brought against the whole or any part or parts of any order or certificate for diverting more highways than one, it shall be lawful for the court to decide upon the propriety of confirming the whole or any part or parts of such order or certificate, without prejudice to the remaining part or parts thereof (5).

Persons who may think themselves aggrieved if such highway should be ordered to be stopped up, &c., may appeal.

88. Provided always, and be it further enacted, that when any such certificate shall have been so given as aforesaid, it shall and may be lawful for any person who may think that he would be injured or aggrieved (6) if any such highway should be ordered to be diverted and turned or stopped up, either entirely or subject as aforesaid, and such new highway set out and appropriated in lieu thereof as aforesaid, or if any unnecessary highway should be ordered to be stopped up as aforesaid, to make his complaint thereof by appeal to the justices of the peace at the said quarter sessions, upon giving to the surveyor ten day's notice in writing (7) of such appeal, together with a statement in writing of the

(1) That is, the county, &c., in which the road is situated: *R.* v. *JJ. of Suffolk*, 17 L. J. M. C. 143, 12 Jur. 480, 4 D. & L. 628.

(2) It would seem that the provision is directory only: *De Ponthieu* v. *Pennyfeather*, 5 Taunt. 634, 1 Marsh. 261. And see *Manning* v. *Eastern Counties Ry.*, 13 L. J. Ex. 265.

(3) This meets a difficulty raised under the previous enactments: See *R.* v. *Milverton*, 5 A. & E. 841, 1 Nev. & P. 179; *R.* v. *JJ. of Middlesex*, 1 Nev. & P. 92.

(4) See the next section.

(5) On appeal to quarter sessions against a certificate ordering certain roads to be diverted and others to be stopped up, the court may confirm the order as to the stopping up, and quash it as to the diverting: *R.* v. *Midgeley*, *ante*, p. 813.

(6) "The stopping up or diverting of a public highway affects in a certain degree all His Majesty's subjects, and, therefore, as the statute (55 Geo. III. c. 68, s. 3, the previous enactment) has not given a right of appeal to all persons, but merely to the *party aggrieved*, we must suppose that the legislature intended to confer that privilege upon those persons alone who have sustained some special and peculiar injury, and not to extend the power of appealing to any captious person whomsoever": *R.* v. *JJ. of Essex*, 5 B. & C. 431, at p. 433, *per* Abbott, C.J. See, also, *R.* v. *Williamson*, 7 T. R. 32; *R.* v. *JJ. of Somersetshire*, 7 B. & C. 681; *R.* v. *Adey*, 4 Nev. & M. 365; *R.* v. *JJ. of W. R. Yorkshire*, 4 B. & Ad. 685, 1 N. & M. 427; *R.* v. *Taunton*, 3 M. & S. 465; *R.* v. *Incledon*, 1 M. & S. 268; *R.* v. *JJ. of Westmoreland*, 1 D. & L. 178; *R.* v. *Townsend*, 5 B. & Ald. 420.

(7) Notwithstanding this provision, the 12 & 13 Vict. c. 45, s. 1, applies to such an appeal, and it is necessary to give the fourteen days' notice there mentioned: *R.* v.

grounds of such appeal, who is hereby required, within forty-eight hours after the receipt of such notice, to deliver a copy of the same to the party by whom he was required to apply to the justices to view the said highway; provided that in all cases where the said surveyor shall have been directed by the inhabitants in vestry assembled to apply to such justices as aforesaid, then the said surveyor shall not be required to deliver a copy of such notice to any party: Provided also, that it shall not be lawful for the appellant to be heard in support of such appeal unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

In case of appeal, jury at sessions to determine whether new highway is nearer, &c.

89. And be it further enacted, that in case of such appeal the justices at the said quarter sessions shall, for the purpose of determining whether the proposed new highway is nearer or more commodious to the public (1), or whether the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or whether the said party appealing would be injured or aggrieved (2), impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and if, after hearing the evidence produced before them, the said jury shall return a verdict that the proposed new highway is nearer or more commodious to the public, or that the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or that the party appealing would not be injured or aggrieved, then the said court of quarter sessions shall dismiss such appeal, and make the order herein mentioned (3) for diverting and turning and stopping up such highway, either entirely or subject as aforesaid, or for diverting, turning, and stopping up of such old highway, and purchasing the ground and soil for such new highway, or for

Maule, 41 L. J. M. C. 47, 23 L. T. N. S. 859, 35 J. P. 956. 12 & 13 Vict. c. 45, s. 1, is as follows:—

"In every case of appeal (except as hereinafter mentioned) to any court of general or quarter sessions of the peace, fourteen clear day's notice of appeal at least shall be given, and such shall be sufficient notice, any Act or Acts or any rule or practice of any court or courts to the contrary notwithstanding; and such notice of appeal shall be in writing, signed by the person or persons giving the same, or by his, her, or their attorney, on his, her, or their behalf, and the grounds of appeal shall be specified in every such notice: Provided always, that it shall not be lawful for the appellant or appellants, on the trial of any such appeal, to go into or give evidence of any other ground of appeal besides those set forth in such notice."

The fourteen days are to be reckoned, excluding the day of giving the notice and the day when the appeal is to be heard: *Pellew* v. *Wonford*, 4 M. & R. 130, 9 B. & C. 134; *R.* v. *JJ. of Shropshire*, 8 A. & E. 173, 7 L. J. M. C. 56; *R.* v. *JJ. Herefordshire*, 3 B. & Ald. 581. The words of the statute cannot be affected by any rules of sessions. See *R.* v. *JJ. of W. R. Yorkshire*, *ante*, p. 814.

The notice must be given fourteen days before the first day of the general quarter sessions, and not fourteen days before the first day on which the adjourned sessions are appointed to be held for the division in which the appeal is to be tried: *R.* v. *JJ. Lancashire*, 8 El. & Bl. 563, 27 L. J. M. C. 161, 4 Jur. N. S. 375; see *R.* v. *JJ. of Suffolk*, 4 D. & L. 628, 12 Jur. 480.

In *R.* v. *JJ. Hertfordshire*, 3 M. & S. 459, it was held that if justices make an order for diverting a public footway, and afterwards an order for stopping up the old footway, the party aggrieved may appeal against the last order, though too late to appeal against the first.

The appeal must be to the quarter sessions held next after the expiration of four weeks from the day on which the certificate was lodged with the clerk of the peace: *R.* v. *JJ. Staffordshire*, 3 East, 151. See section 85, *ante*.

The notice of appeal must state, or it must sufficiently appear therefrom, that the appellant is injured or aggrieved: *R.* v. *JJ. Essex*, 5 B. & C. 431, 7 D. & R. 658; *R.* v. *JJ. of W. R. Yorkshire*, *ante*, p. 814.

(1) See note (7), *ante*, p. 813.

(2) See note (6), *ante*, p. 814.

(3) See section 91, *post*.

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stopping up such unnecessary highway, either entirely or subject as aforesaid; but if the said jury shall return a verdict that the proposed new highway is not nearer or not more commodious to the public, or that the highway so intended to be stopped up, either entirely or subject as aforesaid, is not unnecessary, or that the party appealing would be injured or aggrieved, then the said court of quarter sessions shall allow such appeal, and shall not make such order as aforesaid (1).

Costs to be awarded in appeal against stopping up, &c. highway.

90. And be it further enacted, that the court of quarter sessions is hereby authorised and required to award to the party giving or receiving notice of appeal such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not, and such costs and expenses shall be paid by the surveyor or other party as aforesaid at whose instance the notice for diverting and turning or stopping up the highway, either entirely or subject as aforesaid, shall have been given; and in case the said surveyor or other party as aforesaid shall not appear in support thereof, the said court of quarter sessions shall award the costs of the appellant to be paid by such surveyor or other party as aforesaid, and such costs shall be recoverable in the same manner as any penalties or forfeitures are recoverable under this Act (2).

If no appeal be made, or if dismissed, sessions to make order for diverting &c., and the old ways may be stopped.

New highway shall afterwards continue a public highway, &c.

91. Provided always, and be it further enacted, that if no such appeal be made, or being made shall be dismissed as aforesaid, then the justices at the said quarter sessions shall (3) make an order to divert and turn and to stop up such highway, either entirely or subject as aforesaid (4), or to divert, turn, and stop up such old highway, and to purchase the ground and soil for such new highway, or to stop up such unnecessary highway, either entirely or subject as aforesaid, by such ways and means, and subject to such exceptions and conditions in all respects, as in this Act is mentioned in regard to highways to be widened (5), and the proceedings thereupon shall be binding and conclusive on all persons whomsoever; and the new highways so to be appropriated and set out shall be and for ever after continue a public highway to all intents and purposes whatsoever; but no old highway

(1) The jurisdiction of quarter sessions is not limited to trying the three questions of fact by the jury; they may decide upon any substantial defect appearing on the face of the certificate, and this even without an appeal: *R.* v. *JJ. Worcestershire*, 3 El. & Bl. 477, 23 L. J. M. C. 113, 18 Jur. 424.

As to power to amend certificate upon appeal according to the fact, see *R.* v. *Harvey*, L. R. 10 Q. B. 46, at p. 52, *per* Blackburn, J., 44 L. J. M. C. 1, 31 L. T. N. S. 505.

As to stating special case, see section 108, *post*.

(2) As to recovery of penalties and forfeitures, see sections 101 and 103, post. But see *Sellwood* v *Mount*, *infra*.

The amount of costs ought to be ascertained by the clerk of the peace during the sessions and inserted in the order: *Ex parte Holloway*, 1 Dowl. 26; *Sellwood* v. *Mount*, 1 Q. B. 726, 10 L. J. M. C. 121, 1 G. & D. 358; *R.* v. *Clark*, 5 Q. B. 887, 13 L. J. M. C. 91. See *R.* v. *Mortlock*, 7 Q. B. 459, as to an order for costs made at an adjourned sessions, and see *R.* v. *JJ. of W. R. Yorkshire*, 2 B. & S. 811, 31 L. J. M. C. 271, 6 L. T. N. S. 494, 9 Jur. N. S. 118, as to application for costs after appeal struck out.

The non-payment of costs is not an offence within sections 101, 103, *post*, but payment may be enforced by distress warrant under section 103, *post*; *Sellwood* v. *Mount*, *supra*.

12 & 13 Vict. c. 45, s. 5, provides as follows: "upon any appeal to any court of general or quarter sessions of the peace the court before whom the same shall be brought may, if it think fit, order and direct the party or parties against whom the same shall be decided to pay to the other party or parties such costs and charges as may to such court appear just and reasonable, such costs to be recoverable in the manner provided for the recovery of costs upon an appeal against an order or conviction by an Act passed in the twelfth year of Her Majesty's reign intituled an Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders."

(3) But see *R.* v. *JJ. of Worcestershire*, *supra*.

(4) See section 84, *ante*.

(5) See *R.* v. *Newmarket Ry.*, 19 L. J. M. C. 241.

(except in the case of stopping up of such useless highway as herein is mentioned) shall be stopped until such new highway shall be completed and put into good condition and repair, and so certified (1) by two justices of the peace upon view thereof, which certificate shall be returned to the clerk of the peace, and by him enrolled amongst the records of the court of quarter sessions next after such order as aforesaid shall have been made, pursuant to the directions hereinbefore contained (2).

Party liable to repair of old highways to repair new highways.

92. Provided always, and be it further enacted, that in every case in which a highway shall have been turned or diverted under the provisions of this Act, the parish or other party which was liable to the repair of the old highway shall be liable to the repair of the new highway, without any reference whatever to its parochial locality.

Provi-ions as to widening of a highway to extend to all highways which persons are bound to repair *ratione tenuræ*, &c.

93. And be it further enacted, that the powers and provisions in this Act contained (3) with respect to the widening and enlarging, diverting, turning, or stopping up, any highway shall be applicable to all highways which any person, bodies politic or corporate, is or are bound to repair by reason of any grant, tenure, limitation, or appointment of any charitable gift or otherwise howsoever (4); and that when such last-mentioned highways are so widened or enlarged, turned, or diverted, the same shall and may, by an order of the justices at a special sessions (5) for the highways, be placed under the control and care of the surveyor of the parish in which such highways may be situate, and shall be from time to time thereafter repaired and kept in repair by the said parish: Provided also, that the said highways so widened, enlarged, diverted, or turned shall be viewed by two justices of the peace, who shall make a report thereof to the justices at a special sessions (5) for the highways; and such last-mentioned justices shall, by an order under their hands, fix the proportionate sum which shall be annually paid or shall fix a certain sum to be paid, by such persons, bodies politic or corporate, his or their heirs, successors, or assigns, to the said surveyors of the parish, in lieu of thereafter repairing the said part of the said old highway; and the order of the said last-mentioned justices shall be and continue binding on all such persons, bodies politic or corporate, their heirs, successors, or assigns; and in default of payment thereof the said surveyor shall proceed for the recovery of the same in the manner as any penalties and forfeitures are recoverable under this Act (6).

Justices to fix annual or other amount payable by party previously bound to repair.

Mode of proceeding before justices if highway is out of repair.

94. And be it further enacted (7), that from and after the commencement of this Act, if any highway is out of repair (8), or is not well and sufficiently repaired and amended, and information thereof, on the oath of one credible witness, is given to any justice of the peace, it shall and may be lawful for such justice, and he is hereby authorised and required, to issue a summons requiring the

(1) See *De Ponthieu* v. *Pennyfeather*, 5 Taunt. 634, 1 Marsh. 261.

(2) When the old road ceases to be a highway the land reverts, unencumbered by any easement, to the original owners of the soil: *R.* v. *Wallace*, L. R. 4 Q. B. D. 641, 40 L. T. N. S. 518, 43 J. P. 493, *per* Cockburn C.J.

(3) See sections 82, 83, and 84—92, *ante*.

(4) By the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 44, these powers and provisions are made applicable to highways under local and personal Acts.

As to liability to repair by reason of grant, tenure, &c., see the note, *ante*, p. 765.

(5) See now, the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

(6) As to the recovery of forfeitures and penalties, see sections 101, 103, *post*.

(7) See also, the Highways and Locomotives (Amendment) Act, 1878, 41 & 42 Vict. c. 77, s. 10, *post*. As to districts formed under the Highway Act, 1862, see sections 18 and 19 of that Act, 25 & 26 Vict. c. 61, *post*. As to highways in South Wales, see the South Wales Highway Act, 23 & 24 Vict. c. 68, s. 40, *post*.

As to proceeding by indictment, as well as under these special provisions, see *R.* v. *Robinson*, 2 Burr. 799.

(8) Two conditions must be fulfilled before justices can proceed under this section—first, the road must be *primâ facie* shown to be a highway; and, secondly, it must be shown to be out of repair, &c. See *R.* v. *Johnson*, and cases cited, *post*, p. 818.

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surveyor of the parish, or other person or body politic or corporate, chargeable with such repairs, to appear before the justices at some special sessions (1) for the highways in the said summons mentioned, to be held within the division in which the said highway may be situate; and the said justices shall either appoint some competent person to view the same, and report thereon to the justices in special sessions (1) assembled, on a certain day and place to be then and there fixed, at which the said surveyor of the highways, or other party as aforesaid, shall be directed to attend, or the said justices shall fix a day whereon they or any two of them shall attend to view the said highway; and if to the justices at such special sessions (1), on the day and at the place so fixed as aforesaid, it shall appear, either on the report (2) of the said person so appointed by them to view, or on the view of such justices, that the said highway is not in a state of thorough and effectual repair, they the said justices at such last-mentioned special sessions (1) shall convict the said surveyor or other party liable to the repair of the said highway in any penalty not exceeding five pounds (3), and shall make an order on the said surveyor or other person or bodies politic or corporate liable to repair such highway, by which order they shall limit and appoint a time for the repairing of the same; and in default of such repairs being effectually made within the time so limited, the said surveyor, or such other person or body politic or corporate as aforesaid, shall forfeit and pay to some person, to be named and appointed in a second order, a sum of money to be therein stated, and which shall be equal in amount to the sum which the said justices shall, on the evidence produced before them, judge requisite for repairing such highway, which money shall be recoverable in the same manner as any forfeiture is recoverable under this Act (4), and such money, when recovered, shall be applied to the repair of such highway; and in case more parties than one are bound to repair any such highway, the said justices shall direct in their said order what proportion shall be paid by each of the said parties: Provided that if the said highway so out of repair is a part of the turnpike road, the said justices shall summon (5) the treasurer or surveyor or other officer of such turnpike road, and the order herein directed to be made shall be made on such treasurer or surveyor or other officer as aforesaid, and the money therein stated shall be recoverable as aforesaid (6): Provided nevertheless, that the said justices shall not have power to make such order as aforesaid in any case where the duty or obligation of repairing the said highway comes in question (7).

In what cases justices cannot interfere.

Mode of proceeding if obligation to repair is disputed.

95. And be it enacted, that if on the hearing of any such summons respecting the repair of any highway the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other party charged therewith, it shall then be lawful for such justices and they are hereby required to direct a bill of indictment to be preferred (8), and the necessary witnesses in support thereof to be subpœnaed at the next assizes, to be holden in and for the said

(1) See now, the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

(2) The justices are not bound by the report, but may exercise their discretion, whether they will convict or not: *R.* v. *JJ. of Wilts*, 8 Dowl. 717, 4 Jur. 460.

(3) This is a penalty upon the surveyor as a punishment for his neglect, and does not come out of the highway rate. See *R.* v. *JJ. of Wilts*, *supra*, *per* Coleridge, J.

(4) See section 103, *post*.

(5) A single justice has no power under this section to summon a surveyor, &c., of *turnpike* roads: *George* v. *Chambers*, 11 M. & W. 149, 12 L. J. M. C. 94, 2 Dowl. N. S. 783, 7 Jur. 836.

(6) See generally as to proceedings under this section in the case of turnpike roads: *R.* v. *JJ. of St. Albans*, 22 L. J. M. C. 142, 17 Jur. 531; and *R.* v. *Hyde*, 21 L. J. M. C. 94.

(7) See the next section and the notes thereto.

(8) See the preceding section.

Where the road is *bonâ fide* denied to be a highway the justices have no power to direct an indictment: *R.* v. *Farrer*, L. R. 1 Q. B. 558, 35 L. J. M. C. 210; *R.* v. *Johnson*, 5 N. R. 305, 34 L. J. M. C. 85, 11 Jur. N. S. 467; *Ex parte Bartlett*, 30 L. J. M. C. 65; *R.* v. *Askerton*, 11 L. T. N. S. 706, 29 J. P. 516. But where the road is admitted to be a highway and the surveyor simply denies the liability to repair, it is imperative on

county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein such highway shall be, against the inhabitants of the parish or the party to be named in such order for suffering and permitting the said highway to be out of repair; and the costs (1) of such prosecution shall be directed by the judge of assize before whom the said indictment is tried, or by the justices at such quarter sessions, to be paid out of the rate made and levied in pursuance of this Act in the parish in which such highway shall be situate (2): Provided nevertheless, that it shall be lawful for the party against whom such indictment shall be so preferred at the quarter sessions as aforesaid to remove such indictment by *certiorari* or otherwise into His Majesty's Court of King's Bench (3).

the justices to direct an indictment: *R.* v. *JJ. of Surrey*, 21 L. J. M. C. 195, 16 Jur. 641; *R.* v. *Arnould*, 8 Ell. & B. 655, 27 L. J. M. C. 92. But see *Ex parte Bennett*, 6 Jur. N. S. 1196.

It would seem that the order ought to show that the highway in respect of which the indictment is directed is within the jurisdiction of the justices. See *R.* v. *Hickling*, 7 Q. B. 890, 15 L. J. M. C. 23, 1 Cox, C. C. 243; *R.* v. *Martin*, 2 Q. B. 1037, 13 L. J. M. C. 45.

As to granting criminal information against a parish for non-repair, where a bill of indictment has been ignored by a grand jury, some of the grand jurors taking part in the discussion being landowners in the parish, see *R.* v. *Upton St. Leonards*, 10 Q. B. 827, 16 L. J. M. C. 84.

(1) There is no jurisdiction to direct costs to be paid under this section unless the road be a highway: *R.* v. *Heanor*, 6 Q. B. 745, 14 L. J. M. C. 38; *R.* v. *Down Holland*, 15 L. J. M. C. 25, 9 Jur. 1077; *R.* v. *Chedworth*, 9 C. & P. 285; *R.* v. *Paul*, 2 M. & Rob. 307. Where, however, there is jurisdiction to make the order, the statute is imperative, and leaves no discretion to the judge or justices at quarter sessions. See *R.* v. *Yarkhill*, 9 C. & P. 218.

Where the defendant pleads guilty, an order for costs may be made: *R.* v. *Haslemere*, 3 B. & S. 313, 32 L. J. M. C. 30, 7 L. T. N. S. 382, 27 J. P. 39. But where the jury disagree and are discharged, no costs can be ordered: *R.* v. *Heytesbury*, 8 L. T. N. S. 315, 27 J. P. 280. Nor can costs be given where the highway laid in the indictment is not the same as that set out in the order of the justices: *R.* v. *Fifehead*, 3 Cox C. C. 59; *R.* v. *Lee*, L. R. 1 Q. B. D. 198, 45 L. J. M. C. 54, 34 L. T. N. S. 445. See also *R.* v. *Hickling*, *supra*.

(2) The order should state out of what fund the costs are to be paid: *R.* v. *Watford*, 4 D. & L. 593, 11 Jur. 332; *R.* v. *Clark*, 5 Q. B. 887, 13 L. J. M. C. 91, 8 Jur. 489.

At quarter sessions the amount of the costs should be ascertained and inserted in the order before the conclusion of the sessions: *R.* v. *St. Mary, Lambeth*, 24 L. T. 145. And so it would seem, where the trial is at assizes, the costs should be ascertained and inserted in the order during the assizes: *R.* v. *Eardisland*, 3 E. & B. 960, 23 L. J. M. C. 145, 18 Jur. 876; but see *R.* v. *Clark*, *supra*.

The order under this section extends not only to rates under or levied at the time of the order, but to the highway rate in general, and if there be not sufficient funds in the hands of the surveyors at the time, they must make a rate for the purpose: *R.* v. *Eyton*, 3 El. & Bl. 390, S. C. *nom. re Surveyors of Tryddyn; Ex parte Harrison*, 23 L. J. M. C. 45, 18 Jur. 399. And the order binds not only the surveyors in office at the time, but their successors, until the costs be paid: *Ib.*

The costs are not penalties or forfeitures within the meaning of section 103, and cannot be levied by distress: *Ib.* But a *mandamus* will issue to compel the taking of the proper steps to discharge them: *Ib.*

Where the indictment has been removed into the Queen's Bench Division by *certiorari* and is tried at *nisi prius*, the judge has no power to direct the payment of costs under this section: *R.* v. *Ipstones*, L. R. 3 Q. B. 216, 9 B. & S. 10, 37 L. J. M. C. 37, 17 L. T. N. S. 497, 16 W. R. 538, 32 J. P. 214. As to costs where the indictment has been removed by *certiorari*, see 5 & 6 Will. & M. c. 11, s. 3, and *R.* v. *Taunton, St. Mary*, 3 M. & S. 465.

(3) An indictment preferred at the assizes may be removed by *certiorari*: *R.* v. *Sandon*, 3 El. & Bl. 547, 23 L. J. M. C. 129, 18 Jur. 401.

Secs. 96–98.

Fines, penalties, and forfeitures how to be levied and applied.

96. And be it further enacted, that no fine, issue, penalty, or forfeiture for not repairing the highway, or not appearing to any indictment for not repairing the same, shall hereafter be returned into the Court of Exchequer or other court, but shall be levied by and paid into the hands of such person residing in or near the parish where the road shall lie, as the justices or court imposing such fines, issues, penalties, or forfeitures shall order and direct, to be applied towards the repair and amendment of such highway (1); and the person so ordered to receive such fine shall, and is hereby required to receive, apply, and account for the same according to the direction of such justices or court, or in default thereof, shall forfeit double the sum received; and if any fine, issue, penalty, or forfeiture to be imposed for not repairing the highway, or not appearing as aforesaid, shall hereafter be levied on any inhabitant of such parish, township, or place, then such inhabitant shall and may make his complaint to the justices at a special sessions (2) for the highways; and the said justices are hereby empowered and authorised by warrant under their hands, to make an order (3) on the surveyor of the parish for payment of the same out of the money receivable by him for the highway rate, and shall within two months next after service of the said order on him pay unto such inhabitant the money therein mentioned.

Justices empowered to award costs to defendant, where information, &c. is withdrawn or dismissed.

97. And be it further enacted, that if any surveyor or other person shall be summoned before any justice (*sic*) to answer any information or complaint exhibited or made against him touching or concerning any offence committed or alleged to have been committed by such surveyor or other person against the provisions of this Act, or for any supposed neglect of duty, in case such surveyor or other person be convicted thereof, such justice shall be authorised and empowered to order the payment by such surveyor or other person of all costs or (*sic*) proceedings against him; but in case such information or complaint shall afterwards be withdrawn or quashed or dismissed, or if the defendant shall be acquitted of the offence or neglect of duty charged against him, it shall be lawful for such justices (*sic*) to order and award that the person exhibiting or making such information or complaint shall pay to the defendant all such costs as to such justice shall seem reasonable; and in default of immediate payment of the sum so awarded, it shall be lawful for such justices to cause the same to be levied by distress and sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale; and if goods and chattels of such person sufficient to answer the sum so awarded with such costs as aforesaid, cannot be found, it shall be lawful for such justices to commit such person to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding one calendar month, unless the sum so awarded, together with all costs and expenses, shall be sooner paid and satisfied (4).

Court may award costs to the prosecutor.

98. And be it further enacted, that it shall and may be lawful for the court before whom any indictment shall be preferred for not repairing highways to award costs to the prosecutor, to be paid by the person so indicted, if it shall appear to the said court that the defence made to such indictment was frivolous or vexatious (5).

As to removal of indictments by *certiorari*, see 16 & 17 Vict. c. 30, ss. 4—9; and as to costs, see *R.* v. *Oastler*, L. R. 9 Q. B. 132, 43 L. J. 42, 29 L. T. N. S. 830, 22 W. R. 490, 38 J. P. 391, and *R.* v. *Ipstones*, and *R.* v. *Taunton, St. Mary, ante*, p. 819.

(1) As the fine can only be applied towards the repair and amendment of the highway, if the defendants effectually repair the road before payment of the fine, they are entitled to a stay of further proceedings: *R.* v. *Barnard's Castle*, 10 L. J. M. C. 53, 5 Jur. 799. But the repairs must be effectually done: *R.* v. *Claxby*, 24 L. J. Q. B. 223, 1 Jur. N. S. 710.

As to apportioning fine, where the road is a turnpike road, see 3 Geo. IV. c. 126, s. 110.

(2) See now Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46.

(3) As to proceeding by *mandamus* within a reasonable time, if the justices refuse, see *R.* v. *JJ. of Lancashire*, 12 East. 366; *R.* v. *Townsend*, 2 Doug. 420.

(4) This section is now repealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43, so that the subject is now regulated by the Summary Jurisdiction Acts, 1848, 1879.

(5) Where an indictment is removed by *certiorari*, the judge at *nisi prius*, who tries the case, may award costs: *R.* v. *Pembridge*, 3 Q. B. 901, 12 L. J. Q. B. 47, 259, 3 G. & D. 603, 7 Jur. 553.

Secs. 99—101.

99. And be it further enacted, that from and after the commencement of this Act it shall not be lawful to take or commence any legal proceedings, by presentment against the inhabitants of any parish, or other person, on account of any highway or turnpike road being out of repair (1).

No presentment against inhabitants for highway being out of repair.

100. *Inhabitants and officers in parishes may give evidence* (2).

Justices may proceed by summons in the recovery of penalties.

101. And be it further enacted, that in all cases in which any penalty or forfeiture is recoverable before justices of the peace under this Act it shall and may be lawful for any justice to whom complaint shall be made of any such offence to summon the party complained against before any two justices, and on such summons the said two justices may hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing was exhibited (3).

In such case the judge may also certify for a special jury: *Ib.* And non-payment of the costs is a contempt for which an attachment may issue: *Ib.*

Where the defendants plead guilty to an indictment, there is no power to award costs: *R.* v. *Denton*, 5 B. & S. 821, 34 L. J. M. C. 13, 11 Jur. N. S. 172, 11 L. T. N. S. 371, 13 W. R. 143, 29 J. P. 151. But the fact that the defendants obtain a rule to arrest judgment does not deprive the prosecutor of his costs: *R.* v. *St. John, Margate*, 6 M. & S. 130.

It is not necessary that the judge should in express terms award costs; it is enough if he certify that the defence was frivolous or vexatious: *R.* v. *Clifton*, 6 T. R. 344, see also, *R.* v. *St. John, Margate, supra*, per Ld. Ellenborough, C.J., and Bayley, J.

(1) As to presentment for non-repair of a highway, see the Highway Act, 13 Geo. III. c. 78, s. 24 (repealed by this Act), and 4 Steph. Com. 8th ed., p. 357. Prosecution by way of presentment is not abolished in the case of a county-bridge, but it has fallen entirely into disuse. See *R.* v. *Brecon*, 15 Q. B. 813, 18 L. J. M. C. 123, 13 Jur. 422.

(2) Repealed by the Statute Law Revision Act, 1874, 37 & 38 Vict. c. 35.

By the Act for the Amendment of Evidence in certain cases of misdemeanour, 40 & 41 Vict. c. 14, it is enacted as follows:—

"Section 1. On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only every defendant to such indictment or proceeding, and the wife or husband of any such defendant shall be admissible witnesses and compellable to give evidence." See also, 14 & 15 Vict. c. 99, ss. 2, 3.

For Forms, see the Schedule to this Act, Forms 20—25, *post.*

(3) This section and section 102 are now repealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43. Proceedings before justices are now regulated by the Summary Jurisdiction Acts, 1848, 1879, 11 & 12 Vict. c. 43, 42 & 43 Vict. c. 49. By section 11 of the former Act complaint or information must be made or laid within six calendar months from the time when the matter thereof arose, where no time is specially limited.

The jurisdiction of justices, who have to determine whether a road is a highway or not, is not ousted on the ground that the title to land comes in question, because the owner of the land on both sides of the road denies it to be a highway, and claims the soil subject to a private right of way only: *Williams* v. *Adams*, 2 B. & S. 312, 31 L. J. M. C. 109, 5 L. T. N. S. 790, 8 Jur. N. S. 816, 26 J. P. 180.

By 40 Vict. c. 11, s. 1, it is provided that "No judge shall be incapable of acting in his judicial office in any proceeding, whether commenced before or after the passing of this Act, by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with the others, to contribute to or to be benefited by any rate which may be increased, diminished, or in any way affected by such proceeding." By section 3, "'Rate' means any rate, tax, duty, or assessment, whether public, general, or local, and also any fund formed from the proceeds of any such rate, tax, duty or assessment, or applicable to the same or like purposes to which any such rate, tax, duty or assessment might be applied."

Secs. 102, 103.

Compelling witnesses to attend and give evidence.

102. And be it further enacted, that if any person, after having been paid or tendered a reasonable sum of money for his costs, charges, and expenses, shall be summoned as a witness to give evidence before any justices of the peace touching any matter or fact contained in any information or complaint for any offence against this Act, either on the part of the prosecutor or the person accused, and shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his refusal or neglect, or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expenses) refuse to be examined upon oath and give evidence before such justice of the peace, then and in either of such cases such person shall forfeit for every such offence any sum not exceeding five pounds (1).

Forfeitures, costs, and charges may be levied by distress and sale.

103. And be it further enacted, that all penalties and forfeitures by this Act inflicted or authorized to be imposed for any offence against the same, and all balances due from a surveyor (2), and all costs and charges to be allowed and ordered by the authority of this Act (the manner of levying, recovering, and applying of which is not hereby otherwise particularly directed) (3), shall, upon proof and conviction of the offences respectively before any two or more justices, either by the confession of the party offending or by the oath of any credible witness or witnesses (which oath such justices are in every case hereby fully authorized to administer), or upon order made as aforesaid, be levied, together with the costs attending the information, summons and conviction, by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same respectively, [by warrant under the hands of two or more justices before whom the party may have been convicted (which warrant such justices are hereby empowered and required to grant); and the overplus (if any), after such penalties, forfeitures, and fines, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justices as aforesaid to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such justices as aforesaid, for his or their appearance before such justices on such day or days as shall be appointed for the return of such warrant of distress, such day not being later than seven days from the time of taking any such security, and which security the said justices as aforesaid are hereby empowered to take by way of recognizance or otherwise; or in case it shall appear to the satisfaction of such justices, either by the confession of the offender or otherwise, that he hath not goods or chattels within the jurisdiction of such justices sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justices may, at their discretion, without issuing any warrant of distress, commit the offender for such period of time, and in such and like manner, as if a warrant of distress had been issued, and *nulla bona* returned thereon (4);] but if a warrant of distress shall be issued, and upon the return thereof it shall appear that no sufficient distress can be had whereupon to levy the said penalty, forfeiture or fine, and costs and expenses aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such justices, upon the confession of the offender or otherwise, that he hath not sufficient goods and chattels whereupon such penalty, forfeiture or fine, costs and expenses, could be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant, but in such case such justices are hereby required, by warrant under their hands, to cause such offender or offenders

(1) See the note to the preceding section. As to summoning witnesses, see Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, s. 11, and as to case of witnesses out of the jurisdiction, see Summary Jurisdiction Act, 1870, 42 & 43 Vict. c. 49, s. 36.

(2) See *Kilham* v. *Collier*, 21 L. J. Q. B. 65, 15 Jur. 1175.

(3) See *R.* v. *Eyton*, *ante*, p. 819; *Sellwood* v. *Mount*, 1 Q. B. 726, 10 L. J. M. C. 121, 1 G. & D. 358, 6 Jur. 78; *Lock* v. *Sellwood*, 1 Q. B. 736; *R.* v. *Pembridge*, *ante*, p. 820.

(4) The portions between brackets are now repealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43. Proceedings are now regulated by the Summary Jurisdiction Acts, 1848, 1879.

Secs. 103—105.

to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to be kept to hard labour [for any term not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the same. shall be sooner paid and satisfied (1)]; and the penalties and forfeitures, when so levied, shall be paid, the one half to the informer, and the other half to the surveyor of the parish where such offence, neglect, or default shall happen, to be applied towards the repair of the highways thereof, unless otherwise directed by this Act; but in case the surveyor shall be the informer, then the whole shall be applied towards the repair of such highway (2).

Application of penalties.

104. And be it further enacted, that where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any default or want of form in any proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done in making the distress, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case: Provided always, that no plaintiff shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made by or on behalf of the party who shall have committed or caused to be committed any such irregularity, trespass, or wrongful proceedings, before such action brought; and in case no such tender shall have been made, it shall and may be lawful for the defendant in any such action, by leave of the Court where such action shall depend, at any time before issue joined, to pay into Court such sum of money as he shall see fit, whereupon such proceedings or orders and judgment shall be had, made, and given in and by such Court as in other actions where the defendant is allowed to pay money into Court (3).

Satisfaction recoverable for special damage; but distress not to be deemed unlawful for want of form in the proceedings.

Plaintiff not to recover for irregularity if tender of amends be made.

105. Provided also, and be it further enacted, that if any person shall think himself aggrieved (4) by any rate made under or in pursuance of this Act, or by any order, conviction, judgment, or determination made, or by any matter or thing done, by any justice or other person in pursuance of this Act (5), and for which no particular method of relief hath been already appointed, such person may appeal to the justices at the next general or quarter sessions of the peace [to be held for the county, division, riding, or place wherein the cause of such complaint shall arise, such appellant first giving or causing to be given to the surveyor or surveyors, or to such justice or other person by whose act such person shall think himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds of such appeal, within fourteen days after such rate shall have been made or cause of complaint shall have arisen, and within four days after such notice entering into a recognizance before some justice, with two sufficient sureties, conditioned to try such appeal at and abide the order of and pay such costs as shall be awarded by the justices at such general or quarter

Appeal may be made to quarter sessions against rate, &c.

(1) See note (4), *ante*, p. 822.

(2) See note to section 101, *ante*, p. 821. See especially, sections 9, 21 and 43 of the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, and sections 4, 5, and 46 of the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49.

As to whether the special remedies given by statute exclude the remedy by action, see *Vestry St. Pancras* v. *Batterbury*, *ante*, p. 182. See also, *Wright* v. *London General Omnibus Co.*, L. R. 2 Q. B. D. 271, 46 L. J. Q. B. 429, 36 L. T. N. S. 590, 25 W. R. 647, 41 J. P. 486.

For forms of Return and Warrant, see the Schedule to this Act, Forms, Nos. 24 and 25, *post*.

(3) Repealed by Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43.

(4) See *R.* v. *JJ. of St. Albans*, *infra*.

(5) Under the Highway Act, 13 Geo. III. c. 78, s. 80 (repealed by this Act) it was held that an inhabitant might appeal against the appointment of surveyors, as being a thing done in pursuance of the Act: *R.* v. *JJ. of St. Albans*, 3 B. & C. 698, 5 D. & R. 538.

As to appeal by owner of land adjoining exhausted waste land against the price fixed by justices, see *R.* v. *Drayton Highway Board*, *ante*, p. 790.

Secs. 105—108.

sessions (1); and such justices, upon hearing and finally determining the matter of such appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever: Provided, nevertheless, that in case there shall not be time to give such notice and enter into such recognizance as aforesaid before the next sessions to be holden after the making of any rate or the cause of complaint shall have arisen, then and in every such case such appeal may be made to the next following sessions, and shall be then heard and determined: Provided also, that it shall not be lawful for the appellant to be heard in support of such appeal unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into evidence of any other grounds of appeal than those set forth in such statement as aforesaid (2)].

Provisions of 41 Geo. III. c. 23 applicable to this Act.

106. And be it further enacted, that in all cases of appeal against the rate or assessment made in pursuance of this Act the several provisions and enactments contained in a certain Act made and passed in the forty-first year of the reign of His late Majesty, King George the Third, intituled, "An Act for the better Collection of the Rates made for the Relief of the Poor" (3), shall be applicable thereto, as if the same had been repeated and re-enacted in this Act with respect to such appeals.

Rates and proceedings not to be quashed for want of form.

107. Provided always, and be it further enacted, that no rate, nor any proceeding to be had touching the conviction of any offender against this Act, or any order made or any other matter or thing done or transacted in or relative to the execution of this Act, shall be vacated or quashed for want of form, or be removed or removable (except as herein mentioned) (4) by *certiorari*, or any other writ or process whatsoever, into any of His Majesty's Courts of Record at Westminster (5).

(1) See now 12 & 13 Vict. c. 45, s. 1, *ante*, p. 815.

By the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 32, it is provided as follows:—

"Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which the conviction or order appealed against was founded."

And see *R.* v. *JJ. of Surrey*, L. R. 6 Q. B. D. 100, 50 L. J. M. C. 10, 43 L. T. N. S. 500, 29 W. R. 260, 45 J. P. 93.

It was held under the Highway Act, 13 Geo. III. c. 78, s. 8 (repealed by this Act), that the time for giving notice of appeal from a warrant of distress might be reckoned from the day of the levy, and not from the day of granting the warrant: *R.* v. *JJ. of Devonshire*, 1 M. & S. 411.

It seems that the entering into recognizances before the justices who made the order appealed against will not dispense with the necessity of giving notice.

If the appeal be against the decision of two justices, the notice must be served on each of them, the justices signing the conviction: *R.* v. *JJ. of Bedfordshire*, 11 Ad. & E. 134, 9 L. J. M. C. 8, 3 P. & D. 21, 4 Jur. 85.

Delivery of the notice at the dwelling-house, though not to the party personally, is sufficient: *R.* v. *JJ. of Yorkshire*, 7 Q. B. 154, 14 L. J. M. C. 91, 9 Jur. 425.

(2) The portion between brackets is now, by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43, repealed, so far as regards an appeal from a conviction or order of a court of summary jurisdiction. Proceedings are now regulated by the Summary Jurisdiction Acts, 1848, 1879.

(3) See sections 1—8 of this Act, *post*. Section 9 was repealed by the Statute Law Revision Act, 1872.

(4) See section 95, *ante*.

(5) This section does not extend to a case where the justices have acted wholly without jurisdiction: *R.* v. *JJ. of Yorkshire*, 5 T. R. 629; *R.* v. *JJ. of Somersetshire*, 5 B. & C. 816, 6 D. & R. 469.

Secs. 108, 109.

108. And be it further enacted, that in any case of appeal the court of quarter sessions before whom the same is heard and determined may, if they think fit, state the facts specially for the determination of His Majesty's Court of King's Bench thereon, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said Court of King's Bench (1).

In case of appeal sessions may grant a special case.

109. And be it further enacted, that no action or suit shall be commenced against any person for anything done in pursuance of or under the authority of this Act, until twenty-one days notice (2) has been give thereof in writing to the justice, surveyor, or person against whom such action is intended to be brought, nor after sufficient satisfaction or tender of satisfaction has been made to the party aggrieved, nor after three calendar months next after the fact committed for which such action or suit shall be so brought (3); and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other county or place (4); and the defendant in such action or suit may plead the general issue, and give this Act and every special matter in evidence, at any trial which shall be had thereupon (5); and if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such action or suit was brought before twenty-one days notice thereof given as aforesaid (6), or that sufficient satis-

Limitation of actions.

Defendant may plead the general issue.

As to granting special case see the next section.

(1) As to practice of stating a special case, such as that here referred to, see *Overseers of Walsall* v. *London and N. W. Railway*, L. R. 4 App. Cas. 30, 48 L. J. M. C. 64, 41 L. T. N. S. 106. A writ of *certiorari* is not now necessary, see the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, s. 40.

It is, also, provided by 12 & 13 Vict. c. 45, s. 11, as follows: "At any time after notice given of appeal to any court of general or quarter sessions of the peace against any judgment, order, rate, or other matter (except an order in bastardy or a proceeding under or by virtue of any of the statutes relating to Her Majesty's revenue of excise or customs, stamps, taxes, or post-office), for which the remedy is by such appeal, it shall be lawful for the parties by consent and by order of any judge of one of the superior courts of common law at Westminster, to state the facts of the case in the form of a special case for the opinion of such superior court, and to agree that a judgment in conformity with the decision of such court and for such costs as such court shall adjudge may be entered on motion by either party at the sessions next or next but one after such decision shall have been given; and such judgment shall and may be entered accordingly, and shall be of the same effect in all respects as if the same had been given by the court of general or quarter sessions upon an appeal duly entered and continued."

In *Corporation of Peterborough* v. *Overseers of Wilsthorpe*, L. R. 12 Q. B. D. 1, 50 L. T. N. S. 189, it has been held that an appeal will lie to the Court of Appeal from the decision of the Queen's Bench Division upon a case stated under this section in an appeal against a poor rate; for the decision of the Queen's Bench Division is an order within the meaning of the Supreme Court of Judicature Act, 1873, s. 19.

(2) Generally as to notice of action, see note (4), *ante*, p. 188.

(3) See *Burton* v. *Salford*, *ante*, p. 114, and see *Wordsworth* v. *Harley*, 1 B. & Ad. 391; *Roberts* v. *Read*, 16 East, 215, and *Sutton* v. *Clark*, 6 Taunt. 29.

(4) See note (1), *ante*, p. 190.

(5) See *Calvert* v. *Moggs*, 10 Ad. & E. 632.

By the "Rules of the Supreme Court, 1883," it is provided: Order xix., r. 12, "Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute, and every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead he shall not plead any other defence to the same cause of action without the leave of the court or a judge." Order xxi., r. 19, "In every case in which a party shall plead the general issue intending to give the special matter in evidence by virtue of an Act of Parliament, he shall insert in the margin of his pleading the words 'by statute,' together with the year of the reign in which the Act of Parliament on which he relies was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament."

(6) See *Peters* v. *Clarson*, 7 M. & Gr. 548.

Secs. 109—111.

faction was made or tendered as aforesaid, or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if, upon any demurrer in such action, judgment shall be given for the defendant therein, then and in any of the cases aforesaid such defendant shall have costs as between attorney and client (1), and shall have such remedy for recovering the same as any defendant may have for his or her costs in any other case by law (2).

Costs.

Amount of fees.

110. And be it further enacted, that the several fees hereafter limited and expressed, and no others, shall be taken by the clerk of the peace, clerk to the justices, or others for their several respective services in the execution of this Act; (that is to say,) the sum of sixpence for every information; the sum of one shilling for every summons or warrant, and sixpence for the service thereof; the sum of sixpence for every notice, and sixpence for the service thereof; the sum of one shilling for every order, and sixpence for the service thereof; the sum of two shillings for every warrant of distress; the sum of one shilling for every appointment; and the sum of two shillings for every conviction: Provided always, that in no place regulated by a local Act of Parliament, when the amount of the fees to be taken by the clerk to the justices or others, in any proceeding for the recovery of any rate, shall be less than the fees hereinbefore-mentioned, shall it be lawful for such clerk to the justices or others to demand or take a greater fee for any similar proceeding under this Act than the fee which may be mentioned or directed to be taken by such local Act (3).

Expenses for defending prosecutions agreed upon at a vestry meeting, how to be paid.

111. And be it further enacted, that if the inhabitants of any parish shall agree at a vestry (4) to defend any indictment found against any such parish, or to appeal against any order made by or proceeding of any justice of the peace in the execution of any powers given by this Act, or to defend any appeal, it shall and may be

(1) Now by 5 & 6 Vict. c. 97, s. 2, defendant obtains only such costs as shall be taxed by the proper officer in that behalf.

(2) A person appointed, though informally, as surveyor, is entitled to the protection of the section, if he acts in the supposed exercise of his duty: *Huggins* v. *Waydey*, 15 M. & W. 357, 16 L. J. Ex. 136.

Where a highway board, believing a certain road to be a highway, ordered their surveyor to open it to the public by removing an obstruction, it was held in an action of trespass that the surveyor and members of the board having acted *bonâ fide* were entitled to notice of action: *Smith* v. *Hopper*, 16 L. J. Q. B. 93, 11 Jur. 302.

Where a surveyor failed to remove an obstruction to a highway, after having had notice to do so, and injury was caused by the obstruction, it was held that the surveyor was entitled to notice of an action against him for damages in respect of his negligence: *Davis* v. *Curling*, 8 Q. B. 287, 15 L. J. Q. B. 56, 10 Jur. 69; see, further, *Mason* v. *Birkenhead Commissioners*, 6 H. & N. 72, 29 L. J. Ex. 407, 24 J. P. 791.

Generally as to liability of a public body for damages caused by the negligence in the exercise of their powers, see the cases cited, *ante*, p. 190, and note (2), *ante*, p. 191, and see *Duncan* v. *Findlater*, 6 Cl. & F. 894, and *Smith* v. *West Derby Board*, *ante*, p. 190. And as to liability for negligence of contractor, see *Pendlebury* v. *Greenhalgh*, L. R. 1 Q. B. D. 36, 45 L. J. Q. B. 3, 33 L. T. N. S. 372, 24 W. R. 98, 40 J. P. 36 (C. A.); *Taylor* v. *Greenhalgh*, 24 W. R. 311 (C. A.), reversing L. R. 9 Q. B. 487, 43 L. J. Q. B. 168, 31 L. T. N. S. 184, 23 W. R. 4, 39 J. P.; *Reid* v. *Darlington Board*, 41 J. P. 581; *Pitts* v. *Kingsbridge Board*, 25 L. T. N. S. 195, and *Klatt* v. *City of Milwaukee*, 40 Amer. R. 759 (U. S.) and cases cited, *ante*, p. 190, and note (2), *ante*, p. 191.

(3) See now as to clerks of the peace and clerks to justices, 14 & 15 Vict. c. 55, s. 9, and 40 & 41 Vict. c. 43, s. 2, and as to constables, see 5 & 6 Vict. c. 109, s. 17, 11 & 12 Vict. c. 91, s. 6, 13 & 14 Vict. c. 20, s. 2, 32 & 33 Vict. c. 49, s. 4, and 35 & 36 Vict. c. 92, s. 12.

(4) As to inhabitants in vestry assembled and as to the places where there is no vestry meeting, see section 5, and notes thereto, *ante*.

Secs. 111—115.

lawful for the surveyor of such parish to charge in his account the reasonable expenses incurred in defending such prosecution, or prosecuting or defending such appeal, after the same shall have been agreed to by such inhabitants at a vestry or public meeting as aforesaid, and (1) allowed by two justices of the peace within the division where such highway shall be; which expenses, when so agreed to or allowed, shall be paid by such parish out of the fines, forfeitures, payments and rates authorized to be collected and raised by virtue of this Act (2): Provided nevertheless, that if the money so collected and raised is not sufficient to defray the expenses of repairing the highways in the said parish, as well as of defending such prosecution or prosecuting or defending such appeal, as aforesaid, the said surveyor is hereby authorized to make, collect, and levy an additional rate in the same manner as the rate by this Act is authorized to be made for the repair of the highway (3).

Limiting powers of 57 Geo. III. c. 29.

112. And be it further enacted, that nothing in this Act contained shall be construed to abridge, repeal, alter, amend, or interfere with the powers and provisions contained in an Act passed in the fifty-seventh year of the reign of King George the Third, intituled "An Act for better paving, improving, and regulating the streets of the metropolis, and removing and preventing obstructions therein," or the powers and provisions contained in any Act relating to any particular parish or place for any of the purposes in this Act mentioned (4).

Not to extend to turnpike roads, or to roads under local Acts.

113. Provided always, and be it further enacted, that nothing in this Act contained shall apply to any turnpike roads, except where expressly mentioned, or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchways, or pavements, which now are or may hereafter be paved, repaired, or cleansed, broken up or diverted, under or by virtue of the provisions of any local or personal Act or Acts of Parliament (5).

Not to affect the Universities;

114. Provided always, and be it further enacted, that nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or any of the powers vested by charter or otherwise in the chancellors, masters, and scholars, and their successors, of the said Universities (6):

nor the rights and liberties of the city of London;

115. Provided always, and be it further enacted, that nothing in this Act contained shall extend to alter or in any manner affect the city of London and the liberties thereof, or the rights, interests, privileges, franchises, or authorities of the mayor and commonalty and citizens of the city of London, or their successors, or the Lord Mayor and aldermen of the said city, or the Lord Mayor of the said city for the time being as conservator of the river Thames or otherwise, or to prohibit, defeat, alter, or diminish any power, authority, or jurisdiction which at

(1) The word "and" is by mistake put for "or," and the surveyor may charge the expenses after they have been agreed to at a vestry *or* allowed by justices; *Townsend* v. *Read*, 10 C. B. N. S. 308, 30 L. J. M. C. 245, 5 L. T. N. S. 180.

(2) See *Spratt* v. *Powell*, 3 Bing. 478; *In re Barber*, 14 M. & W. 720; *R.* v. *Read*, 13 Q. B. 524.

As to liability of surveyor for charges of solicitor retained by him, see *Champ* v. *Stokes*, 6 H. & N. 633, 30 L. J. M. C. 242, 7 Jur. N. S. 607.

(3) As to making of highway rate, see sections 27, *et seq.*, *ante*.

It seems that the limitation upon the amount of the rate imposed by section 29, *ante*, does not apply to the additional rate authorized by this section, the words "in the same manner" not applying to the amount of the rate: *R.* v. *Uttermere*, 26 L. T. 94, 4 W. R. 205, 20 J. P. 36.

(4) As to the "metropolis," see note, *ante*, p. 42.

(5) Now, by the Highway Act, 1862, 25 & 26 Vict. c. 61, s. 44, *post*, the provisions of this Act as to widening, &c., highways, are made applicable to highways under local or personal Acts.

This section does not exempt property paved, repaired, &c., under a local Act from being rated under this Act: *R.* v. *Paynter*, 13 Q. B. 399, 18 L. J. M. C. 169, 13 Jur. 281, 3 New Sess. Cas. 465.

(6) See the Public Health Act, 1875, sections 6, 342, and notes thereto, *ante*.

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the time of making this Act the said mayor and commonalty and citizens, the said Lord Mayor and aldermen of the said city, or the said Lord Mayor for the time being as conservator of the river Thames or otherwise, did or might lawfully claim, use, or exercise by any Act of Parliament or otherwise, or to vary or alter any of the provisions or regulations thereby made, directed, or provided, within the said city of London and the liberties thereof, anything herein contained to the contrary thereof in anywise notwithstanding.

nor the Act 1 Geo. IV. c. 7.

116. Provided always, and be it further enacted, that nothing in this Act contained shall extend to alter or in any manner affect the provisions of an Act passed in the first year of the reign of His late Majesty King George the Fourth, intituled "An Act for regulating the Repairs of Bridges in the County of Montgomery," so far as the same relates to the repairs of so much of the highways as lie next adjoining to any ends of any bridges within the said county of Montgomery, the repairs of which have already been made chargeable upon the rates of the said county under the provisions of the said recited Act.

Powers of commissioners of sewers not abridged.

117. Provided always, and be it further enacted, that nothing in this Act contained shall extend to or be deemed or construed to extend to alter, affect, restrain, or abridge the powers or authorities given to the Commissioners of Sewers by any Act of Parliament whatsoever, or to vary or alter any of the provisions or regulations thereby made, directed, or provided, anything herein contained to the contrary thereof in anywise notwithstanding (1).

Concerning the Forms of Proceedings.

118. And be it further enacted, that the forms of proceedings relative to the several matters contained in this Act, which are set forth and expressed in the Schedule hereto annexed, shall be used upon all occasions, with such additions or variations only as may be necessary to adapt them to the particular exigencies of the case; and that no objection shall be made or advantage taken for want of form in any such proceedings by any person whomsoever (2).

Commencement of Act.

119. And be it further enacted, that this Act shall commence and take effect from and after the twentieth day of March, One thousand eight hundred and thirty-six.

120. [*Act may be altered this session* (3).]

The SCHEDULE (stating the Forms) to which this Act refers (4).

No. 1.

Notice to Person of his having been elected Surveyor.

A.B. take notice, that you were, at a meeting held at [*insert the name of the parish, &c.*] on the day of elected and chosen surveyor [*or* one of the surveyors] of the highways for the said [parish, *&c.*] for the year ensuing.

Dated the day of .

C.D. Chairman.

To *A.B.* of .

(1) See Woolrych on "Sewers" and Callis on "Sewers."

(2) Under the Highway Act, 13 Geo. III. c. 78, s. 69 (which was exactly the same as the above section), it was held that the use of the forms was imperative: *Davison* v. *Gill*, 1 East, 64. See also, *Goss* v. *Jackson*, 3 Esp. 198. But see *R.* v. *Casson*, 3 D. & R. 36, at p. 40. As to forms under the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, see section 32 of that Act.

(3) Repealed by Statute Law Revision Act, 1874, 37 & 38 Vict. c. 35.

(4) See section 118, and note thereto, *ante*.

No. 2.

Appointment of Surveyor with Salary.

At a meeting of the inhabitants of in vestry assembled at on the day of *A.B.* was nominated, elected, and appointed as surveyor of such parish, for the purpose of carrying into execution the provisions of an Act passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.* [*here set out Title of Act,*] for the year ensuing; and the salary to be allowed to the said *A.B.* was fixed at the sum of payable on .

Dated the day of .

C.D. Chairman.

No. 3.

Appointment of Surveyor by Justices.

(to wit.) } At a special sessions for the highways held at , in the division *&c.* of by justices of the peace for the said county acting within the said division, *&c.* on the day of .

Whereas it hath appeared to us the said justices, on the oath of *A.B.* an inhabitant of the parish of that the inhabitants of the said parish in vestry assembled have neglected [*or* refused] to nominate and elect a surveyor in manner and for the purposes mentioned in a certain Act made and passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.* [*here set out title of Act,*] [*or* that the surveyor appointed by the inhabitants of the said parish is dead, *or* has ceased to possess the qualification required by the said Act, *or* has become disqualified, *or* has neglected to act, *or* has refused to carry into operation the duties imposed upon him by the said Act], we do therefore hereby appoint you *C.D.* of surveyor for such parish for the year ensuing [*or* for the space of] with the salary of for your trouble; and you the said *C.D.* are faithfully and truly to execute the office of surveyor according to the directions of the said statute.

Given under our hands the day and year first above mentioned.

E.F.
G.H.

To *C.D.*

No. 4.

Form of Highway Rate.

Names of Occupiers or Persons rated.	Description of the Premises and Property rated.	Annual Value.	Sums assessed at 10*d.* in the Pound.
		£ s. d.	£ s. d.
A.B. . . .	House and garden	5 0 0	0 4 2
C.D. . . .	A farmhouse, lands and buildings .	100 0 0	4 3 4
E.F. . . .	A warehouse	20 0 0	0 16 8
and so forth.			

A.B. }
C.D. } Surveyor [*or* surveyors] of the parish of

No. 5.

Weekly account of money expended on the highways of the parish of from the to the day of one thousand eight hundred and .

Day Labour, and when performed.	Labourers Names.	No. of Days.	Rate per Day.	—	Team work, and where done.	Rate	—	Total Weekly Expenditure.	
				£ s. d.			£ s. d.		£ s. d.
								Day Labour	
								Contract Work -	
								Materials -	
								Team Work	
Work executed by contract.	Persons Names.	No. of Days.	Rate per Day.	—	Tradesmen's Bills.	No.	—	Tradesmen's Bills.	
				£ s. d.			£ s. d.		
					Rent of Pits and Quarries.	Name.	—	Rent of Pits and Quarries.	
							£ s. d.		
Materials got and prepared, and from whence.	Parties Names.	Quantity	Rate per	—					
				£ s. d.					
					Incidental Expenses.		—	Incidental Expenses	
							£ s. d.		
								£	

No. 6.

Notice of Intention to make Highway.

I do hereby give you notice, that after the expiration of three calendar months from the date hereof I [*or if given by the clerk, &c. of a body politic or corporate, describe them*] do intend to make a certain highway in the parish of [*describing its situation and extent,*] and to dedicate such highway to the use of the public.

Dated this day of .

A.B.
or
C.D. [clerk, *&c.*]

To *E.F. &c.*
Surveyor of the parish
of .

No. 7.

Certificate of Justices, of Highway having been made in a substantial manner, &c.

We, two of the justices of the peace in and for the county of having viewed a certain highway lately made by *A.B.* in the parish of in the said county, situate, *&c.* [*describing its situation and extent*], do hereby certify, that the same has been made in a substantial manner, and of the width required by a certain Act made and passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.* [*here set out title of Act.*]

Dated this day of .

C.D.
E.F.

No. 8.

Notice to remove Snow, &c.

I, *A.B.*, justice of the peace in and for the county of do hereby give you, the surveyor [*or* surveyors] of the parish of notice, that the highway leading from to [*describing its situation*] is obstructed or impeded from the accumulation of snow [*or* from the falling down of the banks on the side of the said highway, *&c., as the case may be,*] and require you to cause the same to be removed.

Dated this day of .

To *C.D.* and *E.F., &c.*
surveyors of the
parish of .

A.B. of, *&c.*

No. 9.

Schedule to be filled up by the Surveyors of Highways of all Parishes, and presented by them, with their accounts, to the Magistrates at the end of every year.

State of the roads and highways	
— bridges	
— causeways	
— hedges and ditches	
— watercourses	
State all nuisances	
— all encroachments	
— the extent of roads and highways the parish is liable to repair	
— what portion thereof has been repaired and where	
— what materials were used for such repairs .	
— the expense of such repairs . . .	
— the amount levied during the year . . .	

No. 10.

Licence from Justices at Special Sessions for the Highways for a Surveyor to dig, &c. Materials upon inclosed Lands for the Repair of Highways.

(to wit.) } To the surveyor of the parish of in the hundred of in the said county.

Whereas by an Act passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.* [*here set out title of Act*] the surveyor is authorised to dig, get, take, and carry away materials lying upon any lands or grounds within the parish for which he is appointed, for the use and benefit of the highways, but not without the consent of the occupier or owner of such lands or grounds, or his agent, or a licence from the justices at a special sessions for the highways : And whereas it appears to us His Majesty's justices of the peace for the said county, and acting within the said [hundred, *&c.*], at a special sessions for the highways assembled, upon the oath of *C.D.* the said surveyor [*or* one of the surveyors], that he hath applied to *A.B.* of for his consent to dig, get, take, and carry away materials from the lands called or known by the names of and in his occupation [*or* of which he is the owner, *or* in the occupation of *J.K.*, *or* of which *J.K.* is the owner, and the said *A.B.* his agent], within the said [parish, *&c.*], for the purposes aforesaid, and that the said materials are necessary for the repairs of the highways, and

that the said *A.B.* hath refused to permit the same to be dug, got, taken, and carried away; and the said *A.B.* having been duly summoned to appear before us, to show cause why such permission should not be granted, and having appeared before us accordingly [*or* having sent his steward or agent, *or C.D.*, on his behalf, to attend us on that occasion, *or* but not having appeared], we have heard what has been alleged, and taken the said matter into consideration, and are of opinion that the said materials are necessary, and ought to be dug, got, taken, and carried away for the purposes aforesaid: Therefore we do hereby give our licence to the said surveyor [*or* surveyors] to dig, get, take, and carry away the same accordingly, the said surveyor making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the said Act. Given under our hands the day of One thousand eight hundred and .

J.P.
K.P.

No. 11.

Licence from Justices at a Special Sessions for the Highways to get Materials for the Repair of the Highways in another Parish besides that wherein such Materials are to be employed.

(to wit.) } At a special sessions for the highways held at in the hundred, *&c.*, of in the said county, by justices of the peace for the said county acting within the said hundred, on the day of .

It appearing to us, upon evidence this day received, that sufficient materials cannot conveniently be had within the waste lands, common grounds, rivers, or brooks, nor in the inclosed lands, or grounds, lying within the [parish, *&c.*] of in the said hundred, for the repairs of the highways within the said [parish], nor in the waste lands, common grounds, rivers, or brooks within the [parish] of adjoining to the said [parish] of we do hereby give our licence to the surveyor [*or* surveyors] of the said [parish] of to search for, dig, get, and carry materials within the inclosed lands or grounds of *C.D.* within the said parish of to be employed in the repair of the highways within the said [parish] of appearing from evidence before us that there are proper materials within the said lands for the purposes aforesaid lying convenient to the said highways, and that after such materials shall be so taken there will be sufficient left for the use of the highways within the said parish of upon the said surveyor [*or* surveyors] making satisfaction for the same, and also for the damage done to such lands, in the manner directed by the Act made and passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.* [*here set out title of Act*], subject to such restrictions as are therein contained. Given under our hands the day and year above written.

J.P.
K.P.

No. 12.

Information to enable Justices to fix Boundaries of Highway lying in Two Parishes.

County of } At a special sessions for the highways holden, *&c.*

I.S., the surveyor [*or* one of the surveyors] of the parish of *A.*, came before the justices aforesaid, and informed them, that there is in the said county a certain common highway leading from *M.* to *N.*, and that there is a certain part of the said highway, that is to say, so much thereof as lies between a certain place called *C.* and a certain other place called *D.*, being in length [*as the case may be*], one side of which last-mentioned part of the said highway adjoining to the parish of *A.* lies within the said See plan.

parish of *A.*, and is to be and of right ought to be repaired by the said parish of *A.* [*or* by, *&c.*, *describing the body politic or corporate, or person, liable to the repair*], and that the other side of the same part of the said highway adjoining to the parish of *B.* lies within the parish of *B.*, and is to be and of right ought to be repaired by the said parish of *B.* [*or* by, *&c.*], and stating that the repair of such part of the said highway is very inconvenient to the parishes aforesaid, and the want thereof detrimental to the public; and therefore praying that such part of the said highway may be allotted and apportioned for the repair thereof by the justices aforesaid to the said several parishes of *A.* and *B.* [*or* to, *&c.*], in the manner directed by an Act passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.* [*set out title of Act*].

(Signed) *I.S.*, one of the surveyors of the parish of *A.*

The above application was made to us the day and year first above written.

J.P.
K.P.

No. 13.

Summons to be subjoined to a Copy of the above Information.

County of } To the surveyor [*or* surveyors] of the parish of *B.* in the said county, any or either of them:

Whereas a certain information has been given to us, His Majesty's justices of the peace for the said county, at a special sessions for the highways, by *I.S.*, the surveyor [*or* one of the surveyors] of the parish of *A.* in the said county, a true copy whereof is above written: These are, in His Majesty's name, to summon you, any or either of you, to appear before us at in the said county on the day of to show cause (if any) why an allotment and apportionment of the highways therein mentioned should not be made according to the provisions of the Act referred to in the said information. Hereof fail not. Given under our hands this day of .

J.P.
K.P.

No. 14.

Final Order and Adjudication to be filed by the Clerk of the Peace.

Whereas, *&c.*

1.—*State the original application.*

2.—*The summons.*

3.—*The appearance, and that the parties were heard, or their non-appearance.*

Now we, the justices aforesaid, having fully heard and understood the premises, do declare, adjudge, and order that the said highway shall be divided in the following manner; (that is to say,) that at the distance of measuring from the place called *C.* there shall be erected certain posts or stones, *E.* and *F.*, on each side of the said highway, and the whole of the said highway from the place called *C.* to such posts or stones shall be from time to time and at all times hereafter repaired by the parish of *A.* [*or* by, *&c.*], and the whole of the said highway from such posts or stones to the place called *D.* shall from time to time and at all times hereafter be repaired by the parish of *B.* [*or* by, *&c.*]

In witness whereof we have hereunto set our hands, this day of

J.P. (L.S.)
K.P. (L.S.)

No. 15.

Notice from Surveyor to remove Nuisances.

To *C.D.* of .

In pursuance of the directions given by an Act passed in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.*, I, *A.B.*, *&c.*, the surveyor [*or* one of the surveyors] of the parish of do hereby give you notice forthwith to remove the [filth, dung, ashes, rubbish, *&c.*] placed by you on a certain part of the King's highway lying between and in the [parish] of to the obstruction and annoyance of the said highway.

A.B., *&c.*

Dated this day of .

No. 16.

Order of Two Justices for widening a Highway.

(to wit.) } We, two of His Majesty's justices of the peace for the said county, acting within the [hundred, *&c.*] of within the said county, having, upon view, found that a certain part of the highway between and in the [parish, *&c.*] of in the said [hundred], for the length of yards or thereabouts, and particularly described in the plan hereunto annexed, is for the greater part thereof narrow, but may be conveniently enlarged and widened by adding thereto, from the lands and grounds of and of the length of yards or thereabouts, and of the breadth of feet or thereabouts, particularly described in the plan hereunto annexed, which we think will widen and enlarge the same, and be much more commodious to the public, do hereby order that the said highway be widened and enlarged accordingly, and that the said surveyor [*or* surveyors] of the [parish, *&c.*] of where the said old highway lies, do forthwith proceed to treat and make agreement with the said and for the recompense to be made for the said ground and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects as are warranted and prescribed by the statute made in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.;* and in case such agreement shall be made as aforesaid we do order an equal assessment, not exceeding the rate of in the pound, to be made, levied, and collected upon all and every the parties liable to the payment of the highway rate in the said [parish, *&c.*] of and that the money arising thereupon be paid and applied in making such recompense and satisfaction as aforesaid, pursuant to the directions of the said Act.

A.B.
C.D

No. 17.

Certificate from the said Justices to the Court of Quarter Sessions.

To the Justices of the Peace at their General Quarter Sessions to be held at , in the said county, the day of , one thousand eight hundred and

This is to be written upon the above Order when no agreement can be made.

We, the within-named *A.B.* and *C.D.* do hereby certify to the said court of quarter sessions, that we made and signed the within order, and that with our approbation and by our direction the said surveyor [*or* surveyors] has [*or* have] treated with the said and for the said lands required for the purposes aforesaid, but was not able to make any agreement for that purpose with them or either of them, and that he tendered to the said the sum of and to the said the sum of as a recompense for the said ground, and for the making the said ditches and fences, which he [*or* they and each of them] refused to receive.

A.B.
C.D.

No. 18.

Consent from the Owner of the Land through which a new Highway is proposed to be made.

I *A.B.* of in the county of being the owner of the lands described in the plan hereunto annexed, through which part of a certain highway lying between and is intended to be diverted and turned, in consideration of the sum of to be paid to me for the said land and soil thereof, do hereby consent to the making and continuing such new highway through my said lands.

Given under my hand, this day of

One thousand eight hundred and

No. 19.

Form of Notice of diverting, &c., Highway.

Notice is hereby given, that on the day of next application will be made to His Majesty's justices of the peace assembled at quarter sessions in and for the county of at for an order for [*if the order be for turning, diverting, and stopping up, &c., here to state it, and describe the road ordered to be turned, diverted, and stopped up; if the order be for stopping up a useless road here to state it, and describe the road ordered to be stopped up*]; and that the certificate of two justices having viewed the same, *&c.*, with the plan of the old and proposed new highway, will be lodged with the clerk of the peace for the said county on the day of next.

A.B.
C.D. &c. } Surveyor [*or* surveyors] of the parish of .

No. 20 (1).

Summons for any Person or Persons to attend a Justice or Justices.

To *A.B.*

(to wit.) } Whereas complaint and information hath been made upon oath before me, *C.D.*, one of His Majesty's justices of the peace for the said [county, &c.,] by *E.F.* of that, *&c.* [*here state the nature and circumstances of the case as far as it shall be necessary to show the offence, and to bring it within the authority of the justice; and in doing that follow the words of the Act as near as may be*]: These are therefore to require you personally to appear before me [*or* the justices to be assembled at their petty sessions (*or* special sessions for the highways) to be holden at in the said county, *&c.*] on the day of next, at the hour of in the noon, to answer to the said complaint and information made by the said *E.F.*, who is likewise directed to be then and there present to make good the same. Herein fail not.

Given under my hand, this day of .

No. 21 (1).

Information.

(to wit.) } Be it remembered, that on the day *A.B.* of in the said county informeth and maketh oath before me one of His Majesty's justices of the peace for the said county, that of in the said county [*here describe the offence, with the time and place, and follow the words of the Act as near as may be*], contrary to the statute in the fifth and sixth year of the reign of His Majesty King William the Fourth, intituled "An Act," &c. [*here set out title of Act*], which has imposed a forfeiture for the said offence.

Taken and sworn, the day of before me,

A.B.

(1) Forms Nos. 20—25 are now repealed by the Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43. See now the Forms given by the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43.

No. 22 (1).

Form of Conviction.

(to wit.) } Be it remembered, that on the day of in the year of our Lord at in the county aforesaid, *A.B.* came before us of His Majesty's justices of the peace for the said county, and informed us that *E.F.* of on the day of now last past, at in the said county, did [*set forth the fact in the manner described by the Act*], whereupon the said *E.F.* after being duly summoned to answer the said charge, appeared before us on the day of in the said county, and having heard the charge alleged against him, declared that he was not guilty of the said offence; but the same being fully proved upon the oath of *G.H.* a credible witness, it manifestly appears to us the said justices that he the said *E.F.* is guilty of the offence charged upon him in the said information: It is therefore considered and adjudged by us the said justices that the said *E.F.* be convicted, and we do hereby convict him of the offence aforesaid; and we do hereby declare and adjudge that he the said *E.F.* hath forfeited the sum of of lawful money of Great Britain for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given, *&c*,

[*After the words* "being duly summoned to answer the said charge," *insert* "did not appear before us pursuant to the said summons," *or* "did neglect and refuse to make any defence against the said charge;" but the same being fully proved, *&c.*, *as before.*]

This is to be inserted when the party refuses to appear upon the summons.

[*After the words* "charge alleged against him," *insert*, "acknowledged and voluntarily confessed the same to be true;" and it manifestly appears to us the said justices, *&c.*, *as above.*]

This is to be inserted when the party accused confesses the charge.

No. 23 (1).

Warrant to distrain for the Forfeiture.

(to wit.) } To the constable [headborough *or* tithingman] of .

Whereas *A.B.* of in the said county [yeoman, *&c.*] is this day convicted before us, two of His Majesty's justices of the peace in and for the said county, upon the oath of *G.H.* a credible witness, for that the said *A.B.* hath [*here set forth the offence describing it particularly in the words of the Act, as near as may be,*] contrary to the statute in that case made and provided; by reason whereof the said *A.B.* hath forfeited the sum of to be distributed as herein is mentioned, which he hath refused to pay: These are therefore in His Majesty's name to command you to levy the said sum of by distress of the goods and chattels of him the said *A.B.*; and if within the space of four days next after such distress by you taken the said sum of together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay one half of the said sum of to *E.F.* of who informed me of the offence, and the other half of the said sum of to *I.K.*, the surveyor of the parish [township *or* place] where the said offence [neglect *or* default] happened, to be employed towards the repair of the said highways, returning the overplus, upon demand, to him the said *A.B.*, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said *A.B.* whereon to levy the said sum of that then you certify the same to us, together with this warrant.

This to be varied according to the Act in each particular case.

Given under our hands, the day of .

C.D.
E.F.

(1) See note (1), *ante*, p. 836.

No. 24 (1).

Return of the Constable to be made upon the Warrant of Distress when there are no Effects.

I, *A.B.* constable of the [parish, &c.] of in the county of do hereby certify and make oath, that by virtue of this warrant I have made diligent search for the goods of the within-named and that I can find no sufficient goods whereon to levy the within sum of .

As witness my hand, the day of .

A.B.

Sworn before me, the day and year, *&c.*

C.D.

No. 25 (1).

Commitment for Want of Distress.

(to wit.) } To the [constable] of in the said county and to the keeper of the common gaol [*or* house of correction] at in the said county.

Whereas *A.B.* of in the said county, yeoman, was on the day of convicted before us, two of His Majesty's justices of the peace in and for the said county upon the oath of *E.F.* a credible witness, for that he the said *A.B.* [*here set forth the offence*], contrary to the statute made in the fifth and sixth year of the reign of King William the Fourth, intituled "An Act," *&c.* [*here set out title of Act*], by reason whereof the said *A.B.* hath forfeited the sum of : And whereas on the day of in the year aforesaid we did issue our warrant to the [constable] of to levy the said sum of by distress and sale of the goods and chattels of him the said *A.B.* and to distribute the same according to the directions of the said statute: And whereas it duly appears to us upon the oath of the said [constable] that the said [constable] hath used his best endeavours to levy the said sum on the goods and chattels of the said *A.B.* as aforesaid, but that no sufficient distress can be had thereon to levy the same: These are therefore to command you the said [constable] of aforesaid to apprehend the said *A.B.*, and him safely convey to the common gaol [*or* house of correction] at in the said county, and there deliver him to the keeper thereof together with this precept; and we do hereby also command you the said keeper to receive and keep in your custody, and to keep to hard labour, the said *A.B.* for the space of unless the said sum shall be sooner paid, pursuant to the said conviction and warrant; and for so doing this shall be your sufficient warrant.

Given under our hands the day of in the year of our Lord .

C.D.

E.F.

(1) See note (1), *ante*, p. 836.

THE

HIGHWAY ACT, 1862.

25 & 26 VICT. c. 61.

An Act for the better Management of Highways in England.
[29*th July*, 1862.]

WHEREAS it is expedient to amend the law relating to highways in England: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Limits of Act.

1. This Act shall not extend to Scotland or Ireland.

Definition of "county" and "borough."

2. The word "county" in this Act shall not include a "county of a city" or "a county of a town," but where a county, as hereinbefore defined, is divided into ridings or other divisions having a separate court of quarter sessions of the peace, it shall mean each such division or riding, and not the entire county (1); and for the purposes of this Act all liberties and franchises, except the liberty of Saint Albans, which shall be considered a county, and except boroughs as hereinafter defined (2) shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary; the word "borough" shall mean a borough as defined by the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, "for the regulation of municipal corporations in England and Wales," or any place to which the provisions of the said Act have been or shall hereafter have been extended (3).

Definition of "parish," "highway district," and "highway board."

3. The word "parish" shall include any place maintaining its own highways; the expressions "highway district" and "highway board" shall refer only to highway districts formed and highway boards constituted in pursuance of this Act (4).

Definition of "principal Act" and

4. The Act passed in the session holden in the fifth and sixth years of the reign of His late Majesty King William the Fourth, chapter fifty, and intituled "An Act to consolidate and amend the Laws relating to Highways in that Part of Great Britain called England," is hereinafter distinguished as the 'principal Act;'

(1) See, further, the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 3, and the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 38, *post*. Generally as to the counties of England and Wales, see 1 Steph. Com. p. 125 *et seq.*, 8th Edn.

(2) See *Giles* v. *Glubb*, 13 L. T. N. S. 526, 30 J. P. 38. Generally as to "franchises" and "liberties," see 1 Steph. Com. p. 661, 8th Edn.

(3) See now the Municipal Corporations Act, 1882, ss. 5, 7, 260, and the First Schedule thereto, *ante*, pp. 269, 270, 349, 350; and *Giles* v. *Glubb*, *supra*.

(4) See, further, the Highway Act, 1835, s. 5, and notes, *ante*, p. 756, s. 32 of this Act, *post*, and the Highway Act, 1864, 27 & 28 Vict. c. 101, ss. 3, 5, 8, 9, and the Highway and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 25, *post*.

Secs. 4, 5.

"Highway Acts."

and this Act and the principal Act, and the other Acts amending the principal Act, are hereinafter included under the expression "the Highway Acts" (1).

Formation of Highway Districts.

Power to justices, in general or quarter sessions assembled, to issue provisional orders for forming highway districts.

5. Any five or more justices of a county may by writing under their hands require the clerk of the peace to add to or send with the notice (2) required by law to be given of the holding of courts of general or quarter sessions a notice in the Form marked (A.) in the Schedule, or as near thereto as circumstances admit, that at the court therein mentioned a proposal will be made to the justices to divide the county (3) or some part thereof into highway districts, or to constitute the whole or some part thereof a highway district (4), and also require the clerk of the peace to send by post in a prepaid letter notices in the aforesaid form to the churchwardens or overseers of every parish (5) mentioned in the said notice; and upon such requisition being complied with the justices assembled at the court of general or quarter sessions mentioned in the notice may entertain such proposal, and make a provisional order dividing their county or some part thereof into highway districts, or constituting the whole or some part of their county a highway district, for the more convenient management of highways, but such order shall not be of any validity unless it is confirmed by a final order (6) of the justices assembled at some subsequent court (7) of general or quarter sessions (8): [Provided that when it is proposed that only a part of a county shall be divided into a highway district not less than two out of the five justices making such proposal shall be resident in the said district (9).]

(1) See, also, section 42, *post*, and the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 2, *post*.

(2) County sessions are commenced by issuing a precept under the hands and seals of justices of the county, or of the *custos rotulorum* and one justice, addressed to the sheriff requiring him to summon the proposed sessions at some day not less than fifteen days from the date of the precept; to return a grand and petit jury; and give notice throughout his bailiwick to jurors, coroners, gaolers, stewards, constables, and bailiffs of liberties, whose attendance is requisite. Smith's Quarter Sessions Practice, p. 16.

The times for the holding of the county quarter sessions are fixed by 11 Geo. IV. & 1 Will. IV. c. 70, s. 35, as follows, namely:—

In the *first week after* the { 11th of October. 28th of December. 31st of March. 24th of June.

By 4 & 5 Will. IV. c. 47, the April Quarter Sessions may be appointed and held not earlier than the 7th March, nor later than the 22nd April, so that they may not interfere with the holding the Spring Assizes. *Ibid.*, p. 15. The "first week after" means the first *full* week, so that should any of the above days fall on a Sunday the sessions could not be held before the Monday week following. 2 Hale, P.C. 49. As to these times being directory only, see *R. v. JJ. of Leicester*, 7 B. & C. 6; 2 Hale, P.C. 50.

(3) See section 2, *ante*.

(4) See the Highway Act, 1864, 27 & 28 Vict. c. 101, ss. 7 and 17, *post*. And see the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 3, *post*.

(5) If any parish is omitted the order cannot be made: *R.* v. *JJ. of Sussex*, 28 J. P. 469.

As to union of parishes in different counties, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 13, *post*.

(6) See the next section.

(7) See section 6 (1) (3), *post*.

(8) As to alteration or dissolution of highway district, see section 39, *post*. And as to the costs of parishes applying to be removed from one district to another, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 15, *post*.

(9) This portion within brackets is repealed, and provision made in lieu thereof by section 6 of the Highway Act, 1864, 27 & 28 Vict. c. 101, *post*.

Regulations as to the making, &c., of orders of justices.

6. The following regulations shall be enacted as to the making, confirmation, and approval of the orders of justice for forming highway districts:

1. The justices making a provisional order under this Act shall appoint some subsequent court of general or quarter sessions, to be held within a period of not more than six months, for the taking into consideration the confirmation of the provisional order by a final order:
2. The clerk of the peace shall add to or send with the notice required by law to be given of the holding of courts of general or quarter sessions a notice in the form marked (B.) in the schedule hereto or as near thereto as circumstances admit, of the appointment so made by the justices in relation to the confirmation of the provisional order:
3. The justices assembled at the appointed court of general or quarter sessions may make a further order quashing the provisional order, or confirming it with or without variations, or respiting the consideration of such provisional order to some subsequent court of general or quarter sessions, provided—
   Firstly, that where the variations made extend to altering the parishes constituting any highway district or districts as formed in the provisional order, the order shall be deemed to be provisional only, and shall be dealt with accordingly:
   Secondly, that where a respite is made to any subsequent general or quarter sessions, the clerk of the peace shall give notice of such respite in manner in which he is required to give notice in respect of sessions at which a provisional or final order is proposed to be made:
4. The provisional order shall state the parishes to be united in each district, the name by which the district is to be known, and the number of waywardens (such number to be at least one) which each parish is to elect (1):
[5. In addition to the foregoing matters, the provisional order may and the final order shall state the time, not being more than seven days after the first election of waywardens in pursuance of this Act, and the place at which the first meeting of the highway board is to be held in the district (2):]
6. Notice of the provisional and final orders shall as soon as possible after the making thereof be given by the clerk of the peace, by publishing a copy in the *London Gazette* and in one or more newspapers circulating in the county, or if the whole county is not affected by such order in one or more newspapers circulating in the district affected by such orders, and by sending a copy by post in a prepaid letter to the overseers of every parish within the proposed highway district, and there shall be added to the notice of the provisional order the date of the sessions at which the confirmation of such order will be considered (3).

Restrictions on formation of highway districts.

7. The following restrictions shall be imposed with respect to the formation of highway districts in pursuance of this Act (4):

Firstly, there shall not be included in any highway district formed in pursuance of this Act any of the following places; that is to say,

Any part of a county to which the Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of Her present Majesty,

(1) Where a parish is divided into hamlets, each maintaining its own highways, the provisional order must state whether any and what waywardens are to be elected for the separate hamlets: *R.* v. *JJ. of W. Riding of Yorkshire*, 34 L. J. M. C. 227, 12 L. T. N. S. 580, 29 J. P. 440.

(2) This paragraph is repealed and provision made in lieu thereof by sections 10 and 11 of the Highway Act, 1864, 27 & 28 Vict. c. 101, *post*.

(3) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 12, *post*.

See, further, in reference to cases where more highway districts than one are comprised in an order of justices, the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 4, *post*. And as to union of parishes in different counties, see section 13 of that Act, *post*.

(4) By the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 3, highway districts are required to be made so far as possible coincident with rural sanitary districts.

Section 7.

chapter sixty-eight, and intituled "An Act for the better Management and Control of the Highways in South Wales" (1), extends:

The Isle of Wight (2).

Any district constituted under the Public Health Act, 1848, and the Local Government Act, 1858, or either of such Acts (3).

[Any parish or place the highways of which are at the time of the passing of this Act, or may be within six months afterwards, under the superintendence of a board established in pursuance of section eighteen of the principal Act, unless with the consent of such board (4).]

Any parish or place within the limits of the metropolis as defined by the Act passed in the session holden in the eighteenth and nineteenth years of Her Majesty, chapter one hundred and twenty, and intituled "An Act for the better Local Management of the Metropolis":

Any parish or place, or part of a parish or place, the highways whereof are maintained under the provisions of any Local Act of Parliament (5):

Secondly, there shall not be included in any highway district formed in pursuance of this Act any parish or place, or part of a parish or place, within the limits of a borough (6), without the consent, firstly, of the council of such borough, and, secondly, of the vestry of the parish which, or part of which, is proposed to be included (7).

Thirdly, where any parish separately maintaining its own highways is situate in more than one county, the whole of such parish shall, for the purposes of this Act, be deemed to be within the county within which the church of such parish, or (if there be no church) the greater part of such parish, is situate (8).

Lastly, where a parish separately maintaining its own poor is divided into town-

(1) See this Act, *post.*

(2) Regulated by 53 Geo. III. c. xcii.

(3) These Acts are now repealed by the Public Health Act, 1875; and see now sections 216, 313 of that Act, *ante*, pp. 165, 215. And see the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 3, *post.*

(4) This clause within brackets is now repealed by the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 12, *post.*

(5) This does not apply to a Turnpike Act. The Annual Turnpike Acts Continuation Act, 1863, 26 & 27 Vict. c. 94, enacts as follows:—

Sect. 1. "Whereas doubts are entertained whether highway boards established under the Act 25 & 26 Vict. c. 61, are liable to contribute to the repair of turnpike roads in pursuance of the Act 4 & 5 Vict. c. 59, and the Acts continuing the same: It is enacted that where any turnpike road is situate in a parish that is included in a highway district an order may be made on the highway board of the district to contribute to the repair of that road, under the same circumstances under which an order for the same purpose may be made on the parish surveyor, in pursuance of the said Act, the 4 & 5 Vict. c. 59, as continued as aforesaid, and for the purposes of the said last-mentioned Act the highway board shall be deemed to be substituted for the parish surveyor; and 'parish,' as used in this section, shall mean any place in a highway district that returns a waywarden or waywardens to the board of that district; and it is hereby declared that 'local Act' as used in the 7th section of the said Act 25 & 26 Vict. c. 61, does not include turnpike Acts." And by 34 & 35 Vict. c. 115, s. 15, any moneys paid by the board in pursuance of such order shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly to the district fund; and by s. 16, where trustees of a turnpike road pay any moneys on expiration of their trust to treasurer of highway district, such moneys shall be placed to credit of district fund.

(6) See the interpretation clause, section 2, *ante.*

(7) As to places partly within and partly without a borough, see the Highway Act, 1864, 27 & 28 Vict. c. 101, ss. 7, 8, *post.*

(8) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 13, and the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 19, *post.* As to outlying parts of parishes, see section 33 of this Act, *post.*

ships, tithings, hamlets, or places, each of which separately maintains its own highways, it shall be lawful for the justices, if they think fit, in their provisional order, to combine such townships, tithings, hamlets, and places, and to declare that no separate waywardens shall be elected for such townships, tithings, hamlets, and places, and that such parish shall be subject to the same liabilities in respect of all the highways within it which were before maintained by such townships, tithings, hamlets, and places separately, as if all their several liabilities had attached to the whole parish; and that a waywarden or waywardens shall be elected for such parish as a whole; and where such order is made, all the provisions herein contained in relation to parishes within the meaning of this Act shall be applicable to the parish formed by such combination (1).

Legal Objections to Formation of District.

Rules as to objections and evidence.

8. No objection shall be made at any trial or in any legal proceeding to the validity of any orders or proceedings relating to the formation of a highway district, after the expiration of three calendar months (2) from the date of the publication in the *Gazette* of the order under which the district is formed (3); and the production of a copy of the *London Gazette*, containing a copy of the order of justices forming a highway district shall be receivable in all courts of justice, and in all legal proceedings, as evidence of the formation of the district and of the matters in the said Order mentioned (4).

Highway Board.

Constitution of highway board.

9. There shall be enacted, with respect to the constitution of the highway board in each highway district, the provisions following; (that is to say,)

(1). The highway board shall consist of the waywardens elected in the several places within the district, in manner hereinafter mentioned (5), and of the justices acting for the county and residing within the district (6):

(2.) The board shall be a body corporate, by the name of the highway board of the district to which it belongs (7), having a perpetual succession and a common seal, with a power to acquire and hold lands for the purposes of the Highway Acts, without any licence in mortmain (8):

(3.) No act or proceeding of the board shall be questioned on account of any vacancy or vacancies in their body (9):

(1) Now, as to combination of townships, &c., see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 7, *post.*

(2) In *R.* v. *Lindsey*, 6 B. & S. 892, 35 L. J. M. C. 90, 13 L. T. N. S. 524, 12 Jur. N. S. 314, it was held that an objection was made within the three months, where a motion for a rule *nisi* for a *certiorari* was made within that time, though the rule was not returnable and cause not shown till after the three months.

(3) See the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 16, *post.*

(4) As to other evidence of the formation of the district being receivable, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 12, *post.*

(5) See the next section.

(6) As to justice residing in a place prohibited from being included in a highway district, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 29, *post.*

A justice, while he holds office as sheriff, is disqualified from acting as justice: *Exp. Colville*, L. R. 1 Q. B. D. 133, 45 L. J. M. C. 108, 24 W. R. 456; but not by reason of being elected coroner: *Davis* v. *JJ. of Pembrokeshire*, L. R. 7 Q. B. D. 513.

As to the power for a rural sanitary authority coincident with a highway district to become the highway board, see the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, ss. 4, 5, *post.*

(7) See section 6 (4), *ante.*

(8) See, further, the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 53, *post.*

(9) As to the proceedings of highway boards, see the Highway Act, 1864, 27 & 28 Vict. c. 101, First Schedule, *post.*

Secs. 9, 10.

(4.) No defect in the qualification or election of any person or persons acting as members or member of the board or committee of a board shall be deemed to vitiate any proceedings of such board in which he or they have taken part in cases where the majority of members parties to such proceedings are duly entitled to act:

(5.) Any minute made of proceedings at meetings of the board or of committees of the board, if signed by any person purporting to be the chairman of the board or committee of the board, either at the meeting of the board or committee of the board at which such proceedings took place, or at the next ensuing meeting of the board or committee of the board, shall be receivable in evidence in all legal proceedings without further proof; and until the contrary is proved every meeting of the board or committee of the board in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified (1):

(6.) No member of a board, by being party to, or executing in his capacity of member, any contract or other instrument on behalf of the board, or otherwise lawfully exercising any of the powers given to the board, shall be subject to be tried or prosecuted, either individually or with others, by any person whomsoever (2); and the bodies or goods or lands of the members shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, tried, or executed by them, or by reason of any other lawful act done by them in execution of any of the powers of the board; and the members of the board may apply any moneys in their hands for the purpose of indemnifying themselves against any losses, costs, or damages they may incur in execution of the powers granted to them:

[(7.) The rules contained in the schedule hereto with respect to the proceedings of highway boards, and the other matters therein contained, shall be observed in the same manner as if such rules were enacted in the body of this Act (3).]

Election of Waywardens.

Election of waywardens.

10. The following regulations shall be observed with respect to the election of waywardens in highway districts (4).

In every parish (5) forming part of a highway district there shall be elected every year for the year next ensuing a waywarden or such number of waywardens as may be determined by order of the justices (6):

(1) As to the proceedings of highway boards, see the Highway Act, 1864, 27 & 28 Vict. c. 101, First Schedule, *post.*

(2) See *Mill* v. *Hawker*, L. R. 10 Ex. 92, 44 L. J. Ex. 49, 33 L. T. N. S. 177, 23 W. R. 348, 39 J. P. 181.

(3) Repealed by Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66. See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 27, and the First Schedule thereto, *post.*

(4) Where a rural sanitary authority exercise the powers of a highway board, there is no election of waywardens: Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 4, *post.*

(5) See the definition, *ante*, section 3; and see *R.* v. *JJ. of Yorkshire*, *ante*, p. 841.

(6) See section 6 (4), *ante.* A waywarden may sit for more places than one, but is entitled to one vote only: Highway Act, 1864, 27 & 28 Vict. c. 101, s. 19.

As to proceedings at election of waywardens, see *R.* v. *Thomas, or Vicar of St. Asaph*, *ante.*

By the Highway Amendment Act, 1863, 26 & 27 Vict. c. 61, it is provided as follows:

"Section 1. No such waywarden (*i.e.*, waywarden appointed under the above Act) shall directly or indirectly, in his own name or in the name of any other person or persons, contract for the repair of any road or for any other work to be executed under the provisions of the said recited Act within the parish for which he is elected waywarden,

Such waywarden or waywardens shall be elected in every parish forming part of a highway district at the meeting and time (1) and in the manner and subject to the same qualification and the same power of appointment in the justices, in the event of no election taking place, or in the event of a vacancy, at, in, and subject to which a person or persons to serve the office of surveyor would have been chosen or appointed if this Act had not passed (2): Secs. 10, 11.

The justices shall in their provisional order make provision for the election of a waywarden or waywardens in places where no surveyor or surveyors were elected previously to the place forming part of a highway district (3):

A waywarden shall continue to act until his successor is appointed, and shall be re-eligible (4):

Consequences of Formation of Highway District.

Consequences of establishment of highway board.

11. At and after the first meeting (5) in any highway district of the board of such district, the following consequences shall ensue:

All such property, real and personal, including all interests, easements, and rights in, to, and out of property, real and personal, and including things in action, as belong to or are vested in, or would but for this Act have belonged to or been vested in, any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the highway board of that district for all the estate and interest of such surveyor or surveyors as aforesaid, but subject to all debts and liabilities affecting the same (6):

All debts and liabilities incurred in respect of any property transferred to the highway board may be enforced against the board to the extent of the property transferred:

All such powers, rights, duties, liabilities, capacities, and incapacities (except

or within any other parish in the same district under the pain of forfeiting the sum of £10, with full costs of suit to any person or persons who shall sue for the same by action for debt in any county court within the jurisdiction of which the parish in which the roads to be repaired or the other work so contracted for is situate."

"2. It shall not be lawful for any highway board to pay knowingly for any repair or work so contracted for, and any money paid by any board under any such contract shall be recoverable by them with full costs from the person or persons to whom the same shall have been paid by action of debt in any of Her Majesty's Courts of Record at Westminster if the same shall amount to above £50, or in any county court as aforesaid if below that amount, and the balance so recovered after paying all expenses shall be placed to the credit of the district fund."

"3. This Act shall be construed with and held to be part of the said recited Act (*i.e.*, the above Act) for the better management of highways in England."

But waywardens may contract for supply, &c., of materials: Highway Act, 1864, 27 & 28 Vict. c. 101, s. 20, *post*. As to waywardens appointing collector of rates, see *Ibid.*, section 31, *post*.

(1) See *R.* v. *JJ. of Lindsey*, cited *ante*, p. 843, on another point.

(2) See the Highway Act, 1835, ss. 6, 7 and 11, *ante*, pp. 769—771, and the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 31, *post*; and see *R.* v. *Cooper*, L. R. 5 Q. B. 457, 39 L. J. Q. B. 273, 35 J. P. 37.

Waywarden before taking his seat must produce certificate of election: Highway Act, 1864, 27 & 28 Vict. c. 101, s. 19, *post*.

(3) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 7, *post*. And see the Public Health Act, 1875, s. 216, *ante*, p. 165.

(4) See now, however, the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, ss. 11, *post*.

(5) See the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 10, *post*.

(6) Further, as to the relative duties, &c., of outgoing surveyors and highway board, see section 43 and notes thereto, *post*.

Secs. 11–15.

the power of making, assessing, and levying highway rates (1), as are vested in or attached to, or would but for this Act have become vested in or attached to any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the highway board (2):

All property by this Act transferred to the board shall be held by them upon trust for the several parishes or places now maintaining their own highways within their district to which such property belongs, or for the benefit of which it was held previously to the formation of the district.

Appointment of Officers.

Power to highway board to appoint officers.

12. The highway board of a district shall, at their first meeting or at some adjournment thereof, by writing under their seal (3) appoint a treasurer, clerk, and district surveyor (4); they may also at any meeting, if they think fit, appoint an assistant surveyor; they may from time to time remove any of such officers, and appoint others in the room of such as may be so removed, or as may die or resign; they may also, out of any moneys in their hands, pay such salaries as they think reasonable to the clerk and district and assistant surveyor, and to the treasurer, if they think necessary: Provided that before the treasurer enter upon his office the board shall take sufficient security from him for the due performance of the duties of his office; but no appointment, except the first, to any of the offices specified in this section, shall be made unless notice in writing has been sent to every member of the board.

Two offices not to be held by the same person.

13. Not more than one office of treasurer, clerk, and district or assistant surveyor of the same highway board shall be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them; and if any person accepts or holds the office of treasurer, clerk, or district or assistant surveyor, contrary to this provision, he shall be liable to a penalty not exceeding fifty pounds.

Duties of treasurer.

14. The treasurer of each highway board shall receive, and hold to the account of such board, all monies paid to or for the use of such board, and shall make payments thereout under orders of such board, and shall once in every three months, on or at such days or times as the board may direct, or oftener if required by the board, make up an account of all moneys received and paid by him, and deliver the the same to the clerk of the board (5).

Duties of clerk.

15. The clerk of every highway board shall in person, or by such deputy as may be allowed by such board, attend all meetings of the board, and shall conduct the correspondence thereof, and enter and keep in books to be provided for the purpose, notes, minutes, or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of such board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the board may direct (6).

(1) See the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 33, *post.*

(2) See note (6), p. 845.

(3) But see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 30, *post.*

(4) The Highway Act, 1864, 27 & 28 Vict. c. 101, s. 45, *post*, makes provision in case of default of highway board appointing officers.

The appointment is now not chargeable with stamp duty: 38 Vict. c. 23, s. 14.

Highway boards may combine to appoint a district surveyor. See the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 6, *post.*

The surveyor for the time being of every parish within the district continues in office until seven days after the appointment of the district surveyor: Highway Act, 1864, 27 & 28 Vict. c. 101, s. 10, *post.*

As to the relative duties of the treasurer, clerk, and district surveyor, see sections 14, 15 and 16 respectively, *post.*

(5) As to the appointment of and security to be given by the treasurer, see section 12, *ante.* See further as to accounts of officers, section 31, *post.*

(6) See further sections 18 and 42 (6), *post.* As to the appointment of clerk, see section 12, *ante.*

Duties of district surveyor.

16. The district surveyor shall act as the agent of the board in carrying into effect all the works and performing all the duties by this Act required to be carried into effect or to be performed by the board, and he shall in all respects conform to the orders of the board in the execution of his duties (1), and the assistant surveyor, if any, shall perform such duties as the board may require, under the direction of the district surveyor (2).

Works and Duties of Board.

Board to maintain highways.

17. The highway board shall maintain in good repair the highways within their their district, and shall, subject to the provisions of this Act, as respects the highways in each parish within their district, perform the same duties, have the same powers, and be liable to the same legal proceedings as the surveyor of such parish would have performed, had, and been liable to if this Act had not passed (3). It shall be the duty of the district surveyor to submit to the board at their first meeting in every year an estimate of the expenses likely to be incurred during the ensuing year for maintaining and keeping in repair the highways in each parish within the district of the board, and to deliver a copy of such estimate as approved or modified by the board so far as the same relates to each parish to the waywarden of such parish (4).

Proceedings where roads are out of repair.

18. Where complaint is made to any justice of the peace that any highway within the jurisdiction of the highway board is out of repair, the justice shall issue two summonses, the one addressed to the highway board and the other to the waywarden of the parish liable to the repair of such highway, requiring such board and waywarden to appear before the justices at some petty sessions in the summons mentioned, to be held in the division where such highway is situate; and at such petty sessions, unless the board undertake to repair the road to the satisfaction of the justices, or unless the waywarden deny the liability of the parish to repair, the justices shall direct the board to appear at some subsequent petty sessions to be then named, and shall either appoint some competent person to view the highway, and report to them on its state at such other petty sessions, or fix a day, previous to such petty sessions, at which two or more of such justices will themselves attend to view the highway (5).

At such last-mentioned petty sessions, if the justices are satisfied either by the report of the person so appointed, or by such view as aforesaid, that the highway

(1) But if the surveyor does an unlawful act, it is no excuse that he did so in obedience to the orders of the board: *Mill* v. *Hawker*, *ante*, p. 844.

(2) See section 12 and note, *ante*, and section 31, *post*.

(3) See further section 11, *ante*, and section 43, *post*. But see sections 42 (2), (3), (5) and (8), *post*.

(4) As to the mode of defraying the expenses of the highway board, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s 33, *post*, and the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, ss. 7, 9, *post*.

(5) As to procedure under the Highway Act, 1835, see sections 94 and 95 of that Act, and notes thereto, *ante*, pp. 817—819.

Further as to power of county authority to enforce performance of duty by defaulting highway authority, see the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 10, *post*.

No justice is disabled from acting as such merely on the ground that he is by virtue of his office a member of a highway board complaining, &c., or has acted at any meeting of the board: Highway Act, 1864, 27 & 28 Vict. c. 101, s. 46, *post*.

The justices have no jurisdiction if the waywarden *bonâ fide* denies the fact that the road is a highway, but the decision of the justices that the denial is not *bonâ fide* may be reviewed by the Queen's Bench Division: *R.* v. *Odell*, 21 L. T. N. S. 556, 34 J. P. 534. The justices are not bound by the report of the person appointed to view the highway: *R.* v. *JJ. of Wilts*, *ante*, p. 818.

As to appeal to quarter sessions, see *Illingworth* v. *Bulmer East Board*, 52 L. J. Q. B. 680, 48 J. P. 37.

Secs. 18, 19. complained of is not in a state of complete repair, it shall be their duty to make an order on the board limiting a time for the repair of the highway complained of; and if such highway is not put in complete and effectual repair by the time limited in the order, the justices in petty sessions shall appoint some person to put the highway into repair, and shall by order direct that the expenses of making such repairs, together with a reasonable remuneration to the person appointed for superintending such repairs, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the board; and any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, in the same manner as if it were an order of general or quarter sessions, and be enforced accordingly (1).

All expenses so directed to be paid by the board in respect of the repairs of any highway shall be deemed to be expenses incurred by the board in repairing such highway, and shall be recovered accordingly.

The highway board may appear before the justices at petty sessions by their district surveyor or clerk, or any member of the board.

When obligation to repair is disputed.

19. When on the hearing of any such summons respecting the repair of any highway, the liability to repair is denied by the waywarden on behalf of his parish, or by any party charged therewith, the justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpœnaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace, for the county, riding, division, or place wherein such highway is situate, against the inhabitants of the parish, or the party charged therewith, for suffering and permitting the said highway to be out of repair; and the costs of such prosecution shall be paid by such party to the proceedings as the court before whom the case is tried shall direct, and if directed to be paid by the parish shall be deemed to be expenses incurred by such parish in keeping its highways in repair, and shall be paid accordingly (2).

(1) By 12 & 13 Vict.c.45, s. 18, it is provided that "in all cases where any order shall be made by any court of general or quarter sessions of the peace it shall be lawful for the Court of Queen's Bench (now the Queen's Bench Division, 36 & 37 Vict. c. 66, ss. 16, 34) or for any judge of that court at chambers, either in term or vacation, upon the application of any person entitled to enforce such order, and upon the production of a copy of such order under the hand of the clerk of the peace or his deputy and upon proof of refusal or neglect to obey such order to order and direct such order of the court of general or quarter sessions to be removed into the said Court of Queen's Bench, and thereupon such order shall be of the same force and effect and may be enforced in the same manner as a rule made by the said Court of Queen's Bench, and all the reasonable costs and charges attendant upon such application and removal shall be recoverable in like manner as if the same were part of such order."

(2) See the preceding section and the notes thereto. As to indictments, see note, *ante*, p. 766.

The jurisdiction of justices under this section is limited to admitted highways; they have no jurisdiction to order an indictment to be preferred where it is *bonâ fide* denied by the parties charged that the road is a highway, and the liability to repair the road, if it is a highway, is not denied: *R.* v. *Farrer*, L. R. 1 Q. B. 558, 7 B. & S. 554, 35 L. J. M. C. 210, 14 L. T. N. S. 515, 12 Jur. N. S. 622, 14 W. R. 777, 30 J. P. 469.

The court cannot order costs to be paid by the inhabitants of a parish where on the trial of an indictment under this section the jury have found a verdict of not guilty on the ground that the road was not a highway: *R.* v. *Buckland*, 6 B. & S. 397, 34 L. J. M. C. 178, 12 L. T. N. S. 380, 11 Jur. N. S. 821, 13 W. R. 715, 29 J. P. 596.

See, also, *R.* v. *Lee*, *ante*, p. 819.

Now as to payment of expenses of highway boards, see the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 7.

Expenses.

20. [*Expenses how charged* (1)].
21. [*Mode of defraying expenses* (1)].
22. [*Provision where parish as defined by Act not co-extensive with parish maintaining its own poor* (1)].
23. [*Power to overseers, &c., to levy rates for making payments to highway board* (1)].
24. [*Mode of enforcing payments to highway* (1) *boards*].

Accounts.

25. [*Accounts to be made up to 25th March, and statement to be published* (2)].
26. [*Power to appeal in respect of account of board* (2)].
27. [*Clerk of highway board to transmit statement to Secretary of State. Penalty for neglect* (3)].
28. [*Abstract of statements to be laid before Parliament* (3)].
29. [*Secretary of State may cause form of statement to be prepared* (3).]
30. [*Quarterly account to be sent to the overseers* (4).]

Officers appointed by highway board to account to them when required.

31. All officers appointed by the highway board shall, as often as required by them, render to them or to such persons as they appoint a true, exact, and perfect account in writing under their respective hands, with the proper vouchers, of all monies which they may respectively to the time of rendering such accounts have received and disbursed on account or by reason of their respective offices, and in case any monies so received by any such officer remains in his hands, the same shall be paid to the Board, or to such person or persons as they in writing under their hands empower to receive the same; and if any officer refuses or wilfully neglects to render and give such account, or to deliver up such vouchers, or for the space of fourteen days after being thereunto required by the Board refuses or wilfully neglects to give up to them or to such person or persons as they appoint all books, papers, writings, tools, and things in his hands, custody, or power relating to the execution of his office, it shall be lawful for any justice of the peace for the county where the officer so making default is or resides, upon application made to him for that purpose by or on behalf of the Board, to make inquiry of and concerning any such default as aforesaid in a summary way, as well by the confession of the party as by the testimony of any credible witness or witnesses upon oath, and by warrant under his hand and seal to cause such money as may appear to him to be due and unpaid to be levied by distress and sale of the goods and chattels of such officer, rendering to him the overplus (if any), on demand, after payment of the money remaining due and deducting the charges and expenses of making such distress and sale; and if sufficient distress cannot be found, or if it appears to any such justice in manner aforesaid that any such officer has refused or wilfully neglected to give such account, or to deliver up all books, papers, writings, tools, matters and things in his custody or power relating to the execution of his office, the justice shall commit him to the house of correction or common

(1) Repealed by Highway Act, 1864, 27 & 28 Vict. c. 101, s. 32, *post*. See now that and the three following sections.

(2) Repealed by the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 36. See now that and the following section, and the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9.

(3) Repealed by the Highway Accounts Returns Act, 1879, 42 & 43 Vict. c 39, s. 3, *post*. See now section 2 of this latter Act, *post*, and the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, *post*, the Public Health Act, 1872, 35 & 36 Vict. c. 79, s. 36, *ante*, p. 258, and the General Order for Accounts, dated 29th April, 1879, amongst the Orders of the Local Government Board, *post*. See, also, however, the District Auditors Act, 1879, 42 Vict. c. 6, s. 3, *post*.

(4) Repealed by Highway Act, 1864, 27 & 28 Vict. c. 101, s. 36, *post*. See that and the succeeding section and the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, *post*.

Secs. 31–34.

gaol of the county where such offender is or resides, there to remain without bail until he gives a true and perfect account and verifies the same in manner aforesaid, and produces and delivers up the vouchers relating thereto, and pays the money (if any) remaining in his hands as aforesaid according to the direction of the Board, or has compounded with the Board for such money and paid such composition (which composition the Board are hereby empowered to make and receive), or until he delivers up such books, papers, and writings, tools, matters, and things as aforesaid, or has given satisfaction to the Board concerning the same; but no officer who may be committed on account of his not having sufficient goods and chattels as aforesaid shall be detained in prison by virtue of this Act for any longer time than six calendar months (1).

Supplemental Provisions.

Provision as to extra-parochial places.

32. Where in pursuance of an Act passed in the twentieth year of the reign of Her present Majesty, chapter nineteen, and intituled "An Act for the Relief of the Poor in Extra-parochial Places," any place is declared to be a parish, or where overseers of the poor are appointed for any place, such place shall for the purposes of this Act be deemed to be a parish separately maintaining its own highways; and where in pursuance of the same Act any place is annexed to any adjoining parish, or to any district in which the relief of the poor is administered under a local Act, such place shall for the purposes of this Act be deemed to be annexed to such parish or district for the purposes of the maintenance of the highways, as well as for the purposes in the said Act mentioned (2).

Provision for outlying part of parishes.

33. Where part of a parish is not contiguous to the parish of which it is a part, such outlying part may at the discretion of the justices be annexed to a district, and, when so annexed, it shall, for all the purposes of the Highway Acts, be deemed to be a parish separately maintaining its own highways (3).

Expenses of repair of highways may be recovered from party liable to repair *ratione tenuræ*.

34. Where any highway which any body politic or corporate or person is liable to repair by reason of tenure of any land (4), or otherwise howsoever, [shall be adjudged in the manner provided by the principal Act to be out of repair (5)], the Highway Board of the district in which such highway is situate may, if they see fit, direct their surveyor to repair the same, and the expenses to be incurred in such repair shall be paid by the party liable to repair as aforesaid; and it shall be lawful for any justice, upon the application of any person authorized in this behalf by the Highway Board, to summon the party liable to pay such expenses to appear before two justices at a time and place to be named in such summons, and upon the appearance of the parties, or in the absence of either of them, it shall be lawful for such justices to hear and determine the matter, and make such order, as well as to costs or otherwise, as to them may seem just.

(1) See the General Order for Accounts, dated 29th April, 1879, amongst the Orders of the Local Government Board, *post.*

(2) See the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 9, and the note thereto, *post.*

This section does not subject places formerly extra-parochial to the Common Law liability to indictment for non-repair of highways; it only subjects them to the Act as highway parishes liable to be put into a highway district: *R.* v. *Central Wingland*, L. R. 2 Q. B. D. 349, 46 L. J. M. C. 282, 36 L. T. N. S. 798, 25 W. R. 876, 41 J. P. 711.

(3) See now the Divided Parishes and Poor Law Amendment Act, 1876, 39 & 40 Vict. c. 61, ss. 1 and 5; the Poor Law Act, 1879, 42 & 43 Vict. c. 54, s. 7, and the Divided Parishes and Poor Law Amendment Act, 1882, 45 & 46 Vict. c. 58, s. 6, *post.* And see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 5, *post.*

(4) See note, *ante*, p. 765.

(5) This section is now to be construed as if instead of the words within brackets there were substituted the words "shall be adjudged in manner provided by the Highway Act, 1862." See the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 23, *post*, and see sections 18 and 19, *ante*, p. 847.

Highways repairable *ratione tenuræ* may be made repairable by the parish.

35. Where any person or corporation is liable, by reason of tenure of lands (1) or otherwise, to repair any highway situate in a highway district, the person or corporation (2) so liable may apply to any justice of the peace for the purpose of making such highway a highway to be repaired and maintained by the parish in which the same is situate; and such justice shall thereupon issue summonses requiring the waywarden of such parish, the district surveyor, and the party so liable to repair such highway as aforesaid, to appear before two or more justices in petty sessions assembled, and the justices at such petty sessions shall proceed to examine and determine the matter, and shall, if they think fit, make an order under their hands that such highway shall thereafter be a highway to be thereafter repaired and maintained by the parish, and shall in such order fix a certain sum to be paid by such person or corporation to the highway board of the district, in full discharge of all claims thereafter in respect of the repair and maintenance of such highway; and in default of payment of such sum the board may proceed for the recovery thereof in the same manner as for the recovery of penalties or forfeitures recoverable under this Act (3): Provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair and maintenance of such highway exceeds fifty pounds, the same, when received, shall be invested in the name of the highway board of the district in some public Government securities, and the interest and dividends arising therefrom shall be applied by such board towards the repair and maintenance of the highways within the parish in which such highway is situate; but when such sum does not exceed fifty pounds the same or any part thereof, at the discretion of such highway board, shall from time to time be applied by such board towards the repair and maintenance of the highways within such parish: Provided that any person aggrieved by any order of justices made in pursuance of this section may appeal to a court of general or quarter sessions holden within four months from the date of such order; but no such appeal shall be entertained unless the appellant has given to the other party to the case a notice in writing of such appeal, and of the matter thereof, within fourteen days after such order, and seven clear days at the least before such sessions, and has entered into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as may be by the court awarded; and upon such notice being given, and such recognizance being entered into, the court at such sessions shall hear and determine the matter of the appeal, and shall make such order thereon, with or without costs to either party, as to the court may seem meet (4):

From and after the making of such order by the justices, or by the court on appeal, as the case may require, such highway shall be repaired in like manner and at the like expense as highways which a parish is liable to repair (5).

Provision as to roads laid out.

36. Where the inhabitants of any parish are desirous of undertaking the repair and maintenance of any driftway (6), or any private carriage or occupation road, within their parish, in return for the use thereof, the district surveyor may, at the request of the inhabitants of such parish assembled in a vestry duly convened for the purpose, and with the consent in writing of the owner and occupier of every part thereof, apply to the justices in petty sessions to declare such driftway or road to be a public highway to be repaired at the expense of the parish; and upon such application being made it shall be lawful for the justices to declare the same to be a public carriage road to be repaired at the expense of the parish (5).

Surveyor of highway

37. No toll shall be demanded by virtue of any Act of Parliament on any turn-

(1) See note, *ante*, p. 765.

(2) Now, by the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 24, *post*, the highway board may apply also.

(3) See section 47, *post*.

(4) Compare the Highway Act, 1835, section 62, and notes thereto, *ante*, p. 796.

(5) See now the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 7, *post*.

(6) See note, *ante*, p. 757.

Section 37. pike road from the surveyor of a highway board when executing or proceeding to execute his duties as such surveyor, and all provisions applicable to the exemptions in the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, shall apply to the case of the exemptions conferred by this enactment (1).

board exempted from turnpike tolls.

(1) *I. e.*, the General Turnpike Act, 1822, by which it is enacted as follows:—

Section 32. "No toll shall be demanded or taken by virtue of this or any other Act or Acts of Parliament on any turnpike road for any horses or carriages attending his Majesty, or any of the royal family, or returning therefrom, or of or from any person or persons, for any horse or horses, or other beast or cattle, or for any waggon, wain, cart or other carriage employed in carrying or conveying, or going empty to fetch, carry, or convey, or returning empty from carrying or conveying, having been employed only in carrying or conveying, on the same day, any stones, bricks, timber, wood, gravel, or other materials for making or repairing any turnpike road or public highway, or for building, rebuilding, or repairing any present or any future bridge or bridges on any such road or public highway, or of or from the surveyor of any turnpike road when engaged in executing or proceeding to execute within the limits of his own or any adjoining trust the powers of this or any other Act or Acts of Parliament for repairing, maintaining, or relating to any turnpike road."

Section 26. "In every case in which under any Act or Acts of Parliament relating to any turnpike road there is an exemption from toll or duty in respect of any horse, mule, ass, ox, waggon, cart, or other carriage, drawing or carrying any dung, mould, marl, or compost of any nature or kind soever for improving or manuring the land, or hay, straw, or any other fodder for cattle, or materials for repairing any turnpike road or highway, such exemption shall be deemed to extend in respect of every such waggon, cart, or other carriage, and also in respect to the cattle drawing the same going empty, or loaded only with implements necessary for more convenient carriage, or loading or unloading such lading, or returning empty, or with such implements as aforesaid, having been so laden, notwithstanding the said waggon, cart, or other carriage shall for the purpose aforesaid go to or return from any parish or place in which the said turnpike does not lie."

Section 27. "Provided always, and be it further enacted, that for the preventing of frauds on toll collectors by waggons, carts, or other carriages passing empty, or loaded only with implements necessary for the more convenient carriage of, or for loading or unloading manure or materials for the repair of any turnpike road, or highway through turnpike gates, under the pretence of going for such manure or materials the owner or driver of every such empty waggon, cart, or carriage claiming the same exemptions, or any of them shall in all cases pay the toll in respect of such waggon, cart, or other carriage before the same shall be permitted to pass through such turnpike gate, and the collector of such toll shall thereupon deliver to such owner or driver a ticket to be marked "manure exemption," or "road materials" (as the case may be), with the name of the gate, and the date when delivered, and the amount of the toll so paid, all which sum or sums so paid shall be repaid to the owner or driver of such waggon, cart, or other carriage upon his or their returning with such waggon, cart, or other carriage so laden as aforesaid, and producing such ticket, and every collector of such toll refusing to give such ticket on receiving the toll, or refusing or neglecting to return the same toll upon the return of such waggon, cart, or other carriage so laden, and redelivery of the "manure exemption" or "road materials" ticket, as the case may be, shall for every such offence forfeit and pay to the owner of such waggon, cart, or other carriage, a penalty of not more than £5 upon conviction thereof before one or more justice or justices of the peace for the county, riding, division, or place where such offence shall be committed upon the oath of one or more credible witness or witnesses."

Section 28. "The owner or driver of any waggon, cart, or other carriage laden with manure for land, or materials for any turnpike road or highway, passing through any turnpike gate or otherwise passing on or across any turnpike road, shall not be liable to pay any toll, nor shall any toll be demanded for such carriage so laden or the cattle drawing the same, by reason only of any basket or baskets, empty sack or sacks, or spade, shovel, or fork necessary for loading or unloading such manure or materials being

Secs. 38, 39.

Limiting jurisdiction of justices.

Power to alter highway districts.

38. No justice of the peace shall act as such in any matter in which he has already acted as a member of the highway board, and in which the decision of such board is appealed against (1).

39. Any highway district formed under this Act may from time to time be altered by the addition of any parishes in the same or in any adjoining county, or the subtraction therefrom of any parishes, and new highway districts may be formed by the union of any existing highway districts in the same or in any adjoining county, or any parishes forming part of any existing highway districts, or any highway district may be dissolved; but any such alteration of existing districts, or formation of new districts, or dissolution of any district, shall be made by provisional and final orders of the justices; and all the provisions of this Act with respect to the formation of highway districts and provisional and final orders of justices (2), and the notices to be given of and previously to the making of such orders, and all other proceedings relating to the formation of highway districts, shall, in so far as the same are applicable, extend to such alteration of existing or formation of new districts, or dissolution of districts, as is mentioned in this section; and in addition thereto provision shall be made, if necessary, in any orders of justices made under this section for the adjustment of any matters of account arising between parishes or parts of districts in consequence of the exercise of the powers given by this section. Where any parish is added to or any district united with any district in another county, the final order of the justices of the county in which such parish or district is situate shall not be confirmed by them until they

in or upon any such waggon, cart, or other carriage, in addition to such manure or materials, if the loading thereof is substantially manure for land, or materials for the repair of any turnpike road or highway as aforesaid, anything in any Act contained to the contrary thereof notwithstanding."

And by 4 Geo. IV. c. 95, it is provided:—

Section 10. "No person shall by virtue of the said recited Act (*i. e.*, the preceding Act, 3 Geo. IV. c. 126), or this or any other Act or Acts of Parliament, have, claim, or take the benefit or advantage of any exemption from toll or part of tolls, or penalties for overweight, or to pay less toll for or in respect of any waggon, wain, cart, or other carriage, or the horses or beasts drawing the same, and carrying any particular kind of goods than other carriages of the like nature carrying other goods ought to pay, unless such waggon, wain, cart, or other carriage in respect of which the exemption shall be claimed shall have the sole of the bottom of the fellies of the wheels thereof of the breadth or gauge of four and a half inches or upwards (other than and except carts and carriages employed in carrying corn or grain in the straw, hay, straw, fodder, dung, or lime for the improvement of land, or other manure, or any plough, harrow, or implements of husbandry only), but that the tolls imposed by any Act, together with the additional tolls required to be taken for or in respect of every such waggon, wain, cart, or other carriage having the sole or bottom of the fellies of the wheels thereof of less breadth or gauge than four and half inches as aforesaid, and for or in respect of horses or beasts of draught drawing the same, and the additional tolls or penalties for overweight (except as before excepted), shall be paid in the same manner to all intents and purposes as if no exemption or less toll had been enacted or allowed, and as fully as all other waggons, wains, carts, and carriages and horses drawing the same ought respectively to pay which are not entitled to any exemption from toll in the whole or part, or to pay a less toll than other waggons, wains, carts and carriages, any law or statute to the contrary notwithstanding."

Section 25. "So much of the said recited Act (*i. e.*, the preceding Act, 3 Geo. IV. c. 126), as directs that the surveyor of any turnpike road when engaged in executing, or proceeding to execute within the limits of any adjoining trust the powers of the said Act, or any Act, for repairing or maintaining any turnpike road shall be exempt from the payment of toll shall be and the same is hereby repealed."

(1) See now the Highways Act, 1864, 27 & 28 Vict. c. 101, s. 46. Compare the Public Health Act, 1875, s. 258, *ante*, p. 186.

(2) See sections 5 and 6, *ante*, p. 840.

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shall have received the approval of their provisional order for such addition or union from the justices of the county in which the district is situate to or with which such addition or union is to be made. Where any highway district is dissolved, or where any parish is excluded from any highway district, the highways in such district or parish shall be maintained, and the provisions of the principal Act in relation to the election of surveyors and to all other matters shall apply to the said highways, in the same manner as if such highways had never been included within the limits of a highway district (1).

Provision in case of failure of board to hold first meeting.

40. If any highway board make default in holding its first meeting in pursuance of this Act, such board shall not thereupon become disqualified from acting, but the justices in general or quarter sessions shall, on the application of any persons liable to pay highway rates within the district, make such order as they think fit for the holding of such board at some other time, and any order so made shall be deemed to be an order capable of being removed into the Court of Queen's Bench, in pursuance of the Act passed in the session holden in the twelfth and thirteenth years of the reign of Her present Majesty, chapter forty-five, and may be enforced accordingly, and the costs of any application to the court of quarter sessions in pursuance of this section shall be defrayed out of the district fund of the board (2).

Reservation of right to adopt Local Government Act.

41. Any parish or part of a parish included in a highway district may adopt the Local Government Act in the same manner and under the same circumstances in and under which it might have adopted the same if it had not been included in such district; and upon such adoption being made such parish or part of a parish shall cease to form part of such district, subject nevertheless to the payment of any contributions that may at the time of such adoption be due from such parish or part of a parish to the highway board (3).

Application of Principal Act.

Construction of principal Act and this Act.

42. The following regulations shall be observed with respect to the construction of the principal Act (4) and this Act:—

1. This Act shall be construed as one with the principal Act (4) so far as is consistent with the provisions of this Act (5):
2. The ninth section of the principal Act (4), whereby it is enacted that a surveyor may be appointed by the inhabitants of a parish with a salary, shall not apply to any parish within any district formed under this Act:
3. The tenth section of the principal Act (4), whereby it is enacted that the surveyor or surveyors at the time of passing his or their accounts as therein mentioned, shall deliver to the justices a statement in writing of the name and residence of the person or persons appointed to succeed him or them as a surveyor or surveyors, shall not apply to any parish within any district formed under this Act:
4. The thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth sections of the principal Act (4), providing for the formation of parishes into districts, and the eighteenth and nineteenth sections of the principal Act, providing

(1) See now the Highway Act, 1864, 27 & 28 Vict. c. 101, ss. 13, 14, 15, 17, and the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict, c. 77, s. 3, *post.*

By the dissolution of a highway district, the highway board, though it ceases to have any control over the highways in its district, does not cease to exist as a corporate body for the performance of its other duties, such as those of suing and being sued, and acting generally for the purpose of winding up its affairs: *R.* v. *JJ. of Essex*, L. R. 11 Q. B. D. 704, 52 L. J. M. C. 124, 49 L. T. N. S. 177, 32 W. R. 220 (C.A.), in court below, 47 J. P. 725.

(2) See note (1) to section 18, *ante*, p. 848.

(3) See now the Public Health Act, 1875, sections 272, 216 and 313, *ante*, pp. 196, 165, 215, and see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 5, *post.*

(4) See section 4, *ante*, p. 839.

(5) See section 2 of the Highway Act, 1864, 27 & 28 Vict. c. 101, *post.*

for the appointment of a board in large parishes, shall not apply to any parish within any district formed under this Act:

5. The penalty imposed by section twenty of the principal Act (1) on the surveyor for neglect of duty shall not apply to a highway board constituted under this Act (2):

6. Any summons or notice, or any writ or any proceeding, at law or in equity, requiring to be served upon the board, may be served by the same being left at or transmitted through the post in a pre-paid letter directed to the office of the board, or being given personally to the district surveyor or clerk of the board (3):

7. The thirty-fifth section of the principal Act (1), whereby it is provided that the ratepayers of any parish may divide amongst themselves the carriage of materials in manner therein mentioned, shall not apply to any parish within any district formed under this Act (4):

8. The thirty-ninth, fortieth, forty-third, forty-fourth, and forty-fifth sections of the principal Act (1), relating to the accounts of surveyors, shall not apply to the highway board of any district formed under this Act (5).

Relative duties of outgoing surveyors and highway board.

43. On the formation of a highway district the following regulations shall be enacted with respect to the surveyors and the highway board:—

1. No surveyor shall be appointed under the principal Act (1) for any parish within such district (6):

2. The outgoing surveyor of every parish within the district shall continue in office until seven days after the appointment of the district surveyor by the highway board of the district of such outgoing surveyor, and no longer; and he may recover any highway rate made and then remaining unpaid (7) in the same manner as if this Act had not been passed, and the money so recovered shall be applied, in the first place, in reimbursing any expenses incurred by him as such surveyor, and in discharging any debts legally owing by him on account of the highways within his jurisdiction, and the surplus (if any) shall be paid by him to the treasurer of the highway board; and he shall be entitled to receive from the highway board any sum [not exceeding five pounds (8)], which on the allowance of his account shall be found to be due to him as such surveyor after the collection and expenditure of the whole of the highway rate made in such parish during the last year (9):

3. The highway board shall, for all the purposes of the principal Act, except that of levying highway rates, be deemed to be the successor in office of the surveyor of every parish within the district.

Provisions of principal Act

44. All the provisions of the principal Act (1) for widening, diverting, and stopping up (10) highways shall be applicable to all highways which now are or may

(1) See section 4, *ante*, p. 839.

(2) See sections 18 and 19 and notes thereto, *ante*, p. 847.

(3) As to service of notices issued by the highway board, see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 26, *post*.

(4) See the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 20, *post*.

(5) See the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, and notes thereto, *post*.

(6) See sections 42 (2) and 12, *ante*.

(7) The outgoing surveyors are to collect any rate remaining unpaid at the end of seven days from the appointment of the district surveyor: *R.* v. *Bluffield*, 11 L. T. N. S. 337, 29 J. P. 245.

(8) The words within brackets are now expressly repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66; and see the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 28, *post*.

(9) *Wrexham Highway Board* v. *Hardcastle*, 19 C. B. N. S. 177.

(10) *I.e.*, sections 82—92 of the Highway Act, 1835, *ante*, pp. 810—817.

See further the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 21, and the Highways and Locomotives Amendment Act, 1878, section 24, *post*.

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to be applicable to highways under local or personal Acts.

hereafter be paved, repaired, or cleansed under or by virtue of any local or personal Act or Acts of Parliament, or which may be situate within the limits of any such Act or Acts, except highways which any railway company, or the owners, conservators, commissioners, trustees, or undertakers of any canal, river, or inland navigation, are liable by virtue of any Act of Parliament relating to such railway, canal, river, or inland navigation to make, maintain, repair, or cleanse.

Enabling councils of certain boroughs to adopt parish roads and highways and to apply rates for their repair.

45. Whereas there are in certain boroughs in England and Wales roads and highways that are now and have heretofore been repaired by the inhabitants of the several parishes or townships within which such roads and highways are situated, and who also contribute and pay to the general rates levied for the repair of the public streets, roads and highways maintained and kept in repair by the council of such boroughs, by reason whereof a great burthen is imposed upon the ratepayers of the said parishes and townships; and it being doubtful whether the council of such boroughs have the power to adopt such parish roads and highways, or to apply the rates collected in such boroughs in repairing the same: Be it enacted, that it shall and may be lawful for the council of every such borough in England and Wales, upon the petition of the majority of the ratepayers of such parishes or townships present at a public meeting duly convened, to adopt all or any of such parish roads and highways as the council shall in its discretion consider advisable, and to apply the rates levied and collected by the said council for the repair of the public streets, roads, and highways within such borough in repairing and maintaining such parish roads and highways: Provided always, that it shall be competent for such council, previous to adopting such parish roads and highways, to require the provisions contained in any local Act applying to the public streets, roads, and highways of such borough to be complied with (1).

District highway boards may permit landowners to erect fences without incurring liability to repair highways.

46. No person through whose land a highway passes, which is to be repaired by the parish, shall become liable for the repair of such highway by erecting fences between such highway and the adjoining land, if such fences are erected with the consent in writing of the highway board of the district within which such highway is situate in the case of a place within the jurisdiction of a highway board, and in the case of any other place with the consent of the surveyor or other authority having jurisdiction over the highway (2).

Recovery of penalties.

47. All penalties under this Act, and all moneys recoverable as penalties, may be recovered summarily before any two or more justices in the manner directed by the Act of the session of the eleventh and twelfth years of Her present Majesty, chapter forty-three, and any Act amending the same (3); but where any sum adjudged to be paid under this Act in respect of such penalties or moneys exceeds five pounds, an appeal may be had by any person aggrieved to a court of general or quarter sessions [in manner provided by the one hundred and tenth section of the Act passed in the session holden in the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-six, intituled "An Act to consolidate and amend the Statute Law of England and Ireland relating to Larceny and other similar Offences" (4).]

(1) Now see the Public Health Act, 1875, sections 144, *et seq*, *ante*, pp. 113, *et seq*.

(2) See note, *ante*, pp. 765, 766, as to liability to repair *ratione clausuræ*.

(3) *I.e.*, the Summary Jurisdiction Acts, 1848 and 1879, 11 & 12 Vict. c. 43, and 42 & 43 Vict. c. 49.

(4) The portion of the section between brackets is repealed by the Summary Jurisdiction Act, 1884. Proceedings are now regulated by the Summary Jurisdiction Acts, 1848, 1879. The statute 24 & 25 Vict. c. 96, was as follows:—

Section 110. "In all cases where the sum adjudged to be paid on any summary conviction shall exceed £5, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county or place wherein the cause of complaint shall have arisen: Provided that such person shall give to the complainant a notice in writing of such appeal and of the

SCHEDULE.

Proceedings of Highway Boards (1).

FORM (A.) (2).

Notice is hereby given, that at the court of general or quarter sessions to be held on the day of . a proposal will be made to divide the county of Lincoln into highway districts [*or* to divide the parts of Holland in the county of Lincoln into highway districts, *or* to constitute the county of Rutland a highway district, *or* to constitute the parishes of Alford, Castle Carey, and Lovington, in the county of Somerset, a highway district].

FORM (B.) (3).

Whereas at a court of general or quarter sessions, held on the day of last, a Provisional Order was made in the following words; that is to say, [*here set out the provisional order*].

Notice is hereby given, that the confirmation of the said Provisional Order by a final order will be taken into consideration by the justices at the court of general or quarter sessions to be held on the day of next.

cause and matter thereof within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions or shall enter into a recognizance with two sufficient sureties before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded, or if such appeal shall be against any conviction whereby only a penalty or other sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal, and upon such notice being given and such recognizance being entered into or such deposit being made, the justice before whom such recognizance shall be entered into or such deposit shall be made, shall liberate such person if in custody, and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein with or without costs to either party as to the court shall seem meet, and in case of the dismissal of the appeal or the affirmance of the conviction shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment, and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be re-paid to the party convicted, and in any case where after any such deposit the conviction shall be quashed, the court shall order the money deposited to be repaid to the party convicted, and in every case where any conviction shall be quashed on appeal as aforesaid, the clerk of the peace or other proper officer should forthwith endorse on the conviction a memorandum that the same has been so quashed, and whenever any copy or certificate of such conviction shall be made a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate should be sufficient evidence of such conviction."

(1) This part of the schedule is repealed by the Highway Act, 1864, 27 & 28 Vict. c. 101, s. 27, *post*.

(2) See section 5, *ante*, p. 840.

(3) See section 6 (2), *ante*, p. 841.

HIGHWAY ACT, 1864.

27 & 28 VICT. c. 101.

An Act to amend the Act for the better Management of Highways in England.
[29*th July*, 1864.]

Secs. 1—4.

25 & 26 Vict. c. 61.

Whereas it is expedient to amend an Act passed in the session holden in the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter sixty-one, and intituled "An Act for the better Management of Highways in England:" Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short titles of Highway Acts.

1. The Acts hereinafter mentioned may be cited for all purposes by the short titles following; (that is to say,)

The Act passed in the session of the fifth and sixth years of the reign of King William the Fourth, chapter fifty, and intituled "An Act to consolidate and amend the Laws relating to Highways in that part of Great Britain called England," by the short title of the "Highway Act, 1835:"

The said Act passed in the session of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter sixty-one, by the short title of the "Highway Act, 1862:"

This Act by the short title of the "Highway Act, 1864."

All the above-mentioned Acts, and any Acts passed or to be passed amending the same, shall be included in the short title of "The Highway Acts."

This Act shall be construed with 25 & 26 Vict. c. 61.

2. This Act, so far as is consistent with the tenor thereof, shall be construed as one with the "Highway Act, 1862" (1).

Definition of "poor law parish," "highway parish," "highway rate," and "county."

3. "Poor law parish" shall mean a place that separately maintains its own poor:

"Highway parish" shall mean a place that after the constitution of a highway district separately maintains its own highways (2), and is entitled to return a waywarden or waywardens to the highway board of the district (3):

"Highway rate" shall include any rate, whether poor rate or not, out of the produce of which moneys are payable in satisfaction of precepts of a highway board (4):

"County" shall include any division of a county that has a separate county treasurer (5).

Amendments as to Orders of Justices.

Amendment of section 6

4. Where more highway districts than one are comprised in any order of justices, whether provisional or final, and whether made before or after the passing of this

(1) See the Highway Act, 1862, s. 42 (1), *ante*, p. 854

(2) See section 5, *infra*.

(3) Compare the definition of parish in the Highway Act, 1835, *ante*, p. 756, and the Highway Act, 1862, *ante*, p. 839.

(4) See the Highway Act, 1835, s. 27, *ante*, p. 778.

(5) See the definition of county in the Highway Act, 1862, s. 2, *ante*, p. 839.

Act, the formation of each of such districts is to deemed independent of the formation of any other district, and the order shall for all purposes be construed and take effect as if a separate order had been made in respect of each district; and any variation in a provisional order altering the parishes in any one or more districts comprised in that order shall make that order provisional only as to the particular district or districts in which the alterations are made, and not as to any other district or districts included in the same order (1).

Secs. 4—7.

of Highway Act of 1862.

5. Any parish, township, tithing, hamlet, or other place having a known legal boundary in which there are no highways repairable at the expense of the place, or in which the highways are repaired at the expense of any person, body politic or corporate, by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever than out of a highway rate or other general rate, shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways (2).

Certain places to be deemed places separately maintaining their own highways.

Where part of a parish is, in pursuance of the Local Government Act, 1858, Amendment Act, 1861, section 9 (3), treated as forming part of a district constituted under the Local Government Act, 1858, for all purposes connected with the repair of highways and the payment of highway rates, but for no other purpose, such part shall, for the purposes of the Highway Act, 1862, and this Act, be deemed to be a place separately maintaining its own highways, and capable of being included in a highway district, without requiring the consent of the local board to be given.

Where the highways of one part of a parish are, in pursuance of a private Act of Parliament, repairable out of a different rate from that out of which the highways of the other part are repairable, each of such parts shall, for the purposes of the Highway Acts, be deemed to be a place separately maintaining its own highways.

6. [There shall be repealed so much of the fifth section of the Highway Act, 1862, as provides that, "when it is proposed that only part of a county shall be divided into a highway district, not less than two out of the five justices making such proposal shall be resident in the said district;" and in lieu thereof be it enacted, that (4)] when it is proposed that only part of a county is to be constituted a highway district, not less than two out of the five justices making such proposal shall be resident in the said district, or acting in the petty sessional division in which such district or some part thereof is situate.

Part of section 5 of Highway Act, 1862, repealed, and other provisions enacted.

7. The power given by the seventh section of the "Highway Act, 1862" (5), of combining townships, tithings, hamlets, or places separately maintaining their own highways, and situate in a poor law parish, shall extend to combining any two or more of such townships, tithings, hamlets, or places, and any combination so formed shall for all the purposes of the Highway Acts be deemed to a highway parish.

Amendment of section 7 of Highway Act of 1862 as to combination of townships, &c.

Where a township, tithing, hamlet or other place separately maintaining its own highways is situate in two or more poor law parishes, each part of such township, tithing, hamlet, or other place may be combined with the parish in which that part is situate.

The justices may, by their provisional and final order, declare that any poor law parish within their jurisdiction, or residue of a poor law parish, after excluding such part, if any, as is prohibited by the "Highway Act, 1862," either wholly or without the consent of the governing body, from being included in the highway district, shall henceforward become a highway parish (6); and upon such declaration being made such poor law parish, or residue of a poor law parish, shall thereafter be a highway parish entitled to return a waywarden or waywardens to the

(1) See the Highway Act, 1862, ss. 5 and 6, *ante*, pp. 840, 841.

(2) See *R.* v. *Gasgoign*, 29 J. P. 389.

(3) Repealed by the Public Health Act, 1875, s. 343, *ante*, p. 224. See now the proviso in section 216 of this latter Act, *ante*, p. 165.

(4) The portion within brackets is now repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66, but the former statute is not thereby revived.

(5) *Ante*, p. 841.

(6) See *R.* v. *Gasgoign*, *supra*.

Secs. 7—10. highway board of the district in which it is included: and no rate shall be separately levied for the maintenance of the highways, and no separate waywardens be elected in any township, tithing, hamlet, or other sub-division of such poor law parish or residue of a poor law parish (1).

Where, previously to the passing of the provisional order forming a highway district, no surveyors or waywardens have been elected within any highway parish in that district, and where the mode of electing a waywarden or waywardens in such parish is not provided by this Act or the "Highway Act, 1862," the justices shall, by their provisional and final orders constituting the district, or by any subsequent provisional and final orders, make provisions for the annual election of a waywarden or waywardens for such parish.

Provision for places partly within and partly without a borough.

8. Where a parish or place separately maintaining its own highways is situate partly within and partly without the limits of a borough, the justices may by their provisional and final orders include in a highway district the outlying part of such parish or place; and where the outlying part of a parish or place situate as aforesaid has been, previously to the passing of this Act, or may be hereafter, included in a highway district, each part of such parish or place shall for all the purposes of the Highway Acts be deemed to be a place separately maintaining its own highways; and a waywarden or waywardens shall be elected by the ratepayers in each such part at such time and in such manner as may be provided by the said justices (2).

Power of justices as to extra-parochial places.

9. The justices in petty sessions may appoint overseers or otherwise deal with any extra-parochial place with a view to constituting it a highway parish or part of a highway parish, in the same manner as the justices may deal with such place for the purpose of constituting it a place or part of a place maintaining its own poor, in pursuance of the powers for that purpose given by the Act of the twentieth year of the reign of Her present Majesty, chapter nineteen (3).

Part of section 6 of Highway Act of 1862 as to meetings of Board repealed, and other provisions enacted.

10. [The paragraph No. 5 in the sixth section of the "Highway Act, 1862," shall be repealed, and in lieu thereof be it enacted (4)].

The first meeting of the highway board after the formation of a district shall be held at such time as may be appointed by the provisional or final order of the justices, so that the time appointed be not more than seven days after the expiration of the time limited by law for the election of waywardens (5), or, in the case of a special day being appointed for such election as hereinafter mentioned (6), be not more than twenty-one days after that day.

The day appointed for the first meeting of the Board shall for all the purposes

(1) See now the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 3, *post*.

(2) See the former provision in the Highway Act, 1862, s. 7, *ante*, p. 841. And see now the Public Health Act, 1875, s. 216, *ante*, p. 165.

(3) Now by the Poor Law Amendment Act, 1868, 31 & 32 Vict. c. 122, s. 27, it is enacted that "from the 25th day of December next every place which was or is reputed to be extra-parochial, whether entered by name in the report upon the census for the year 1851 or not, for which an overseer has not been then appointed, or for which no overseer shall be then acting, or which has not been then annexed to and incorporated with an adjoining parish shall for all civil parochial purposes be annexed to and incorporated with the next adjoining parish with which it has the longest common boundary, and in case there shall be two or more parishes with which it shall have boundaries of equal extent, then with that parish which now contains the lowest amount of rateable value, and every accretion from the sea, whether natural or artificial, and the part of the sea shore to the low water mark, and the bank of every river to the middle of the stream, which on the said 25th day of December next shall not be included within the boundaries of, or annexed to, and incorporated with any parish, shall for the same purposes be annexed to and incorporated with the parish to which such accretion, part, or bank adjoins in proportion to the extent of the common boundary."

(4) Repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

(5) See the Highway Act, 1862, s. 10, *ante*, p. 844.

(6) See the next section.

of the Highway Acts be deemed to be the day of the formation of the district; and the surveyor for the time being of every parish within the district shall continue in office until seven days after the appointment of the district surveyor, and no longer (1).

Power to justices to bring Highway Act into operation on a particular day.

11. In forming a highway district under the "Highway Act, 1862," the justices may, for the purpose of avoiding delay in bringing the Act into operation, appoint by their final order a day on which the first election of waywardens as members of the highway board is to take place in the district.

On the day appointed for the election waywardens shall be elected in every parish in the district entitled to elect such officers by the same persons and in the same manner by and in which waywardens are elected under the "Highway Act, 1862" (2), and all the provisions of the Highway Acts relating to the qualifications of surveyors or waywardens, and to the appointment of surveyors and waywardens by justices in the event of no election taking place, shall apply accordingly (3); but the waywardens elected under this section shall continue in office only until the time at which the next annual election of surveyors would have taken place in the several parishes of the district if the same had not been constituted a highway district, and at that time new waywardens shall be elected in manner provided by the Highway Acts (4).

Publication of orders in *Gazette* made permissive.

12. No order of the justices forming a highway district shall be invalidated by reason of its not being published in the *London Gazette;* and where any reference is made in any section of the "Highway Act, 1862," to the date of the publication in the Gazette of the order, such section shall be construed as if the date of the making of the final order under which the district is formed were substituted for "the date of the publication in the Gazette of the order under which the district is formed;" and any copy of the provisional or final order of the justices forming a highway district, certified under the hand of the clerk of the peace to be a true copy, shall be receivable in all courts of justice and in all legal proceedings as evidence of the formation of the district and of the matters in the said order mentioned (5).

As to union of parishes in different counties.

13. Contiguous places situate in different counties and places situate partly in one county and partly in another county or counties (6) shall, for the purpose of being united in one highway district, be deemed to be subject to the jurisdiction of the justices of any county, who may make a provisional and final order (7) constituting them an highway district, in the same manner as if all such places or parts of places were situate in such last mentioned county; subject to this proviso, that the provisional and final orders of the justices of the said county shall be of no validity unless provisional and final orders to the same effect are passed either concurrently with or subsequently to the first-mentioned provisional and final orders by the justices of every other county in which any of the said places or parts of places are situate.

Amendment of section 39 of Highway Act, 1862.

14. The approval of the justices of any county to any provisional order made by the justices of another county affecting any place in such first-mentioned county, in pursuance of the thirty-ninth section of the "Highway Act, 1862" (8), shall be testified by provisional and final orders (7) of the justices of the said first-mentioned county.

The powers conferred on justices by the thirty-ninth section of the "Highway Act, 1862" (8), shall be deemed to extend to the separation of any townships, tithings, hamlets, or places separately maintaining their own highways which may

(1) Compare the Highway Act, 1862, section 43 (2), *ante*, p. 855.

(2) Section 10, *ante*, p. 844.

(3) See the Highway Act, 1835, sections 6, 7, 11, *ante*, pp. 769—771.

(4) See now, however, the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 11, *post*.

(5) See the Highway Act, 1862, sections 6 and 8, *ante*, pp. 841, 843.

(6) See the Highway Act, 1862, section 7 (Thirdly), *ante*, p. 842.

(7) See section 18, *post*.

(8) *Ante*, p. 853.

Secs. 14–20.

have been consolidated by any previous order of the justices, and to an alteration in the number of waywardens of any parish.

As to the costs of parishes applying to be removed from one district to another.

15. Where, after the formation of an highway district, an application is made by any parish in that district to any court of general or quarter sessions, praying that the said parish may be removed from that district, all costs incidental to or consequential on such application and the removal of the said parish shall, unless the Court otherwise directs, be paid by the parish that has made the application in such manner as the said Court may direct. The amount of such costs shall be raised in the same manner as if they were expenses incurred in maintaining and keeping in repair the highways of that parish (1).

As to validity of order of justices.

16. No order of the justices forming a highway district, whether made before or after the passing of this Act, shall be void by reason that it includes in such district a place which the justices are not entitled to include under the provisions of this Act or the "Highways Act, 1862," or one of such Acts; and any order containing such prohibited place shall be construed and take effect as if that place had not been mentioned therein.

All expenses properly incurred by the justices of any county in maintaining the validity of any provisional or final order made by them shall be payable out of the county rate of that county.

Extent of powers of justices.

17. All powers and jurisdictions vested in justices by the "Highway Act, 1862," and this Act (2), or either of such Acts, may from time to time be exercised in relation to highway districts, highway boards, and highway parishes already formed, as well as upon the occasion of forming new highway districts, boards, or parishes; and where an alteration is made in part only of a highway district, the residue of that district shall not be affected thereby, but shall continue subject to the Highway Acts in the same manner as if no such alteration had been made.

Definition of "Provisional and Final Orders."

18. The expression "provisional and final order," (3) as used in this Act, shall mean a provisional and final order passed and published in manner provided by this Act and the "Highway Act, 1862," with the necessary variations as to notices and otherwise.

Miscellaneous Amendments.

Appointment and vote of waywardens.

19. Every waywarden, before taking his seat as a member of a highway board, shall produce a certificate of his having been duly elected or appointed a waywarden, and such certificate shall, in the case of an elected waywarden, be signed by the chairman of the vestry or other meeting at which he was elected; and in the case of a waywarden appointed by justices, be signed by the justices making the appointment.

A waywarden may sit as such for more places than one, but he shall be entitled to one vote only as waywarden (4).

Power to waywardens to contract for supply or cartage of materials.

20. Whereas doubts are entertained whether the forty-sixth section of the Highway Act of 1835 applies to a highway district: Be it enacted, that that section shall not apply to the highway board of any highway district or to any parish within any highway district.

Notwithstanding anything contained in the Act of the session of the twenty-sixth and twenty-seventh years of the reign of Her present Majesty, chapter

(1) See the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 7, *post*, and see the Highway Act, 1835, section 27, *ante*, p. 778, and the Highway Act, 1862, section 39, *ante*, p. 853.

(2) See the Highway Act, 1862, s. 39, *ante*, p. 853, and section 14 of this Act, *ante*, p. 861.

(3) As to the making of these orders, see the Highway Act, 1862, sections 5 and 6, *ante*, pp. 840, 841.

(4) But see the First Schedule (5), *post*.

sixty-one (1), or in any other Act, any waywarden may contract for the supply or cartage of materials within the parish for which he is waywarden, with the licence of two justices assembled at petty sessions, such licence to be granted on the application of the clerk of the highway board, who must be authorised to make such application by a resolution of his board assembled at a meeting, of which notice has been given.

Provisions for discontinuance of maintenance of unnecessary highways.

21. When any highway board consider any highway unnecessary for public use, they may direct the district surveyor to apply to two justices to view the same, and thereupon the like proceedings shall be had as where application is made under the "Highway Act, 1835," (2) to procure the stopping up any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the liability of the parish shall cease accordingly (3); and for the purpose of such proceedings under this enactment, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order as the nature of the case may require: Provided that if at any time thereafter, upon application of any person interested in the maintenance of such highway, after one month's previous notice in writing thereof to the clerk of the highway board for the district in which such highway is situated, it appear to any court of general or quarter sessions of the peace that from any change of circumstances since the time of the making of any such order as aforesaid under which the liability of the parish to repair such highway has ceased the same has become of public use and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly as if the first-mentioned order had not been made; and the said court may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Highway Board may contract to repair highways for the repair of which other parties are liable.

22. The highway board of any district may from time to time contract for any time not exceeding three years with any person or body of persons, corporate or unincorporate, to repair any highways, turnpike roads, or roads over county or other bridges, or any part thereof, for the repairing of which such persons or body of persons are liable; and any persons or body of persons liable to repair any roads may contract with the highway board for the repairing any highways, inclusive as aforesaid, or any part thereof, which the highway board is liable to make or repair; and the money payable under any contract made in pursuance of this section shall be raised in the same manner and be paid out of the same rates as would have been applicable to defray the expenses of the repair of such highways if no contract had been made in respect thereto (4).

(1) See this Act cited in note (6), *ante*, p. 844.

See *Wakefield* v. *Seneschall*, *ante*, p. 790.

As to the power of the highway board to contract for materials for repairing highways, see section 52, and notes thereto, *post*.

As to turnpike roads, see 33 & 34 Vict. c. 73, s. 11, cited *post*, p. 864.

(2) See sections 84—91 of the Highway Act, 1835, *ante*, pp. 812—816.

(3) See now the procedure under the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 24, *post*.

(4) By the Stamp Act, 1870, 33 & 34 Vict. c. 93, Sched., an agreement or contract made or entered into pursuant to the Highway Acts for or in relation to the making, maintaining, or repairing highways, is subject to a stamp duty of sixpence.

As to turnpike roads, see 26 & 27 Vict. c. 94, s. 1, cited *ante*, p. 842.

By the Annual Turnpike Acts Continuance Act, 1870, 33 & 34 Vict. c. 73, it is provided:—

Section 10. "With regard to any highway which within seven years previous to the passing of this Act has ceased, or which hereafter may cease to be a turnpike road, the cost of maintaining so much thereof as passes through any highway district constituted under the Highway Acts, 1862 and 1864, shall, after the 31st day of December, 1870, or after the date of the said highway ceasing to be a turnpike road, whichever shall last

Secs. 23–25.

Amendment of section 34 of Highway Act, 1862.

Amendment of section 35 of Highway Act of 1862.

Section 74 of 5 & 6 Will. IV. c. 50, repealed, and other provisions made as to cattle found straying, &c. on highways.

23. Section thirty-four of the "Highway Act, 1862," shall be construed as if, instead of the words "shall be adjudged in the manner provided by the principal Act to be out of repair," the words were substituted, "shall be adjudged in manner provided by the Highway Act, 1862, to be out of repair."

24. The highway board may apply, under section thirty-five of the "Highway Act of 1862," for the purpose of making any highway to which that section refers a highway to be repaired and maintained by the parish in which the same is situate, and upon such application being made the same proceedings may be had as upon the application of the person or corporation liable to repair the same (1).

25. The seventy-fourth section of the "Highway Act, 1835," shall be repealed, and instead thereof be it enacted, if any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, goat, kid, or swine is at any time found straying on or lying about any highway, or across any part thereof or by the sides thereof (2) (except on such parts of any highway as pass over any common or waste or uninclosed ground) (3), the owner or owners thereof shall, for every animal so found straying or lying, be liable to a penalty not exceeding five shillings, to be recovered in a summary manner, together with the reasonable expense of removing such animal from the

happen, be a charge on the common fund of such highway district, and shall be annually provided for in the same manner as is enacted in the thirty-second section of the Highway Act, 1864, in respect to the salaries of the officers appointed for the district."

Section 11. "It shall be lawful for any surveyor of any highway district to raise stone or other material within any highway district for the repair of any turnpike road which may be thrown upon any highway district by the preceding clause of this bill in the same manner and with the like powers and on payment of such compensation for the same as the trustees of a turnpike road are now empowered by law to do."

Section 12. "Where a turnpike road shall have become an ordinary highway, all bridges which were previously repaired by the trustees of such turnpike road shall become county bridges, and shall be kept in repair accordingly: Provided that, for the purposes of this Act, such bridges shall be treated as if they were bridges built subsequently to the passing of the Act of the fifth and sixth years of His late Majesty King William the Fourth, chapter 50, intituled 'An Act to consolidate and amend the laws relating to Highways in that part of Great Britain called England.'"

Section 13. "Where a turnpike road extending into two or more counties shall become an ordinary highway, in lieu of the certificate required by the seventh section of the 'Annual Turnpike Acts Continuance Act, 1868,' to be given by two justices before the trustees can award compensation to their officers, there shall be required a certificate by two justices of each county into which such turnpike road may extend, and each of such certificates shall certify that such part of the road that lies within the county for which the justices giving the certificate are acting was at the time at which it became an ordinary highway in complete and effectual repair."

By the Annual Turnpike Acts Continuance Act, 1872, 35 & 36 Vict. c. 85, it is provided:—

Section 14. "A highway board may, if they think fit, either repair, or contribute to the repair, of a turnpike road within their district, notwithstanding that no order of contribution may have been made upon the board in pursuance of the first section of the Annual Turnpike Acts Continuance Act, 1863, and all moneys so expended by the board shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly on the district fund, and this section shall be deemed to take effect from the 1st of January, 1872."

(1) But now see the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 7, *post*.

(2) The owner is liable, though the animal was in charge of a keeper at the time: *Lawrence* v. *King*, L. R. 3 Q. B. 345, 37 L. J. M. C. 78, 18 L. T. N. S. 356, 16 W. R. 966, 32 J. P. 310. But see *Horwood* v. *Goodall*, 36 J. P. 70.

(3) See *Golding* v. *Stocking*, L. R. 4 Q. B. 516, 38 L. J. M. C. 122, 20 L. T. N. S. 479, 918, 17 W. R. 722, 33 J. P. 278, 10 B. & S. 348, and *Bothamley* v. *Danby*, 24 L. T. N. S. 656, 36 J. P. 135.

highway where it is found to the fields or stable of the owner or owners, or to the common pound (1) (if any) of the parish where the same shall be found, or to such other place as may have been provided for the purpose: Provided always, that no owner of any such animal shall in any case pay more than the sum of thirty shillings, to be recovered as aforesaid, over and above such reasonable expenses as aforesaid, including the usual fees and charges of the authorised keeper of the pound: Provided also, that nothing in this Act shall be deemed to extend to take away any right of pasturage which may exist on the sides of any highway (2).

As to service of notices issued by highway board.

26. Any notice in respect of which no other mode of service is provided by the highway board in pursuance of powers in that behalf conferred on them, and any precept, summons, or order issued by the highway board, may be served,—

By delivery of the same personally on the party required to be served; or

By leaving the same at the usual or last known place of abode of such party as aforesaid; or

By forwarding the same by post as a prepaid letter addressed to the usual or last known place of abode of such party.

In proving service of a document by post it shall be sufficient to prove that the document was properly directed, and that it was put as a prepaid letter into the post office; and in serving notice on the overseers or the waywardens (if more than one) of any parish it shall be sufficient to serve the same on any one of such officers in a parish (3).

Schedule to Highway Act of 1862, repealed, and other regulations made.

27. [The schedule annexed to the "Highway Act of 1862" shall be repealed so far as relates to the proceedings of highway boards, and (4)] the proceedings of highway boards shall, after the passing of this Act, be subject to the regulations contained in the first schedule to this Act annexed.

28. [*Amendment of section* 43 *of Highway Act*, 1862 (5)].

Qualification of ex officio waywardens.

29. A justice of the peace acting for the county in which a highway district is situate, if he is resident in any place which is prohibited either altogether or without the consent of the local authority from being included in a highway district by the seventh section of the "Highway Act of 1862," and which is surrounded by or adjoins in any part such highway district, shall by virtue of his office, be a member of the highway board of such district, subject to this qualification, that if in pursuance of this section any justice of the peace would be entitled to be a member of two or more highway boards in the same county, he shall, by letter under his hand, addressed to the clerk of the highway board for which he elects to act, and by him to be transmitted to the clerk of the peace of the county, declare of which of the said highway boards he elects to be a member, and having made that election he shall be bound thereby, and shall not be entitled by virtue of his office of justice to be a member of any other of the said boards (6).

(1) A person who distrains cattle is bound to impound them in a proper pound, and if the usual pound is in an unfit state, he must find another: *Bignell* v. *Clarke*, 5 H. & N. 485, 29 L. J. Ex. 257, 2 L. T. N. S. 189.

As to supplying food and water to animal impounded, see the Cruelty to Animals Act, 1849, 12 & 13 Vict. c. 92, s. 5, the Cruelty to Animals Amendment Act, 1854, 17 & 18 Vict. c. 60, s. 1, and *Dargan* v. *Davies*, L. R. 2 Q. B. D. 118, 46 L. J. M. C. 122, 35 L. J. N. S. 810, 25 W. R. 230, 41 J. P. 468.

(2) See *Golding* v. *Stocking*, and *Bothamley* v. *Danby*, *supra*.

The provisions of this section are applied to turnpike roads by the Annual Turnpike Acts Continuance Act, 1871, 34 & 35 Vict. c. 115, s. 20.

(3) See *R.* v. *JJ. of Warwickshire*, 6 A. & E. 873, and the Highway Act, 1862, section 42 (6), *ante*, p. 855.

(4) The part within brackets is repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66, but the repealed schedule is not thereby revived.

(5) Repealed by Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66, but the words are not to be restored in the former enactment.

(6) See the Highway Act, 1862, sections 7 & 9, *ante*, pp. 841, 843.

Secs. 30–33.

Appointment of officers of board.

30. The appointment of any officer of a highway board may be made by a minute of the board, signed by the chairman and countersigned by the clerk of the board, and any appointment so made shall be as valid as if it were made under the seal of the board (1).

Power to appoint paid collectors of highway rates.

31. The power of appointing paid collectors of highway rates with the consent of the inhabitants in vestry assembled, which is vestsd in a surveyor by the "Highway Act, 1835" (2), and all the provisions of that Act relating to such appointment, shall be vested in and extend to any waywarden required to levy rates in pursuance of the "Highway Act, 1862," and this Act, or either of such Acts; and for the purposes of this Act any meeting of ratepayers entitled to elect a waywarden or waywardens (3) shall be deemed to be included under the expression "inhabitants in vestry assembled" (4), as used in this section, and the Highway Acts.

As to Expenses of Board.

32. [Repeal of sections 20, 21, 22, 23, and 24 of Highway Act, 1862 (5).]

Expenses how to be charged.

The salaries of the officers appointed for each district, and any other expenses incurred by any highway board for the common use or benefit of the several parishes within such district, shall be annually charged to a district fund to be contributed by and charged upon the several highway parishes within such district in proportion to the rateable value of the property in each parish, but the expenses of maintaining and keeping in repair the highways of each highway parish within the district, and all other expenses legally payable by the highway board in relation to such parish, including any sums of money that would have been payable out of the highway rates of such parish if the same had not become part of a highway district, except such expenses as are in this Act authorised to be charged to the district fund, shall be a separate charge on each parish (6).

The rateable value of the property in each parish shall be ascertained according to the valuation list (7) or other estimate for the time being in force in such parish for the purposes of the poor rate, or if no such valuation list or estimate be in force, then in such manner as may be determined by the justices in petty sessions, subject to an appeal by any person aggrieved to the next general or quarter sessions.

Mode of defraying expenses of the highway board.

33. For the purpose of obtaining payment from the several highway parishes within their district of the sums to be contributed by them, the highway board shall order precepts to be issued to the waywardens or overseers of the said parishes according to the provisions hereinafter contained, stating the sum to be contributed by each parish, and requiring the officer to whom the precept is addressed, within a time to be limited by the precept, to pay the sum therein mentioned to the treasurer of the board (8).

Where a highway parish is not a parish separately maintaining its own poor, or where in any highway parish it has, for a period of not less than seven years immediately preceding the passing of the "Highway Act, 1862," been the custom of the surveyor of highways for such parish to levy a highway rate in respect of property not subject by law to be assessed to poor rates, the precept of the highway

(1) See the Highway Act, 1862, section 12, *ante*, p. 846, and section 9 (5), *ante*, p. 844.

(2) Section 36, *ante*, p. 786.

(3) See the Highway Act, 1862, section 10, *ante*, p. 844.

(4) See the Highway Act, 1835, section 5, and note thereto, *ante*, p. 757.

(5) This portion of the section is repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66, but the repealed enactments are not revived.

(6) See now the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, ss. 7, 8, and 13, *post*.

(7) See the Union Assessment Committee Acts, 25 & 26 Vict. c. 102, 27 & 28 Vict. c. 39, and 43 & 44 Vict. c. 7.

(8) See now the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, ss. 13, 23.

As to service of notices, &c., see section 26, *ante*.

board shall be addressed to the waywarden of the parish, and in all other cases it shall be addressed to the overseers. Secs. 33–35.

Where the precept is addressed to a waywarden he shall pay the sum thereby required out of a separate rate, and such separate rate shall, in the case of a parish in which for such period aforesaid it has been the custom of the surveyor of highways to levy a highway rate in respect of property not subject by law to be assessed to poor rate, be assessed on and levied from the persons and in respect of the property on, from, and in respect of which the same has been assessed and levied during such period as aforesaid, and in all other cases such rate shall be assessed on and levied from the persons and in respect of the property on, from, and in respect of which a poor rate would be assessable and leviable if the parish of which he is a waywarden were a place separately maintaining its own poor (1).

No rate leviable by a waywarden under this Act shall be payable until the same has been published in manner in which rates for the relief of the poor are by law required to be published (2).

A waywarden shall account to the highway board for the amount of all rates levied by him, and at the expiration of his term of office shall pay any surplus in his hands arising from any rate so levied, above the amount for which the rate was made, to the treasurer of the highway board, to the credit of the parish within which such rate was made, and such surplus shall go in reduction of the next highway rate that may be leviable in such parish (3).

Where the precept is addressed to the overseers they shall pay the sum thereby required out of a poor rate to be levied by them, or out of any moneys in their hands applicable to the relief of the poor.

No contribution required to be paid by any parish at any one time in respect of highway rates shall exceed the sum of tenpence in the pound, and the aggregate of contributions required to be paid by any parish in any one year in respect of highway rates shall not exceed the sum of two shillings and sixpence in the pound, except with the consent of four-fifths of the ratepayers of the parish in which such excess may be levied present at a meeting specially called for the purpose, of which ten days' previous notice has been given by the waywarden of such parish, and then only to such extent as may be determined by such meeting (4).

All sums of money payable in pursuance of the precepts of a highway board shall, whether they are or not payable by the overseers of the poor, be subject to all charges to which ordinary highway rates are subject by law.

Power to levy rates for making payments to highway boards.

34. All waywardens and overseers to whom precepts of a highway board are hereby directed or authorised to be issued shall within their respective parishes have the same powers, remedies, and privileges, for and in respect of assessing and levying any rates required to be levied for making payments to a highway board, in the case of overseers, as they have in assessing and levying ordinary rates for the relief of the poor, and in the case of waywardens as they would have if the parish of which they are waywardens were a place separately maintaining its own poor, and they were overseers thereof, and the rate to be levied by them were a duly authorised poor rate (5).

Mode of enforcing payments to highway boards.

35. If any payment required to be made by the overseers or waywardens of any parish of monies due to a highway board is in arrear, it shall be lawful for any justice, on application under the hand of the chairman for the time being or by

(1) As to property rateable to the highway rates, see the notes, *ante*, pp. 778, *et seq.*; and see *R.* v. *Heath*, L. R. 1 Q. B. 218, 35 L. J. M. C. 113, 13 L. T. N. S. 669, 14 W. R. 388, 30 J. P. 182, 7 B. & S. 285, S. C. *nom. Re Heath*, 12 Jur. N. S. 355.

(2) See note (1), *ante*, p. 783.

When proceedings are taken before justices for non-payment of a highway rate, the mere production of the book purporting to contain the rate is no evidence of the due publication of the rate: *Bird* v. *Adcock*, 47 L. J. M. C. 123, 26 W. R. 634, 42 J. P. 308.

(3) See now the Highway Rate Assessment and Expenditure Act, 1882, 45 & 46 Vict. c. 27, s. 7, *post*.

(4) Compare the Highway Act, 1835, section 29, and notes thereto, *ante*, p. 783.

(5) As to property liable to be assessed to the poor rate, see the notes, *ante*, pp. 778, *et seq.*

Secs. 35–37.

the clerk of such board, to summon the said overseers or waywardens to show cause at petty sessions why such payment has not been made; and the justices at such petty sessions, after hearing the complaint preferred on behalf of the board, may, if they think fit, cause the amount of payment in arrear, together with the costs occasioned by such arrear, to be levied and recovered from the said overseers or waywardens, or any of them, in like manner as monies assessed for the relief of the poor may be levied and recovered, and the amount of such arrear, together with the costs aforesaid, when levied and recovered, to be paid to the said board.

Accounts of Board.

36. [Sections 25, 26, and 30 of Highway Act, 1862, repealed, and other provisions substituted (1)].

Within thirty days after the signature (2) of the accounts by the chairman the board shall cause a statement showing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars and in such form as the Secretary of State (3) may direct, to be printed, and sent by post or otherwise to each member of the board, and to the overseers of every parish within the district having overseers; and the clerk of the board shall furnish a copy of such statement to any ratepayer or owner of property situate within the district, on his application, and on the payment of a sum not exceeding one penny.

The books of account of the board shall at all seasonable times be open to the inspection of any ratepayer of any highway parish within the district of the board.

Persons aggrieved by rates levied may appeal in manner provided by 6 & 7 Will. IV., c. 96.

37. If any person feels aggrieved by any rate levied on him for the purpose of raising monies payable under a precept of a highway board, on the ground of incorrectness in the valuation of any property included in such rate, or of any person being put on or left out of such rate, or of the inequality or unfairness of the sum charged on any person or persons therein, he may appeal to the justices in special sessions in manner provided by the Act of the session of the sixth and seventh years of the reign of his Majesty, King William the Fourth, chapter ninety-six, sections six and seven, and all the provisions of the said section shall be applicable to such appeal (4).

(1) Repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66, and the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, *post*. See now, this latter enactment.

(2) See now, the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 9, *post*.

(3) See now, 35 & 36 Vict. c. 79, s. 36, *ante*, p. 258.

(4) The provisions are as follows:—

Section 6. "The justices acting in and for every petty sessions division shall, four times at least in every year, hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes twenty-eight days at the least before the holding of the same, and such special sessions shall and may be adjourned from time to time by the justices there present as they may think fit, and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein, which decision shall be binding and conclusive on the parties unless the person or persons impugning such decision shall within fourteen days after the same shall have been made cause notice to be given in writing of his, her, or their intention of appealing against such decision and of the matter or cause of such appeal to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice shall enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to

Power to appeal to quarter sessions against items of expense and expenditure, &c.

38. Where any waywarden of a highway parish of a district, or any ratepayer of such parish, feels aggrieved in respect of the matters following:—

(1.) In respect of any order of the highway board for the repair of any highway in his parish on the ground that such highway is not legally repairable by the parish, or in respect of any other order of the board on the ground that the matter to which such order relates is one in regard to which the board have no jurisdiction to make an order;

(2.) In respect of any item of expense charged to the separate account of his parish on the ground that such item of expense has not in fact been incurred or has been incurred in respect of a matter upon which the board have no authority by law to make any expenditure whatever;

(3.) In respect of any item of expenditure charged to the district fund on the ground that such item of expense has not in fact been incurred, or has been incurred in respect of a matter upon which the board has no authority by law to make any expenditure whatever;

(4.) In respect of the contribution required to be made by each parish to the district fund on the ground that such amount, when compared with the contribution of other parishes in the district, is not according to the proportion required by this Act (1);

he may, upon complying with the conditions hereinafter-mentioned, appeal to the court of general or quarter sessions having jurisdiction in the district; but no appeal shall be had in respect of any exercise of the discretion of the board in matters within their discretion; and no appeal shall be had except in respect of the matters and upon the grounds hereinbefore mentioned.

Conditions of appeal to general or quarter sessions.

39. No appeal shall be entertained by any court of general or quarter sessions in pursuance of this Act, unless the following conditions have been complied with:—

(1.) Notice of the intention of appeal must be served by the appellant on the clerk of the highway board in the case of an appeal against an order

try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of, and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof, and such justices upon hearing and finally determining such matter of appeal shall and may, according to their discretion award such costs to the party or parties appealing or appealed against as they shall think proper, and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever. Provided always that no such objection shall be inquired into by the said justices in special sessions, unless notice of such objection in writing under the hand of the complainant shall have been given seven days at least before the day appointed for such special session to the collector, overseers, or other persons by whom such rate was made. Provided also that the said justices in special session shall not be authorized to inquire into the liability of any hereditaments to be rated, but only into the true value thereof, and into the fairness of the amount at which the same shall have been rated."

Section 7. "The justices present at any such special or adjourned session shall for the aforesaid purpose have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs which any court of quarter sessions of the peace has upon appeals from any such rate, except as herein excepted. Provided always that no order of the said justices shall be removed by certiorari or otherwise into any of his Majesty's Courts of Record at Westminster. Provided also that nothing in this Act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions. Provided, also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject-matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such Court upon such appeal."

(1) See section 32, *ante*.

Secs. 39–43.

within two months after the order, and in the case of an appeal in respect of any item of expense or contribution within one month after the statement of the account of the board has been sent to each member of the board as hereinbefore mentioned (1):

(2.) The notice must state the matter appealed against, and the ground of the appeal:

On the receipt of the notice the board may serve a counter notice on the appellant, requiring him to appear in person or by his agent at the next meeting of the board, and support his appeal. On hearing the appellant the board may rectify the matter complained of, and if they do so to a reasonable extent, and tender to the appellant a reasonable sum for the costs of his attendance, it shall not be lawful for the appellant to proceed with his appeal. In any other case the appellant may proceed with his appeal, and the reasonable costs of his attendance on the board shall be deemed part of the costs of the appeal.

Power to refer case to arbitration.

40. If at any time after notice of appeal has been given it appears to the court of general or quarter sessions, on the application of either party in the presence of or after notice has been given to the other party, that the matter in question in such appeal consists only or in part of matters of mere account which cannot be satisfactorily tried by the court, it shall be lawful for such court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons, to be appointed by the parties, or, in case of disagreement, by the court; and the award made on such arbitration shall be enforceable by the same process as the order of the court of quarter sessions (2).

Provisions of 17 & 18 Vict. c. 125, incorporated.

41. The provisions of the "Common Law Procedure Act, 1854," relating to compulsory references, shall be deemed to extend to arbitrations directed by the court of quarter sessions; and the word "court" in the said Act shall be deemed to include the court of quarter sessions.

Proceedings on appeal.

42. If upon the hearing of the appeal it appears to the court that the question in dispute involves an inquiry as to whether a road is or is not a highway repairable by the public, or an inquiry as to any other important matter of fact, the court may either themselves decide such question, or may empanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions, and submit to such jury such questions in relation to the matters of fact in dispute as the court think fit; and the verdict of such jury, after hearing the evidence adduced, shall be conclusive as to the questions submitted to them.

The questions so submitted shall be in the form and shall be tried as nearly as may be in the manner in which feigned issues are ordinarily tried, and the court shall decide the parties to be plaintiffs and defendants in such trials (3).

Subject as aforesaid, the court may, upon the hearing of any appeal under this Act, confirm, reverse, or modify any order of the highway board, or rectify any account appealed against.

Costs of appeal.

43. If the appellant is successful, the costs shall, unless the court otherwise orders, be paid by the board, and shall be charged to the parishes within the juris-

(1) See section 36, *ante*.

(2) See the provisions of 12 & 13 Vict. c. 45, s. 18, cited in note (1), *ante*, p. 848.

(3) See 8 & 9 Vict. c. 109, s. 15. The Form of Issue given by this Statute is as follows:—

"In the Court of Queen's Bench [Common Pleas or Exchequer, *or in any inferior court as the case may be*].

Middlesex to wit. } [*or such other county as may be directed*].

Whereas *A.B.* affirms, and *C.D.* denies [*here state fully the fact or facts in issue*], and the Lord Chancellor [*or such other court, &c.*] is desirous of ascertaining the truth by the verdict of a jury, and both parties pray that the same may be inquired of by the country. Now let a jury, &c."

42 & 43 Vict. c. 59, s. 4 (3), expresses excepts from its operation, the above enactment as regards "any court other than the Supreme Court of Judicature in England." See further, Archbold's Practice, 13th ed., p. 732; Lush's Practice, 3rd ed., p. 960.

diction of the board other than the parish to which the appellant belongs in the same proportions in which such parishes contribute to the common fund of the board.

If the appellant is unsuccessful, the board, if the waywarden be the appellant, may charge the costs of the appeal to the parish to which the appellant belongs, in the same manner as if they were expenses incurred in repairing the roads in such parish, and may levy the sum accordingly, and may carry the sum so levied to the account of the several parishes within the jurisdiction of the board, other than the parish to which the appellant waywarden belongs, in the same manner as if they were expenses contributed by such parishes to the common fund of the board, but if some ratepayer other than the waywarden is the appellant, the court may order the costs of the appeal to be paid by such appellant; and such costs shall be recoverable in the same manner as a penalty is recovered under the "Highway Act, 1862" (1).

Jurisdiction as to districts in different counties.

44. Places situate in different counties, and places situate partly in one county and partly in another county, when united in one highway district (2), shall, for all matters connected with the provisions of this Act relating to appeals to quarter sessions against accounts, be deemed to be subject to the jurisdiction of the justices of the county in which the district is situate to which such places shall have been united by any provisional and final order or orders, or to which after the passing of this Act any such district shall be declared to be subject by the orders constituting the same, in the same manner as if all such places or parts of places were situate in such county.

Supplemental Provisions.

In case of default of highway board appointing officers.

45. If the highway board of a district make default in appointing a treasurer, clerk, and district surveyor, or any of such officers, in pursuance of the "Highway Act, 1862" (3), within three months after the day fixed by the justices for the holding of the first meeting of the board, or within three months after a vacancy occurring in any of the said offices, the justices in general or quarter sessions assembled may, if they think fit, appoint a person to any of the said offices in respect of which the default has been made, and may fix the salary of the officer appointed; and any such appointment shall take effect and salary be recoverable in the same manner as if the officer appointed by the justices had been appointed by the highway board of the district; and it shall not be lawful for such board, without the consent of the said justices, to remove any officer appointed by them under this section, or to lessen his salary within one year from the date of his appointment.

Jurisdiction of justices in petty sessions.

46. The justices assembled in petty sessions at their usual place of meeting may exercise any jurisdiction which they are authorised under the Highway Acts or any of them to exercise in special sessions; and no justice of the peace shall be disabled from acting as such at any petty or special or general quarter sessions in any matter merely on the ground that he is by virtue of his office a member of any highway board complaining, interested, or concerned in such matter, or has acted as such at any meeting of such board (4).

(1) Section 47, *ante*, p. 856. See now, however, the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 7, *post*.

(2) See section 13, *ante*, p. 861; and the Highway Act, 1862, section 39, *ante*, p. 853.

(3) Sections 12, &c., *ante*, p. 846.

(4) But see the Highway Act, 1862, section 38, and notes, *ante*, p. 853.

Notwithstanding this section, a justice who, on the application to subtract certain townships from a highway district, appears by counsel and gives evidence to oppose the subtraction, makes himself a party to the proceedings, and is not entitled to vote; but *query* whether the mere giving of evidence would disentitle: *R.* v. *Cumberland JJ.*, 42 J. P. 361. Such proceedings are judicial and not administrative: *Ib.*

By 16 Geo. II. c. 18, it is enacted that—

Section 1. "It shall and may be lawful to and for all and every justice or justices of the peace for any county, riding, city, liberty, franchise, borough, or town corporate

Section 47.

Power of highway board to make improvements and borrow money for the same, but previously to cause an estimate to be made.

47. A highway board may make such improvements as are hereinafter mentioned (1) in the highways within their jurisdiction, and may, with the approval of the justices in general or quarter sessions assembled, borrow money for the purpose of defraying the expenses of such improvements:

Previously to applying for the approval of the justices the highway board shall cause an estimate of the expenses of the improvements to be made, and two months at the least before making their application shall give notice of their intention so to do.

The notice shall state the following particulars:

(1.) The nature of the work, the estimated amount of expense to be incurred, and the sum proposed to be borrowed:

(2.) The parish or parishes within the district by which the sum borrowed and the interest thereon is to be paid, and in case of more parishes than one

within their respective jurisdictions to make, do, and execute all and every act or acts, matter or matters, thing or things, appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons, for passing and punishing vagrants, for repair of the highways, or to any other laws concerning parochial taxes, levies, or rates, notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid."

Section 3. "Provided always—that this Act or anything therein contained shall not authorise or empower any justice or justices of the peace for any county or riding at large to act in the determination of any appeal to the quarter sessions for any such county or riding from any order, matter, or thing relating to any such parish, township, or place where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid, anything herein contained to the contrary in anywise notwithstanding."

(1) See section 48, *post*.

Abolition of tolls on turnpike roads an improvement.

Now by the Annual Turnpike Acts Continuance Act, 1872, 35 & 36 Vict. c. 85, it is provided as follows:—

Section 15. "For the purpose of facilitating the abolition of tolls on any turnpike road within or passing through a highway district, the highway board and the trustees of the turnpike road may mutually agree that the highway board shall take upon themselves the maintenance and repair of such turnpike road, or so much thereof as is within their district, and thereupon the highway board shall pay off and discharge, where the turnpike is wholly within the highway district, the debt that may remain and be subsisting on the trusts of such turnpike road, or such sum by way of composition, but in full discharge of such debt, as the Local Government Board may after inquiry determine, and where the turnpike is not wholly within such district, such sum as the Local Government Board may in like manner determine as an equitable proportion of such debt or composition for the same.

"The abolition of such tolls shall be deemed to be an improvement of highways within the meaning of sections 47, 48, and 50 of 'The Highway Act, 1864,' and for such purpose the highway board may borrow money in accordance with the provisions of those sections, subject to the following provisions, viz.: 'That the improvement shall be deemed to be on behalf of all the parishes within the district, and each parish shall contribute thereto in the same proportion as it contributes to the district fund.'"

And by the Annual Turnpike Acts Continuance Act, 1873, 36 & 37 Vict. c. 90, it is provided that—

Section 16. "The abolition of the tolls on a turnpike road in consequence of any such order as aforesaid (*i.e.*, order of Local Government Board under section 15), shall in the case of a highway district be deemed to be an improvement of highways within the meaning of sections 47, 48, and 50 of 'The Highway Act, 1864,' and for such purpose the highway board may borrow money in accordance with the provisions of those sections, subject to the following provisions, viz.: 'That the improvement shall be deemed to be on behalf of all the parishes within the district, and each parish shall contribute thereto in the same proportion as it contributes to the district fund.'"

being made liable to pay the principal and interest the annual amounts to be contributed by each parish towards the payment thereof:

(3.) The number of years within which the principal moneys borrowed are to be paid off, not exceeding twenty years, and the amount to be set apart in each year for paying off the same:

(4.) The sessions at which the application is to be made.

Notice shall be given as follows:—

(1.) By transmitting a copy to the clerk of the peace for the county or division:

(2.) By placing a copy of such notice for three successive Sundays on the church door of every church of the parish or parishes on behalf of which such works are to be done, or, in the case of any place not having a church, in some conspicuous position in such place.

Upon the hearing of the application any person or persons may oppose the approval of the justices being given, and it shall be lawful for the justices to give or withhold their approval, with or without modification, as they think just.

All moneys borrowed in pursuance of this Act, together with the interest thereon, shall be a first charge on the highway rates of each parish liable to contribute to the payment thereof, after paying the sums due to the highway board on account of the district fund, in the same manner, so far as the creditor is concerned, as if the money had been borrowed on account of each parish alone; and the sums necessary to repay the said borrowed moneys, with interest, shall in each such parish be recoverable in the same manner as if they were expenses incurred by the board in keeping in repair the highways of that parish (1).

But it shall be the duty of the highway board, in case of any one parish paying more than its share of such borrowed money, or of the interest thereon, to make good to that parish the excess so paid out of the rates of the other parishes liable to contribute thereto.

The justices may from time to time make general orders in relation to the mode in which applications are to be made to them for their consent under this Act to the borrowing of any moneys.

Definition of improvements.

48. The following works shall be deemed to be improvements of highways:

(1.) The conversion of any road that has not been stoned into a stoned road:

(2.) The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the the making any new road, and the building or enlarging bridges:

(3.) The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair (2).

Power for parishes and districts to contribute to improvements.

49. Any parish may, with the consent of its waywarden, contribute to any improvements (3) made in another parish, whether situate or not in the same district, if such first mentioned parish consider such improvements to be for its benefit; and any highway board may contribute to any improvements (3) made in another district if such improvements are, in the opinion of the highway board of the first-mentioned district, for the benefit of their district. The contribution to be made by one parish to another shall be payable in the same manner as if such contributions were moneys due from the contributing parish in respect of expenses incurred in keeping in repair the highways of that parish, and moneys contributed by one district to another district shall be payable out of the common fund of the contributing district.

Certain clauses of 10 & 11 Vict. c. 16 incorporated.

50. The clauses of "The Commissioners Clauses Act, 1847," with respect to mortgages (4) to be created by the commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

(1) See now the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 8, *post*.

(2) Now as to the abolition of tolls on turnpike roads, see note, *ante*, p. 872.

(3) See the preceding section.

(4) *I.e.*, sections 75—88. The Act will be found, *post*.

Secs. 50–53.

In the construction of the said clauses "the commissioners" shall mean "the highway board."

Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last-mentioned Act, or in the forms appearing in the second schedule annexed to this Act, or as near thereto as circumstances admit.

As to encroachment on highways.

51. From and after the passing of this Act if any person shall encroach by making or causing to be made any building, or pit, or hedge, ditch, or other fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish, on the side or sides of any carriageway or cartway within fifteen feet of the centre thereof, or by removing any soil or turf from the side or sides of any carriageway or cartway, except for the purpose of improving the road, and by order of the highway board, or, where there is no highway board, of the surveyor, he shall be subject on conviction for every such offence to any sum not exceeding forty shillings, notwithstanding that the whole space of fifteen feet from the centre of such carriageway or cartway has not been maintained with stones for other materials used in forming highways (1); and it shall be lawful for the justices assembled at petty sessions, upon proof to them made upon oath, to levy the expenses of taking down such building, hedge, or fence, or filling up such ditch or pit, and removing such dung, compost, materials, or rubbish as aforesaid, or restoring the injury caused by the removal of such soil or turf upon the person offending: Provided always, that where any carriageway or cartway is fenced on both sides no encroachment as aforesaid shall be allowed whereby such carriageway or cartway shall be reduced in width to less than thirty feet between the fences on each side.

Power to contract for materials for repairing highways.

52. The highway board may and is hereby authorised to contract for purchasing, getting, and carrying the materials required for the repair of the highways, and for maintaining and keeping in repair all or any part of the highways of any parish within their highway district, for any period not exceeding three years (2).

8 & 9 Vict. c. 18 and 23 & 24 Vict. c. 106 incorporated.

53. A highway board for the purpose of improving the highways within their district may purchase such lands or easements relating to lands as they may require; and "The Lands Clauses Consolidation Act, 1845," and the Act amending the same passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter one hundred and six, shall be incorporated with this Act (3), with the exception of the clauses relating to the purchase of land otherwise than by agreement.

In the construction of this Act and the said incorporated Acts this Act shall be deemed to be the special Act, and the board shall be deemed to be the promoters of the undertaking, and the word "land" or "lands" shall include any easement in or out of lands.

(1) The words "sides of any carriage or cartway" mean any land forming part of the highway, though not part of the metalled road, but they do not extend to land which, though by the side of the road, has not been dedicated as highway to the use of the public: *Easton* v. *Richmond Board*, L. R. 7 Q. B. 69, 41 L. J. M. C. 25, 25 L. T. N. S. 586, 20 W. R. 203, 36 J. P. 485; *Field* v. *Thorne*, 20 L. T. N. S. 563, S. C. *nom. Thorne* v. *Field*, 33 J. P. 727.

Proceedings must be taken within six months, as limited by the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, s. 11, after the committing of the act complained of, for the encroachment is not a continuing offence: *Coggins* v. *Bennett*, L. R. 2 C. P. D. 568; *Ranking* v. *Forbes*, 34 J. P. 486.

As to soil, rubbish, &c., laid on highway so as to be a nuisance, see the Highway Act, 1835, section 73, *ante*, p. 806.

(2) See section 22, and note thereto, *ante*, p. 863.

(3) These Acts will be found, *post*.

SCHEDULES.

FIRST SCHEDULE.

Proceedings of Highway Boards.

(1.) The board shall meet for the despatch of business, and shall from time to time make such regulations with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business, including the quorum at meetings of the board, as they think fit, subject to the following conditions:

(*a.*) The first meeting after the formation of the district shall be held at the time and place fixed by the order of the justices in that behalf;

(*b.*) One ordinary meeting shall be held in each period of four months, and of such meetings one shall be held on some day between the seventh and fourteenth days of April;

(*c.*) An extraordinary meeting may be summoned at any time on the requisition of three members of the board addressed to the clerk of the board;

(*d.*) The quorum to be fixed by the board shall consist of not less than three members;

(*e.*) Every question shall be decided by a majority of votes of the members voting on that question;

(*f.*) The names of the members present at a meeting shall be recorded.

(2.) The board shall at the first meeting, and afterwards from time to time at their first meeting after each annual appointment of members of the board as hereafter mentioned, appoint one of their members to be chairman, and one other of their members to be a vice-chairman, for the year following such choice.

(3.) If any casual vacancy occur in the office of chairman or vice-chairman, the board shall, as soon as they conveniently can after the occurrence of such vacancy, choose some member of their number to fill such vacancy; and every such chairman or vice-chairman so elected as last aforesaid shall continue in office so long only as the person in whose place he may be so elected would have been entitled to continue if such vacancy had not happened.

(4.) If at any meeting the chairman is not present at the time appointed for holding the same, the vice-chairman shall be the chairman of the meeting; and if neither the chairman nor vice-chairman shall be present, then the members present shall choose some one of their number to be a chairman of such meeting.

(5.) In case of an equality of votes at any meeting, the chairman for the time being of such meeting shall have a second or casting vote.

(6.) All orders of the board for payment of money, and all precepts issued by the board, shall be deemed to be duly executed if signed by two or more members of the board authorised to sign them by a resolution of the board, and countersigned by the clerk; but it shall not be necessary in any legal proceeding to prove that the members signing any such order or precept were authorised to sign them, and such authority shall be presumed until the contrary is proved.

SECOND SCHEDULE.

FORMS.

Note.—*See section* 50 *of Act.*

Note.—*Highway rate includes Poor rate when the highways are maintained out of Poor rate. See section* 33 *of Act.*

Note.—*Highway parish means every parish that separately returns a way-warden or way-wardens to the highway board. See section* 3 *of Act.*

Form of Mortgage.

The highway board of the district, in consideration of pounds paid to the treasurer of the said board by *A.B.* of , assigns unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the highway rates leviable in the highway parish or parishes of (1) [*name the parishes*] as the said sum of pounds bears to the whole sum borrowed on the credit of the said rates, to hold to the said *A.B.*, his executors, administrators, and assigns, until the said sum of pounds, with interest at the rate of pounds per centum per annum, is paid.

The interest on this mortgage will be paid at on the day and days of in every year.

The principal will be paid at on the day of .

Given under our corporate seal this day of , 18 .

Note.—*The mortgage must be under the corporate seal of the board, and duly stamped. See Commissioners Clauses Act,* 10 *Vict. c.* 16, *s.* 75 (2).

Transfer of Mortgage by Indorsement.

The within-named *A.B.*, in consideration of the sum of pounds paid to him by *C.D.*, of hereby transfers to the said *C.D.*, his executors, administrators, and assigns, all his interest in the moneys secured by the within-written mortgage and in the within-named rates.

In witness whereof the said *A.B.* has hereunto set his hand and seal this day of 18 .

Note.—*The transfer must be under seal and duly stamped. See section* 77 *of Commissioners Clauses Act,* 10 *Vict. c.* 16 (2).

(1) See now the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict c. 77, s. 7, *post.*

(2) See section 50 and note thereto, *ante*, p. 873.

HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

41 & 42 VICT. c. 77.

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29. Amendment of section 3 of Locomotive Act, 1865.
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HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878.

41 & 42 VICT. c. 77.

An Act to amend the Law relating to Highways in England and the Acts relating to Locomotives on Roads; and for other purposes. [16*th August*, 1878.]

Secs. 1—4.

Whereas it is expedient to amend the law relating to highways in England, and to amend the Locomotive Acts, 1861 and 1865 (1):

24 & 25 Vict. c. 70.
28 & 29 Vict. c. 83.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as the "Highways and Locomotives (Amendment) Act, 1878."

Application of Act.

2. This Act shall not apply to Scotland or Ireland; and, save as is by this Act expressly provided, Part I. of this Act shall not apply to the Isle of Wight (2); nor to any part of the metropolis; nor to any part of a county to which the Act passed in the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter sixty-eight, intituled "An Act for the better Management and Control of the Highways in South Wales" (3), extends.

PART I.

Amendment of Highway Law.

Highway Districts.

Highway districts to be made so far as possible coincident with rural sanitary districts.

3. In forming any highway districts, or in altering the boundaries of any highway districts (4), the county authority shall have regard to the boundaries of the rural sanitary districts (5) in their county, and shall, so far as may be found practicable, form highway districts so as to be coincident in area with rural sanitary districts, or wholly contained within rural sanitary districts.

Power for rural sanitary authority of district coincident with highway district to become highway board.

4. Where a highway district, whether formed before or after the passing of this Act, is or becomes coincident in area with a rural sanitary district (6), the rural sanitary authority (6) of such district may apply to the county authority (6), stating that they are desirous to exercise the powers of a highway board under the Highway Acts (7) within their district.

On such application the county authority may, if they see fit, by order declare that from and after a day to be named in the order (in this Act called the commencement of the order) such rural sanitary authority shall exercise all the powers of a highway board under the Highway Acts (7); and as from the commencement of the order the existing highway board (if any) for the district shall be dissolved, and waywardens or surveyors shall not hold office or be elected for any parish in the district.

(1) These Acts will be found *post*.
(2) The Act applicable to the Isle of Wight is a local Act, 53 Geo. III. c. xcii.
(3) This Act will be found *post*.
(4) See the Highway Act, 1862, sections 5, 6, 39, *ante*, pp. 840, 841, 853.
(5) See section 38, *post*, and the Public Health Act, 1875, section 9, *ante*, p. 50.
(6) See section 38, *post*. (7) See the Highway Act, 1864, section 1, *ante*, p. 858.

Secs. 4—7.

An order made under this section may be amended, altered, or rescinded by a subsequent order of the county authority.

Where a highway district, being coincident in area with a rural sanitary district, is situate in more than one county, an order under this section may be made by the county authority of any county in which any part of such district is situate, but such order, and any order amending, altering, or rescinding the same, shall not be of any force or effect until it has been approved by the county authority or authorities of the other county or counties in which any part of such district is situate.

Consequences of rural sanitary authority becoming highway board.

5.—(1.) From and after the commencement of the order declaring a rural sanitary authority (1) entitled to exercise the powers of a highway board within their district, the following consequences shall ensue:

All such property, real or personal, including all interests, easements, and rights in, to, and out of property real and personal, and including things in action, as belongs to or is vested in, or would but for such order have belonged to or been vested in the highway board, or any surveyor or surveyors of any parish forming part of the district, shall pass to and vest in the rural sanitary authority for all the estate and interest of the highway board, or of such surveyor or surveyors, but subject to all debts and liabilities affecting the same:

All debts and liabilities incurred in respect of any property transferred to the rural sanitary authority may be enforced against that authority to the extent of the property transferred:

All such powers, rights, duties, liabilities, capacities, and incapacities (except the power of obtaining payment of their expenses by the issue of precepts in manner provided by the Highway Acts (2), or the powers of making, assessing, and levying highway rates) as are vested in or attached to, or would but for such order have become vested in or attached to, the highway board, or any surveyor or surveyors of any parish forming part of the district, shall vest in and attach to the rural sanitary authority:

All property by this Act transferred to the rural sanitary authority shall be held by them on trust for the several parishes for the benefit of which it was held previously to such transfer.

(2.) If at any time after a rural sanitary authority has become invested with the powers of a highway board in pursuance of this Act, the boundaries of the district of such authority are altered, the powers and jurisdiction of such authority in their capacity of highway board shall be exercised within such altered district; and on the application of any authority or person interested the Local Government Board may by order provide for the adjustment of any accounts, or the settlement of any doubt or difference so far as relates to highways consequent on the alteration of the boundaries of such rural sanitary district.

(3.) All expenses incurred by a rural sanitary authority in the performance of their duties as a highway board shall be deemed to be general expenses of such authority within the meaning of the Public Health Act, 1875 (3).

38 & 39 Vict. c. 55.

Highway boards may combine to appoint a district surveyor.

6. Any two or more highway boards may unite in appointing and paying the salary of a district surveyor, who shall in relation to the district of each of the boards by whom he is appointed have all the powers and duties of a district surveyor under the Highway Acts (2).

Expenses of highway boards to be paid out of district fund.

7. All expenses incurred by any highway board in maintaining and keeping in repair the highways of each parish within their district, and all other expenses legally incurred by such board, shall, notwithstanding anything contained in the Highway Acts (2), on and after the twenty-fifth day of March one thousand eight hundred and seventy-nine, be deemed to have been incurred for the common use or benefit of the several parishes within their district, and shall be charged on the district fund: Provided, that if a highway board think it just, by reason of natural differences of soil or locality, or other exceptional circumstances, that any

(1) See section 38, *post*.

(2) See the Highway Act, 1864, section 1, *ante*, p. 858.

(3) Sections 229, 230, *ante*, pp. 169, 170.

parish or parishes within their district should bear the expenses of maintaining its or their own highways, they may (with the approval of the county authority (1) or authorities of the county or counties within which their district, or any part thereof, is situate) divide their district into two or more parts, and charge exclusively on each of such parts the expenses payable by such highway board in respect of maintaining and keeping in repair the highways situate in each such part; so, nevertheless, that each such part shall consist of one or more highway parish or highway parishes.

Charge of moneys to be hereafter borrowed.

8. All moneys borrowed by a highway board after the twenty-fifth day of March one thousand eight hundred and seventy-nine, under the Highway Acts, shall be charged on the district fund, but nothing in this Act shall affect the security, chargeability, or repayment of any moneys borrowed before the twenty-fifth day of March one thousand eight hundred and seventy-nine (2).

Audit of accounts of highway districts and parishes.

9. The accounts of the highway authority of every highway district and highway parish shall be made up in such form as the Local Government Board shall from time to time prescribe, and shall be balanced to the twenty-fifth day of March in each year, and as soon as conveniently may be after such day the said accounts shall be audited and examined by the auditor of accounts relating to the relief of the poor [for the audit district in which the highway district or highway parish, or the greater part thereof in rateable value, is situate (3).]

Every such auditor shall (as nearly as may be) have, in relation to the accounts of the highway authority of a highway district or highway parish, and of their officers, the same powers and duties as he has in the case of accounts relating to the relief of the poor (4); and any person aggrieved by the decision of the auditor shall have the same rights and remedies as in the case of such last-mentioned audit (5).

[The auditor shall receive such remuneration as the Local Government Board direct; and such remuneration, together with the expenses incident to the audit, shall be paid by the highway authority of the highway district or highway parish out of the fund or rate applicable to the repair of highways within such district or parish; and such remuneration and expenses may, in default of payment, be recovered in a summary manner (3).]

5 & 6 Will. IV. c. 50. 27 & 28 Vict. c. 101.

Section forty-four of the Highway Act, 1835, is hereby repealed, and section thirty-six of the Highway Act, 1864, is hereby repealed down to the words "to be paid out of the district fund," and the statement of receipt and expenditure by the said section directed to be furnished by every highway board within thirty days after the signature of the accounts by the chairman shall be furnished within thirty days after the completion of the audit under this section.

Nothing in this section shall affect any proceeding commenced before the passing of this Act.

Power of county authority to enforce performance of duty by defaulting highway authority.

10. Where complaint is made to the county authority that the highway authority of any highway area within their jurisdiction has made default in maintaining or repairing all or any of the highways within their jurisdiction, the county authority, if satisfied after due inquiry and report by their surveyor that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of the duty of the highway authority in the matter of such complaint.

(1) See section 38, *post*.

(2) See the Highway Act, 1864, section 47, *ante*, p. 872.

(3) The portions within brackets are repealed by the District Auditors Act, 1879, 42 Vict. c. 6, s. 11.

(4) As to these powers and duties, see 7 & 8 Vict. c. 101, ss. 32—36; 11 & 12 Vict. c. 91, ss. 4—9; 12 & 13 Vict. c. 103, ss. 9—11; and 29 & 30 Vict. c. 113, ss. 5—7, *post*.

(5) See the General Orders for Accounts, dated 29th April, 1879, 13th Sept., 1880, and 9th April, 1881, amongst the orders of the Local Government Board collected, *post*. And see the District Auditors Act, 1879, 42 Vict. c. 6, and the Highway Rate Assessment and Expenditure Act, 1882, 45 & 46 Vict. c. 27, s. 7, *post*.

Secs. 10–13.

If such duty is not performed by the time limited in the order, and the highway authority (1) fail to show to the county authority sufficient cause why the order has not been complied with, the county authority (1) may appoint some person to perform such duty, and shall by order direct that the expenses of performing the same, together with the reasonable remuneration of the person appointed for superintending such performance, shall be paid by the authority in default, and any order made for payment of such expenses and costs may be removed into the High Court of Justice, and be enforced in the same manner as if the same were an order of such court (2).

Any person appointed under this section to perform the duty of a defaulting highway authority shall, in the performance and for the purpose of such duty, be invested with all the powers of such authority other than the powers of making rates or levying contributions by precept, and the county authority may from time to time, by order, change any person so appointed.

Where an order has been made by a county authority for the repair of a highway on a highway authority alleged to be in default, if such authority, within ten days after service on them of the order of the county authority, give notice to the clerk of the peace that they decline to comply with the requisitions of such order until their liability to repair the highway in respect to which they are alleged to have made default has been determined by a jury, it shall be the duty of the county authority either to satisfy the defaulting authority by cancelling or modifying in such manner as the authority may desire the order of the county authority, or else to submit to a jury the question of the liability of the defaulting authority to repair the highway.

If the county authority decide to submit the question to a jury they shall direct a bill of indictment to be preferred to the next practicable assizes to be holden in and for their county, with a view to try the liability of the defaulting authority to repair the highway (3). Until the trial of the indictment is concluded the order of the county authority shall be suspended. On the conclusion of the trial, if the jury find the defendants guilty, the order of the county authority shall forthwith be deemed to come into force; but if the jury acquit the defendants the order of the county authority shall forthwith become void.

The costs of the indictment, and of the proceedings consequent thereon, shall be paid by such parties to the proceedings as the court before whom the case is tried may direct. Any costs directed to be paid by the county authority shall be deemed to be expenses properly incurred by such authority, and shall be paid accordingly out of the county rate; and any costs directed to be paid by the highway authority shall be deemed to be expenses properly incurred by such authority in maintenance of the roads within their jurisdiction, and shall be paid out of the funds (4) applicable to the maintenance of such roads.

Duration of office of waywarden.

11. Notwithstanding anything in the Highway Acts, waywardens shall continue in office till the thirtieth day of April in the year following the year in which they were elected, and on that day their successors shall come into office (5).

Repeal of part of s. 7, of 25 & 26 Vict. c. 61.

12. So much of section seven of the Highway Act, 1862, as prohibits the inclusion in a highway district of any parish or place the highways of which were, at the time of the passing of that Act, or within six months afterwards, under the superintendence of a board established in pursuance of section eighteen of the principal Act, unless with the consent of such board, is hereby repealed.

Main Roads.

Disturnpiked roads to become main

13. For the purposes of this Act, and subject to its provisions, any road which has, within the period between the thirty-first day of December one thousand eight hundred and seventy and the date of the passing of this Act, ceased to be a

(1) See section 38, *post.*

(2) See 12 & 13 Vict. c. 45, s. 18, cited in note *ante*, p. 848.

(3) See *R.* v. *JJ. of Cheshire*, 47 J. P. 788.

(4) See section 7, *ante.*

(5) See the Highway Act, 1862, section 10, *ante*, p. 845.

Sec. 13.

roads, and half the expense of maintenance to be contributed out of county rate

turnpike road, and any road which, being at the time of the passing of this Act a turnpike road, may afterwards cease to be such, shall be deemed to be a main road (1); and one half of the expenses (2) incurred from and after the twenty-ninth day of September one thousand eight hundred and seventy-eight, by the highway authority in the maintenance of such road shall, as to every part thereof which is within the limits of any highway area (3), be paid to the highway authority of such area by the county authority (4) of the county in which such road is situate out of the county rate (5), on the certificate of the surveyor of the county authority, or of such other person or persons as the county authority may appoint, to the effect that such main road has been maintained to his or their satisfaction.

Provided that no part of such expenses shall be included in—

(1.) Any precept or warrant for the levying or collection of county rate within the metropolis, subject and without prejudice to any provision to be hereafter made; or

(2.) Any order made on the council of any borough having a separate court of quarter sessions under section one hundred and seventeen of the Municipal Corporation Act, 1835 (6).

The term "expenses" (7) in this section shall mean the cost of repairs defrayed out of current rates, and shall not include any repayment of principal moneys borrowed, or of interest payable thereon.

(1) Where by the enlargement of the boundaries of a borough by a local Act, portions of turnpike roads entering the borough were by the operation of the Towns Improvement Clauses Act, 1847, 11 & 12 Vict. c. 34, ss. 47—50, *post*, taken out of the turnpike trusts, such portions are not to be deemed main roads within this section, which applies only to the cesser or extinguishment and winding up of turnpike trusts whereby the entirety of the turnpike roads ceases to be such: *JJ. of Lancashire* v. *Mayor of Rochdale*, L. R. 8 App. Cas. 494, 53 L. J. M. C. 5, 49 L. T. N. S. 368, 32 W. R. 65, 48 J. P. 20 H. L.

A provision in Turnpike Acts coming into operation before the 31st of December, 1870, that turnpike trustees shall not spend money or levy toll upon certain portions of turnpike roads does not prevent such portions of the roads from being turnpike roads within this section: *JJ. of West Riding* v. *R.*, L. R. 8 App. Cas. 781, 53 L. J. M. C. 41; S.C. *nom. JJ. of W. Riding* v. *Mayor of Sheffield*, 32 W. R. 253, 49 L. T. N. S. 786. So also where there was an agreement under the Local Government Act, 1858, 21 & 22 Vict c. 98, s. 41 (see now Public Health Act, 1875, s. 148, *ante*, p. 115), made before the 31st December, 1870, between turnpike trustees and a corporation, under which the turnpikes upon certain portions of turnpike roads were removed, and the repair of such portions undertaken by the corporation: *Ib.*

(2) See the concluding paragraph of the section and the note thereto.

(3) See section 14, *post*.

(4) See section 38 *post*, and *Ex parte Isle of Thanet Rural Authority*, 48 J. P. 249.

(5) As to county rates, see 15 & 16 Vict. c. 81 and 21 & 22 Vict. c. 33. The Municipal Corporation Act, 1882, section 5, *ante*, p. 269, repeals section 38 of the former Act.

As to exemption from county rate, see *Overseers of Middlesborough* v. *JJ. of North Riding*, L. R. 12 Q. B. D. 239, 32 W. R. 671.

(6) See now the Municipal Corporations Act, 1882, sections 151, 152, 153, *ante*, pp. 316, 317.

It is enacted by 44 & 45 Vict. c. 72 that from and after its passing (27th August, 1881) this section shall be read and construed as though the following words were inserted therein:

"Provided further, that no part of such expenses incurred from and after the 29th day of September, 1881, shall be included in any precept or warrant issued by the county authority for the county of Southampton for the levying or collection within the Isle of Wight of the county rate for the said county."

(7) The cost of removing snow which rendered a main road impassable is an expense within the section: *Amesbury Guardians* v. *JJ. of Wilts*, L. R. 10 Q. B. D. 480, 52 L. J. M. C. 64, 31 W. R. 521, 47 J. P. 184.

Secs. 14–18.

Description of highway areas.

14. The following areas shall be deemed to be highway areas for the purposes of this Act; (that is to say,)

(1.) Urban sanitary districts:

(2.) Highway districts:

(3.) Highway parishes not included within any highway district or any urban sanitary district (1).

Power to declare ordinary highway to be a main road.

15. Where it appears to any highway authority that any highway within their district ought to become a main road by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, such highway authority may apply to the county authority for an order declaring such road, as to such parts as aforesaid, to be a main road; and the county authority, if of opinion that there is probable cause for the application, shall cause the road to be inspected, and, if satisfied that it ought to be a main road, shall make an order accordingly.

A copy of the order so made shall be forthwith deposited at the office of the clerk of the peace of the county, and shall be open to the inspection of persons interested at all reasonable hours; and the order so made shall not be of any validity unless and until it is confirmed by a further order of the county authority made within a period of not more than six months after the making of the first-mentioned order.

Power to reduce main road to status of ordinary highway.

16. If it appears to a county authority that any road within their county which, within the period between the thirty-first day of December one thousand eight hundred and seventy and the date of the passing of this Act, ceased to be a turnpike road ought not to become a main road in pursuance of this Act, such authority shall, before the first day of February one thousand eight hundred and seventy-nine, make application to the Local Government Board for a provisional order declaring that such road ought not to become a main road.

Subject as aforesaid, where it appears to a county authority that any road within their county which has become a main road in pursuance of this Act ought to cease to be a main road and become an ordinary highway, such authority may apply to the Local Government Board for a provisional order declaring that such road has ceased to be a main road and become an ordinary highway.

The Local Government Board, if of opinion that there is probable cause for an application under this section, shall cause the road to be inspected, and if satisfied that it ought not to become or ought to cease to be a main road and become an ordinary highway shall make a provisional order accordingly, to be confirmed as hereinafter mentioned (2).

All expenses incurred in or incidental to the making or confirmation of any order under this section shall be defrayed by the county authority applying for such order.

Turnpike road in several counties.

17. Where a turnpike road subject to one trust extends into divers counties, such road, for the purposes of this Act, shall be treated as a separate turnpike road in each county through which it passes (3).

Accounts of expenses of maintenance of main roads.

18. Every highway authority (1) shall keep, in such form as may be directed by the county authority (1), a separate account of the expenses of the maintenance of the main roads within their jurisdiction, and shall forward copies thereof to the county authority at such time or times in every year as may be required by the county authority, and the accounts so kept shall, where the accounts of the highway authority are audited under this Act (4) or under section two hundred and forty-seven of the Public Health Act, 1875 (5), be audited in the same manner as the other accounts of such authority, and where the accounts of the highway authority are not so audited shall be subject to such audit as the county authority may direct.

38 & 39 Vict. c. 55.

If any highway authority makes default in complying with the provisions of this section, or with any directions given in pursuance thereof by the county

(1) See section 31, *post*.
(2) See section 34, *post*.
(3) See section 19, *post*.
(4) See section 9, *ante*, p. 881.
(5) *Ante*, p. 178.

authority, the county authority may withhold all or any part of the contribution payable by them under this Act towards the expenses of the maintenance of main roads by such highway authority for the year in which such default occurs.

Highway district situate in more than one county.

19. Where a highway district (1) is situate in more than one county, the provisions of this Act, with respect to the maintenance of main roads, shall apply as if the portion of such district situate in each county were a separate highway district in that county.

Repair of main roads in certain cases.

20. Notwithstanding the provisions of this Act, in the case of any county in which certain of the bridges within the county are repairable by the county at large, and others are repairable by the several hundreds within the county in which they are situate, it shall be lawful for the county authority (1) from time to time, by order, to declare any main road or part of a main road within their county to be repairable to the extent only and in manner provided by section thirteen of this Act, either by the county or by the hundred in which such main road or part is situate, as they think fit; and where a main road or part thereof is declared to be repairable by a hundred, the expense of repairing the same shall, to the extent to which but for this section the expense or any contribution towards the expense of repairing the same would be repayable out of the county rate, be repayable out of a separate rate which shall be raised and charged in the like manner as the expenses of repairing the hundred bridges in the same hundred would have been raised and charged.

Bridges.

Certain existing bridges may be accepted by county authority.

21. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in section five of the statute of the forty-third year of King George the Third, chapter fifty-nine, and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair.

Contribution out of county rates towards erecting bridges.

22. The county authority may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected, after the same has been certified in accordance with the provisions of section five of the statute of the forty third year of King George the Third, chapter fifty-nine, as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one half the cost of erecting such bridge (2).

Extraordinary Traffic.

Power of road authority to recover expenses of extraordinary traffic.

23. Where by a certificate of their surveyor it appears to the authority which is liable or has undertaken to repair any highway, whether a main road or not, that, having regard to the average expense of repairing highways in the neighbourhood, extraordinary expenses have been incurred by such authority in repairing such

(1) See section 38, *post.*

(2) By the County Bridges Loans Extension Act, 1880, 43 & 44 Vict. c. 5, it is provided as follows:—

Section 2. "Where, under section 22 of the Highways and Locomotives (Amendment) Act, 1878, the county authority, as defined by that Act, see fit to make a contribution towards the cost of a bridge erected as therein mentioned, they may borrow on mortgage of the county rate all or any part of the amount of such contribution in the same manner in every respect as if the amount to be borrowed had been the amount of an estimate made and approved in the manner mentioned in the Act of the 4th and 5th years of the reign of her Majesty, c. 49, hereinafter termed the principal Act, and all the powers, directions, and provisions of the principal Act shall extend and apply to the moneys borrowed under this Act, provided that the sum required for or towards any such contribution as aforesaid may be borrowed in exercise of the powers hereby conferred, although the same shall not exceed one-fourth of the amount of the ordinary annual assessment in the principal Act referred to."

Sec. 23. highway by reason of the damage caused by excessive weight passing along the same, or extraordinary traffic thereon, such authority may recover in a summary manner from any person by whose order such weight or traffic has been conducted the amount of such expenses as may be proved to the satisfaction of the court having cognizance of the case to have been incurred by such authority by reason of the damage arising from such weight or traffic as aforesaid (1).

Provided that any person against whom expenses are or may be recoverable under this section may enter into an agreement with such authority as is mentioned in this section for the payment to them of a composition in respect of such weight or traffic, and thereupon the persons so paying the same shall not be subject to any proceedings under this section.

(1) "Excessive weight" and "extraordinary traffic" mean excessive and extraordinary with reference to the road itself and the ordinary uses of the road, and not with reference to the weight which by section 28, *post*, may lawfully be imposed upon it: *Lord Aveland* v. *Lucas*, L. R. 5 C. P. D. 211, 351, 49 L. J. C. P. 643, 28 W. R. 571, 42 L. T. N. S. 788, 44 J. P. 360. So, where stone was conveyed in heavy loads from quarries (in the district) so as to make the cost of repairing the roads much greater than if they had been subject to ordinary agricultural traffic, but stone traffic was a recognised business in the neighbourhood and the waggon loads of the usual weight in such traffic, it was held that the cost of repairing the roads was not extraordinary expenses within the meaning of the section: *Wallington* v. *Hoskins*, L. R. 6 Q. B. D. 206, 50 L. J. M. C. 19, 43 L. T. N. S. 597, 45 J. P. 173, 29 W. R. 152. "I think nothing can be more to the point than the observation of my brother Lindley (in *Lord Aveland* v. *Lucas*, *supra*), which I adopt as my own. There the question related to extraordinary traffic and excessive weight, but I apply his expression to the words excessive weight and extraordinary expenses. He says, 'it appears to me that those words must mean excessive and extraordinary with reference to the ordinary use and traffic upon and over the road. If anything is done of an unusual and extraordinary kind the person doing it must pay for the damage thereby occasioned. It is the ordinary nature of the traffic over the road which is to be the standard.'" *Ib. per* Lord Coleridge, C. J. See also, *Raglan Highway Board* v. *Monmouth Steam Co.*, 46 J. P. 598. Therefore, where materials for building a house were carried over a highway, so that the traffic was in aggregate weight and in quantity excessive compared with the ordinary traffic along the highway, which was light agricultural traffic, but did not materially differ in character from that to be expected on the highway, it was held that though the amount expended on the highway by reason thereof was in excess of the average expense of repairing highways in the neighbourhood, this was not extraordinary traffic within the section: *Pickering Lythe East Highway Board* v. *Barry*, L. R. 8 Q. B. D. 59, 51 L. J. M. C. 17, 45 L. T. N. S. 655, 30 W. R. 246, 46 J. P. 215. The use of a large number of carts and their passage to and fro upon the highway more frequently than usual, is not extraordinary traffic within the section: *R.* v. *Williamson*, 45 J. P. 505. But the use of traction engines for the carriage of agricultural materials and produce upon a road not prepared or adapted for such use, and not generally so used, is extraordinary traffic upon the particular road: *R.* v. *Ellis*, L. R. 8 Q. B. D. 466, 30 W. R. 613, S. C., *nom. Ellis* v. *Maidstone Rural Authority*, 46 J. P. 295.

A person, who hires a contractor by whom the traffic is carried on, is liable: *Williams* v. *Davies*, 44 J. P. 347. But see *Barnett* v. *Hoo Board*, 46 J. P. 805 (where the person actually doing the injury to the road was held liable).

The average expenses of repairing highways in the neighbourhood is not the sole test of the extraordinary expenses, though it is an element to be taken into consideration in estimating such expenses: *Lord Aveland* v. *Lucas*, *supra*.

As to recovery of expenses, see section 36, *post*.

The six months within which summary proceedings for the recovery of the expenses are to be taken must be computed from the certificate of the surveyor: *Poole and Forden Board* v. *Gunning*, 51 L. J. M. C. 49, 46 L. T. N. S. 163, 31 W. R. 30, 46 J. P. 708. But see *White* v. *Colson*, 46 J. P. 565.

Discontinuance of unnecessary Highways.

Unnecessary highways may be declared not repairable at the public expense.

24. If any authority liable to keep any highway in repair is of opinion that so much of such highway as lies within any parish situate in a petty sessional division is unnecessary for public use, and therefore ought not to be maintained at the public expense, such authority (in this section referred to "as the applicant authority") may apply to the court of summary jurisdiction (1) of such petty sessional division to view by two or more justices, being members of the court, the highway to which such application relates, and on such view being had, if the court of summary jurisdiction is of opinion that the application ought to be proceeded with, it shall by notice in writing to the owners or reputed owners and occupiers of all lands abutting upon such highway, and by public notice, appoint a time and place, not earlier than one month from the date of such notice, at which it will be prepared to hear all persons objecting to such highway being declared unnecessary for public use, and not repairable at the expense of the public.

On the day and at the place appointed, the court shall hear any persons objecting to an order being made by the court that such highway is unnecessary for public use and ought not to be repairable at the public expense, and shall make an order either dismissing the application or declaring such highway unnecessary for public use, and that it ought not to be repaired at the public expense.

If the court make such last-mentioned order as aforesaid, the expenses of repairing such highway shall cease to be defrayed out of any public rate.

Public notice of the time and place appointed for hearing a case under this section shall be given by the applicant authority as follows; that is to say,

(1.) By advertising a notice of the time and place appointed for the hearing and the object of the hearing, with a description of the highway to which it refers in some local newspaper circulating in the district in which such highway is situate once at least in each of the four weeks preceding the hearing; and

(2.) By causing a copy of such notice to be affixed, at least fourteen days before the hearing, to the principal doors of every such church and chapel in the parish in which such highway is situate, or in some conspicuous position near such highway.

And the application shall not be entertained by the court until the fact of such public notice having been given is proved to its satisfaction.

If at any time after an order has been made by a court of summary jurisdiction under this section, upon application of any person interested in the maintenance of the highway in respect of which such order has been made, after one month's previous notice in writing thereof to the applicant authority, it appears to the court of quarter sessions that from any change of circumstances since the time of the making of any such order as aforesaid such highway has become of public use, and ought to be maintained at the public expense, the court of quarter sessions may direct that the liability of such highway to be maintained at the public expense shall revive from and after such day as they may name in their order, and such highway shall thenceforth be maintained out of the rate applicable to payment of the expenses of repairing other highways repairable by the applicant authority; and the said court of quarter sessions may by their order direct the expenses of and incident to such application to be paid as they may see fit (2).

Any order of a court of summary jurisdiction under this section shall be deemed to be an order from which an appeal lies to a court of quarter sessions (3).

(1) See section 36, *post*.

(2) As to stopping up highways, see the Highway Act, 1835, sections 84, 85, *ante*, pp. 812, 813, and the Highway Act, 1864, section 21, *ante*, p. 863.

(3) See section 37, *post*.

Appointment of Surveyors in certain Parishes.

Removal of doubt as to appointment of surveyors in certain parishes. 5 & 6 Will. IV. c. 50.

25. Whereas doubts have arisen whether a surveyor of highways can be appointed, in pursuance of the Highway Act, 1835 (1), for a parish which does not maintain any highway: Be it therefore enacted, that it shall be lawful for the inhabitants in vestry assembled of any parish or place having a known legal boundary (notwithstanding that the inhabitants at large are not for the time being liable to maintain any highway or to contribute to any rate applicable to the maintenance of highways), or, on the neglect or refusal of such inhabitants, for justices at a special sessions for the highways or in petty sessions assembled, at any time to exercise all the powers of the Highway Acts with respect to the election or appointment of a surveyor of highways with or without a salary for such parish or place; and any surveyor so elected or appointed shall have all the powers and duties (including the power of making, assessing, and levying of highway rates) of a surveyor under the Highway Acts.

Bye-laws by County Authority.

Power of county authority to make bye-laws.

26. A county authority (2) may from time to time make, with respect to all or any main roads or other highways within any highway area (3) in their county, and when made alter or repeal, bye-laws for all or any of the purposes following (4); that is to say,

(1.) For prohibiting or regulating the use of any waggon, wain, cart, or carriage drawn by animal power and having wheels of which the fellies or tires are not of such width in proportion to the weight carried by, or to the size of, or to the number of wheels of such waggon, wain, cart, or carriage, as may be specified in such bye-laws; and

(2.) For prohibiting or regulating the use of any waggon, wain, cart, or other carriage drawn by animal power not having the nails on its wheels countersunk in such manner as may be specified in such bye-laws, or having on its wheels bars or other projections forbidden by such bye-laws; and

(3.) For prohibiting or regulating the locking of the wheel of any waggon, wain, cart, or carriage drawn by animal power when descending a hill, unless there is placed at the bottom of such wheel during the whole time of its being locked a skidpan, slipper, or shoe in such manner as to prevent the road from being destroyed or injured by the locking of such wheel; and

(4.) For prohibiting or regulating the erection of gates across highways, and prohibiting gates opening outwards on highways; and

(5.) For regulating the use of bicycles.

Fines to be recovered summarily (5) may be imposed by any such bye-laws on persons breaking any bye-law made under this section, provided that no fine exceeds for any one offence the sum of two pounds, and that the bye-laws are so framed as to allow of the recovery of any sum less than the full amount of the fine.

Saving for Minerals.

To whom minerals under disturnpiked roads to belong.

27. Notwithstanding anything contained in section sixty-eight of the Public Health Act, 1848, or in section one hundred and forty-nine of the Public Health Act, 1875 (6), all mines and minerals of any description whatsoever under any dis-

(1) Sections 6 and 11, *ante*, pp. 769 and 771.

(2) See section 38, *post*.

(3) See section 14 *ante*, p. 884, and section 38, *post*.

(4) As to confirmation by the Local Government Board, see section 35 *post*.

(5) See section 36 *post*.

(6) *Ante*, p. 117. The Public Health Act, 1848, is repealed by section 343 of the Public Health Act, 1875, *ante*, p. 224; but section 68 of the former is reproduced in section 149 of the latter Act.

turnpiked road or highway which has or shall become vested in an urban sanitary authority by virtue of the said sections, or either of them, shall belong to the person who would be entitled thereto in case such road or highway had not become so vested, and the person entitled to any such mine or minerals shall have the same powers of working and of getting the same or other minerals as if the road or highway had not become vested in the urban sanitary authority, but so nevertheless that in such working and getting no damage shall be done to the road or highway (1).

Secs. 27, 28.

11 & 12 Vict. c. 63.
38 & 39 Vict. c. 55.

This section shall extend to the Isle of Wight and to South Wales, as defined by the said Act of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter sixty-eight, intituled "An Act for the better management and control of the highways in South Wales" (2).

PART II.

Amendment of Locomotive Acts, 1861 and 1865 (3).

28. Section three of the Locomotive Act, 1861, and section five of the Locomotive Act, 1865, are hereby repealed, so far as relates to England, and in lieu thereof be it enacted that it shall not be lawful to use on any turnpike road or highway a locomotive constructed otherwise than in accordance with the following provisions; (that is to say),

Weight of locomotives and construction of wheels.

24 & 25 Vict. c. 70.
28 & 29 Vict. c. 83.

(1.) A locomotive (4) not drawing any carriage, and not exceeding in weight three tons, shall have the tires of the wheels thereof not less than three inches in width, with an additional inch for every ton or fraction of a ton above the first three tons; and

(2.) A locomotive (4) drawing any waggon or carriage shall have the tires of the driving wheels thereof not less than two inches in width for every ton in weight of the locomotive, unless the diameter of such wheels shall exceed five feet, when the width of the tires may be reduced in the same proportion as the diameter of the wheels is increased, but in such case the width of such tires shall not be less than fourteen inches; and

(3.) A locomotive shall (4) not exceed nine feet in width or fourteen tons in weight, except as in hereinafter provided; and

(4.) The driving wheels of a locomotive (4) shall be cylindrical and smooth-soled, or shod with diagonal cross-bars of not less than three inches in width nor more than three-quarters of an inch in thickness, extending the full breadth of the tire, and the space intervening between each such cross-bar shall not exceed three inches (5).

The owner of any locomotive (4) used contrary to the foregoing provisions shall for every such offence be liable to a fine not exceeding five pounds: Provided that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county may, on the application of the owner of any locomotive exceeding nine feet in width or fourteen tons in weight, authorise such locomotive to be used on any turnpike road or highway within the areas

(1) This section was introduced in consequence of the decision in *Coverdale* v. *Charlton*, *ante*, p. 118.

(2) This Act will be found *post*. As to the Isle of Wight, see note (2) *ante*, p. 842.

(3) These Acts will be found *post*. (4) See section 38 *post*.

(5) See *Stringer* v. *Sykes*, L. R. 2 Ex. D. 240, 46 L. J. M. C. 137, 36 L. T. N. S. 152, 25 W. R. 273, 41 J. P. 296; and *Body* v. *Jeffery*, L. R. 3 Ex. D. 95, 47 L. J. M. C. 69, 38 L. T. N. S. 68, 26 W. R. 356, 42 J. P. 121; both decided under the Locomotive Act, 1861, section 3, repealed by this section.

Secs. 28–33.

respectively above mentioned, or part of any such road or highway, under such conditions (if any) as to them may appear desirable. Provided also, that the owner of a locomotive used contrary to the provisions of sub-section two of this section shall not be deemed guilty of an offence under this section if he proves to the satisfaction of the court having cognizance of the case that such locomotive was constructed before the passing of this Act, and that the tires of the wheels thereof are not less than nine inches in width.

Amendment of 28 & 29 Vict. c. 83, s. 3.

29. The paragraph numbered "secondly" of section three of the Locomotive Act, 1865, is hereby repealed, so far as relates to England, and in lieu thereof the following paragraph is hereby substituted; namely,

"Secondly, one of such persons, while the locomotive (1) is in motion, shall precede by at least twenty yards the locomotive on foot, and shall in case of need assist horses, and carriages drawn by horses, passing the same" (2).

Steam locomotives to be constructed so as to consume their smoke. 24 & 25 Vict. c. 70.

30. Section eight of the Locomotive Act, 1861, is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that every locomotive (1) used on any turnpike road or highway shall be constructed on the principle of consuming its own smoke; and any person using any locomotive not so constructed, or not consuming, so far as practicable, its own smoke, shall be liable to a fine not exceeding five pounds for every day during which such locomotive is used on any such turnpike road or highway.

Power to local authorities to make orders as to hours during which locomotives may pass over roads. 28 & 29 Vict. c. 83.

31. Section eight of the Locomotive Act, 1865, is hereby repealed, so far as relates to England; and in lieu thereof, be it enacted that the mayor, aldermen, and commons in the city of London, and the Metropolitan Board of Works in the metropolis, exclusive of the city of London, and the council of any borough which has a separate court of quarter sessions, and the county authority of any county, may make bye-laws as to the hours during which locomotives are not to pass over the turnpike roads or highways situate within the areas respectively above-mentioned, the hours being in all cases consecutive hours and no more than eight out of the twenty-four, and for regulating the use of locomotives upon any highway, or preventing such use upon every bridge (3) where such authority is satisfied that such use would be attended with danger to the public; and any person in charge of a locomotive acting contrary to such bye-laws shall be liable to a fine not exceeding five pounds (4).

Power of county authority to license locomotives.

32. A county authority (1) may from time to time make, alter, and repeal bye-laws for granting annual licenses to locomotives used within their county, and the fee (not exceeding ten pounds) to be paid in respect of each license; and the owner of any locomotive for which a license is required under any bye-law so made who uses or permits the same to be used in contravention of any such bye-law shall be liable to a fine not exceeding forty shillings for every day on which the same is so used (3).

All fees received under this section shall be carried to and applied as part of the county rate.

This section shall not apply to any locomotive used solely for agricultural purposes.

Duration of Part II. of Act. 28 & 29 Vict. c. 83.

33. This part of this Act shall remain in force so long only as the Locomotive Act, 1865, continues in force.

(1) See section 38, *post*.

(2) See *Davis* v. *Browne*, 48 L. J. M. C. 92, 40 L. T. N. S. 557, 43 J. P. 416 (decided on the repealed enactment).

(3) See *Dawson* v. *Cruit*, 48 J. P. 148.

(4) As to confirmation of bye-laws, see section 35, *post*.

PART III.

PROCEDURE AND DEFINITIONS.

34. It shall be lawful for the Local Government Board to submit any provisional order made by them under this Act to Parliament for confirmation, and without such confirmation a provisional order shall not be of any validity (1). Confirmation of provisional order.

35. A bye-law made under this Act, and any alteration made therein and any repeal of a bye-law, shall not be of any validity until it has been submitted to and confirmed by the Local Government Board. Confirmation of bye-laws.

A bye-law made under this Act shall not, nor shall any alteration therein or addition thereto or repeal thereof, be confirmed until the expiration of one month after notice of the intention to apply for confirmation of the same has been given by the authority making the same in one or more local newspapers circulating in their county or district.

36. All offences, fines, and expenses under this Act, or any bye-law made in pursuance of this Act, may be prosecuted, enforced, and recovered before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts. Recovery of penalties and expenses.

The expression "the Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," inclusive of any Acts amending the same.

The expression "court of summary jurisdiction" means and includes any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts: Provided that the court, when hearing and determining an information or complaint under this Act, shall be constituted either of two or more justices of the peace in petty sessions, sitting at a place appointed for holding petty session, or of some magistrate or officer sitting alone or with others at some court or other place appointed for the administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

37. If any party thinks himself aggrieved by any conviction or order made by a court of summary jurisdiction on determining any information or complaint under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following: Form of appeal to quarter sessions.

(1.) The appeal shall be made to the next practicable court of quarter sessions for the county or place where the decision appealed from was given holden not less than twenty-one days after the decision of the court from which the appeal is made; and

(2.) The appellant shall, within ten days after the pronouncing by the court of the decision appealed from, give notice to the other party and to the court of summary jurisdiction of his intention to appeal and of the ground thereof; such notice of appeal shall be in writing signed by the person or persons giving the same, or by his, her, or their solicitor on his, her, or their behalf; and

(3.) The appellant shall, within three days after such notice, enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon and to pay such costs as may be awarded by the court, or give such other security by deposit of money or otherwise as the justice may allow; and

(4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody:

(1) See section 16, *ante*.

Secs. 37, 38.

(5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just (1).

Interpretation.
25 & 26 Vict. c. 61.
27 & 28 Vict. c. 101.

38. In this Act—

"County" has the same meaning as it has in the Highway Acts, 1862 and 1864, except that every liberty not being assessable to the county rate of the county or counties within which it is locally situate shall, for the purposes of this Act other than those relating to the formation and alteration of highway districts, and the transfer of the powers of a highway board, be deemed to be a separate county:

"County authority" means the justices of a county in general or quarter sessions assembled:

"Borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same (2):

25 & 26 Vict. c. 61.

"Highway district" means a district constituted in pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts:

27 & 28 Vict. c. 101.

"Highway board" means the highway board having jurisdiction within a highway district:

25 & 26 Vict. c. 61.
27 & 28 Vict. c. 101.

"Highway parish" means a parish or place included or capable of being included in a highway district in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts:

"Highway authority" means as respects an urban sanitary district the urban sanitary authority, and as respects a highway district the highway board, and as respects a highway parish the surveyor or surveyors or other officers performing similar duties:

"Rural sanitary district" and "rural sanitary authority" mean respectively the districts and authorities declared to be rural sanitary districts and authorities by the Public Health Act, 1875:

38 & 39 Vict. c. 55.

"Urban sanitary district" and "urban sanitary authority" mean respectively the districts and authorities declared to be urban sanitary districts and authorities by the Public Health Act, 1875, except that for the purposes of this Act no borough having a separate court of quarter sessions, and no part of any such borough, shall be deemed to be or to be included in any such district, and where part of a parish is included in such district for the purpose only of the repairs of the highways such part shall be deemed to be included in the district for the purposes of this Act:

38 & 39 Vict. c. 55.

"The metropolis" means the parishes and places mentioned in the Schedules A., B., and C., annexed to the Metropolis Management Act, 1855, and any parish to which such Act may be extended by Order in Council in manner in the said Act provided; also the city of London and the liberties of the said city:

18 & 19 Vict. c. 120.

"Quarter sessions" includes general sessions:

"Petty sessional division" means any division for the holding a special sessions formed or to be formed under the provisions of the Act of the ninth year of the reign of His late Majesty King George the Fourth, chapter forty-three, or any Act amending the same; also any division of a county, or of a riding, division, parts, or liberty of a county, having a separate commission of the

(1) Further, as to appeals to quarter sessions, see notes, *ante*, pp. 823, 824.

(2) See now the Municipal Corporations Act, 1882, *ante*, p. 269.

peace, in and for which petty sessions or special sessions are usually held, whether in one or more place or places, in accordance with any custom, or otherwise than under the said last-mentioned Act; but does not include any city, borough, town corporate, or district constituted a petty sessional division by the Act of the session of the twelfth and thirteenth years of the reign of Her present Majesty, chapter eighteen, intituled "An Act for the holding of petty sessions of the peace in boroughs, and for providing places for the holding of such petty session in counties and boroughs:"

"Locomotive" means a locomotive propelled by steam or by other than animal power: (1).

"Person" includes a body of persons corporate or unincorporate.

(1) A tricycle capable of being propelled by steam, was held to be a locomotive within this definition: *Parkyns* v. *Preist*, L. R. 7 Q. B. D. 313, 50 L. J. M. C. 148, 30 W. R. 13, 45, J. P. 751.

LANDS CLAUSES CONSOLIDATION ACT, 1845.

8 VICT. c. 18.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the taking of lands for undertakings of a public nature (1).

[*8th May*, 1845.]

Secs. 1, 2.

Whereas it is expedient to comprise in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: May it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall apply (2) to every undertaking authorised by any Act which shall hereafter be passed, and which shall authorise the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act (2); and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed, together therewith, as forming one Act.

Act to apply to all undertakings authorised by Acts hereafter to be passed.

And with respect to the construction of this Act and of Acts to be incorporated therewith, be it enacted as follows:

Interpretations in this Act.

2. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed, which shall authorise the taking of lands for the undertaking to which the same relates, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had

"Special Act;"

"prescribed;"

(1) The headings of the different parts of this Act are to be referred to to determine the sense of any doubtful expression in a section ranged under any particular heading: *Hammersmith and City Ry. Co.* v. *Brand*, L. R. 4 H. L. 171, 38 L. J. Q. B. 265, 21 L. T. N. S. 238, 18 W. R. 12.

(2) This Act applies only in cases where land is sought to be acquired for undertakings of a public nature, and is, therefore, not to be considered as incorporated in subsequent private Acts: *Wale* v. *Westminster Palace Hotel Co.*, 7 Jur. N. S. 26, 8 C. B. N. S. 276, 9 W. R. 14. As to effect of the incorporation of this Act in special Acts, see note to section 68, *post*, p. 926.

Secs. 2, 3.

been used; and the expression "the works" or "the undertaking" (1) shall mean the works or undertaking, of whatever nature, which shall by the special Act be authorised to be executed; and the expression "the promoters of the undertaking" shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute such works or undertaking.

"the Works."

"Promoters of the undertaking."

3. The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction (that is to say),—

Interpretations in this and the Special Act.

Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number:

Number.

Words importing the masculine gender only shall include females:

Gender.

The word "lands" (2) shall extend to messuages, lands, tenements, and hereditaments of any tenure:

"Lands."

The word "lease" shall include an agreement for a lease:

"Lease"

The word "month" shall mean calendar month:

"Month."

The expression "superior courts" shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require:

"Superior Courts."

The word "oath" shall include affirmation in the case of Quakers or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"Oath."

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"County."

The word "sheriff" shall include under-sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque ports, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

"the Sheriff;"

"the clerk of the peace."

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the

"Justices."

(1) The sale of a railway as an "undertaking" means the sale of the lands on which it is constructed, as well as the whole line, with its tolls, &c.: *Ex parte Smith*, 16 L. T. N. S. 615. See also, as to the meaning of the word "undertaking," *King* v. *Marshall*, 10 L. T. N. S. 557, 12 W. R. 971, 4 N. R. 258, 10 Jur. N. S. 921; *Gardner* v. *London, Chatham & Dover Ry. Co.*, L. R. 2 Ch. at p. 216, 36 L. J. Ch. 323, 15 L. T. N. S. 552, 15 W. R. 325.

(2) It would seem that an easement is not included in the word "lands" as here defined. In *Pinchin* v. *London & Blackwall Ry. Co.*, 1 Kay & J. 34, 5 De G. M. & G. 851, 24 L. J. Ch. 417, Wood, V.-C., held that an easement was included in the word "lands," but on appeal Lord Cranworth (Lord Chancellor) held that it was not, though the decision was affirmed on other grounds. But see *Eagle* v. *Charing Cross Ry. Co.*, cited *post*, p. 930, and *R.* v. *Cambrian Ry. Co.*, L. R. 6 Q. B. 422. In *The Great Western Ry. Co.* v. *The Swindon & Cheltenham Ry. Co.*, 47 L. T. N. S. 709, it was held that the acquisition by the S. & C. Co. of the right or easement of crossing the G. W. Co.'s railway by a bridge and tunnel was not included in the word "lands." An annuity charged on land, being a hereditament, is within the word "lands" in this section: *In re Brewer*, 1 Ch. D. 409, 34 L. T. N. S. 466, 24 W. R. 465. See further as to easements, note, *post*, p. 930.

Secs. 3—7.

county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorised or required to be done by two justices, the expression "two justices" shall be understood to mean two justices (1) assembled and acting together:

"Two justices."

"Owner;" Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any Act shall be authorised or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be enabled to sell and convey lands to the promoters of the undertaking:

"the bank." The expression "the bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland.

Short title of the Act.

4. And be it enacted, that in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845."

Form in which portions of this Act may be incorporated with other Acts.

5. And whereas it may be convenient in some cases to incorporate with Acts of Parliament hereafter to be passed some portion only of the provisions of this Act: Be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such Act to enact that the clauses of this Act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this Act in the words introductory to the enactment with respect to such matter), shall be incorporated with such Act, and thereupon all the clauses and provisions of this Act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such Act shall relate (2).

And with respect to the purchase of lands by agreement, be it enacted as follows:—

Power to purchase lands by agreement.

6. Subject to the provisions of this and the special Act, it shall be lawful for the promoters of the undertaking to agree with the owners of any lands (3) by the special Act authorised to be taken, and which shall be required for the purposes of such Act (4), and with all parties having any estate or interest in such lands, or by this or the special Act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Parties under disability

7. It shall be lawful for all parties (5) being seised, possessed of, or entitled to

(1) Or one in the metropolis, see 2 & 3 Vict. c. 71, s. 14; and one stipendiary magistrate in other places, see 21 & 22 Vict. c. 73, s. 1.

(2) As to the incorporation of this Act with special Acts, see note to section 68, *post*, p. 926.

(3) The lands required for the purposes of the Act herein referred to include lands which the promoters may be required to take under section 92: *Governors of the Hospital of St. Thomas* v. *Charing Cross Ry. Co.*, 30 L. J. Ch. 395, 1 J. & H. 400. A railway company, having the usual power to purchase lands under its special Act, has, by virtue of this section, power also to purchase the minerals under those lands compulsorily at any time before the time limited for the exercise of its compulsory powers (though the company has previously purchased the surface lands): *Errington* v. *Metropolitan District Ry. Co.*, 19 Ch. D. 559, 51 L. J. Ch. 305, 46 L. T. N. S. 443, 30 W. R. 663.

(4) See *Colman* v. *Eastern Counties Ry. Co.*, 10 Beav. 1, 4 Ry. Cas. 513; *Graham* v. *Birkenhead, &c., Ry. Co.*, 12 Beav. 460, 2 Mac. & Gor. 146; *Salomons* v. *Laing*, 6 Railw. C. 289, 12 Beav. 339.

(5) See *In re East Lincolnshire Railway Act*, 1 Sim. N. S. 260.

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enabled to sell and convey.

any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say,) all corporations, tenants in tail or for life (1), married women seised in their own right (2) or entitled to dower, guardians, committees of lunatics (3) and idiots, trustees (4) or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years (5), or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics and idiots respectively could have exercised the same power under the authority of this or the special Act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their *cestui que trusts*, whether infants, issue unborn, lunatics, *femes covert*, or other persons, and that to the same extent as such *cestui que trusts* respectively could have exercised the same powers under the authority of this and the special Act if they had respectively been under no disability (6).

Parties under disability to exercise other powers.

8. The power hereinafter given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special Act, or any Act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance, shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Amount of compensation in case of

9. The purchase money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power

(1) An equitable tenant for life is not empowered under this section to execute a conveyance of land, but the trustees, who have the legal estate, are necessary parties to the conveyance: *Lippincott* v. *Smyth*, 29 L. J. Ch. 520, 2 L. T. N. S. 79, 6 Jur. N. S. 311. See also *Devenish* v. *Brown*, 2 Jur. N. S. 1043.

(2) When land was limited in remainder after a life estate to a husband and wife in fee, it was held that the wife could convey under this section: *Cooper* v. *Gostling*, 9 Jur. N. S. 1006, 4 Giff. 499, 11 W. R. 931.

(3) See *In re Brewer*, 1 Ch. D. 409, 34 L. T. N. S. 466, 24 W. R. 465. A person of unsound mind cannot sell under this section, which only authorises the committee of a lunatic to sell: *Re Tugwell*, L. R. 27 Ch. D. 309.

(4) Trustees for *femes covertes*, who are absolutely entitled for their separate use, are not persons competent to contract for the sale of land under this section: *Peters* v. *Lewes and East Grinstead Ry. Co.*, 18 Ch. D. 429, 50 L. J. Ch. 839, 45 L. T. N. S. 234, 29 W. R. 875.

(5) Compare *Slipper* v. *Tottenham and Hampstead Junction Ry. Co.*, L. R. 4 Eq. 112, 36 L. J. Ch. 841, 16 L. T. N. S. 446, 15 W. R. 861.

(6) Compulsory clauses in public Acts of Parliament will authorise the taking of lands, though the same are inalienably settled upon a family by Act of Parliament, and the person having the present interest may sell and convey such lands. But no interest in the Crown can be effected without its being named in the particular Act: *In re Cuckfield Burial Board*, 24 L. J. Ch. 585, 19 Beav. 153, 3 W. R. 142.

Secs. 9—11.

parties under disability to be ascertained by valuation and paid into the bank.

to sell or convey such lands except under the provisions of this or the special Act, and the compensation to be paid for any permanent damage or injury to any such lands (1), shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party (2), and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors if they agree (3), or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter mentioned.

Where vendor absolutely entitled, lands may be sold on chief rents.

10 (4). It shall be lawful for any person seised in fee of, or entitled to dispose of absolutely for his own benefit, any lands authorised to be purchased for the purposes of the special Act, to sell and convey such lands or any part thereof unto the promoters of the undertaking in consideration of an annual rent-charge payable by the promoters of the undertaking, but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum.

Payment of rents to be charged on tolls.

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special Act, and shall be otherwise secured in such manner as shall be agreed between the parties (5), and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the Superior Courts, or it shall be lawful for him to levy the same by distress (6) of the goods and chattels of the promoters of the undertaking.

(1) The words "injury to any *such* lands" mean injury to lands held by persons under disability. This section applies to compensation for injuriously affecting land not taken by the promoters, as well as to compensation for taking land: *Stone* v. *Mayor of Yeovil*, 2 C. P. D. 99, 46 L. J. C. P. 137, 36 L. T. N. S. 279, 25 W. R. 240.

(2) "The other party" cannot nominate himself: he must nominate a person who has no interest in the property: *Peters* v. *Lewes, &c., Ry. Co.*, 18 Ch. D. 429, 50 L. J. Ch. 839, 45 L. T. N. S. 234, 29 W. R. 875.

(3) The provisions of this section, as to the purchase of lands from persons under disability, must be strictly complied with: *Wycombe Ry. Co.* v. *Donnington Hospital*, L. R. 1 Ch. 268, 12 Jur. N. S. 347, 14 L. T. N. S. 179, 14 W. R. 359.

(4) By section 1 of 23 & 24 Vict. c. 106, *post*, p. 981, so much of this section as provides that, save in the case of lands of which any person is seised in fee, or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is repealed, but the repealing section is itself repealed by section 1 of the Statute Law Revision Act, 1875; and by section 2 of the same Act parties under disability may sell, &c., lands for an annual rent-charge, according to the powers and provisions of this Act.

(5) When lands are sold in consideration of a rent-charge, the parties may agree for its being secured by a power of entry: *Forster* v. *Manchester, &c., Ry. Co.*, 49 L. J. Ch. 454; and by a power of distress: *Eyton* v. *Denbigh, &c., Ry. Co.*, L. R. 6 Eq. 14, 16 W. R. 1005; *Eyton* v. *Denbigh, &c., Ry. Co.*, L. R. 6 Eq. 488, 38 L. J. Ch. 74.

(6) The owner of a rent-charge, granted under section 10, has no power of distress other than that given by section 11: *Eyton* v. *Denbigh, &c., Ry. Co.*, 38 L. J. Ch. 74; but he has a first charge on the lands of the company comprised in the deed of charge, and he is entitled to have his rent-charge paid out of the net earnings of the undertaking, in priority to debenture holders: S. C., L. R. 7 Eq. 439, 20 L. T. N. S. 388, 17 W. R. 546; but see *E. Jersey* v. *Briton Ferry, &c., Dock*, L. R. 7 Eq. 409.

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12. In case the promoters of the undertaking shall be empowered by the special Act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorised to be purchased for extraordinary purposes.

Power to purchase lands required for additional accommodation.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons, as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

Authority to sell and re-purchase such lands.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special Act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Restraint on purchase from incapacitated persons.

15. Nothing in this or the special Act contained shall enable any municipal corporation to sell for the purposes of the special Act, without the approbation of the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three of them, any lands which they could not have sold without such approbation before the passing of the special Act, other than such lands as the company are by the powers of this or the special Act empowered to purchase or take compulsorily.

Municipal corporations not to sell without the approbation of the Treasury.

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

16. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special Act, or any Act incorporated therewith, in relation to the compulsory taking of land (1) for the purposes of the undertaking (2).

Capital to be subscribed before compulsory powers of purchase put in force.

(1) As to the compulsory taking of land within the meaning of this section, see the *Great Western Ry. Co.* v. *The Swindon, &c., Ry. Co.*, 47 L. T. N. S. 709.

(2) The 16th and 17th sections requiring the whole capital to be subscribed, and a certificate obtained from the justices to that effect before proceeding to take lands compulsorily, do not apply to the case of a branch railway authorised to be made by an already existing company: *Weld* v. *South Western Ry. Co.*, 9 Jur. N. S. 510, 33 L. J. Ch. 142, 1 N. R. 415, 8 L. T. N. S. 13, 11 W. R. 448, following *R.* v. *Great Western Ry. Co.*, 17 Jur. 85, 1 E. & B. 253, 22 L. J. Q. B. 65. In this latter case it was held, that even if section 16 did apply to the case, and if a mandamus ordered the company to make the extension line, a return alleging that the capital required for making it had not been subscribed under any contract as required by this section, and that the line could not be made without exercising the compulsory powers of purchase, is no answer to the writ, as it does not show any inability to obtain such a subscription, or any incapacity to obey the writ.

It is no answer to an action against a railway company for not issuing their warrant under section 39 of this Act for the assessment of compensation for land which they have given notice of their intention to purchase, that the undertaking was intended to be carried into effect by means of a certain capital, and that the whole amount has not been subscribed as required by this section: *Guest* v. *Poole, &c., Ry. Co.*, L. R. 5 C. P. 553, 39 L. J. C. P. 329, 22 L. T. N. S. 589.

Secs. 17, 18.

A certificate of two justices to be evidence that the capital has been subscribed.

Notice of intention to take lands.

17. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly (1).

18. When the promoters of the undertaking shall require to purchase or take (2) any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorised to purchase or take, they shall give notice (3) thereof to

(1) In the absence of fraud, the certificate given under this section is conclusive evidence that the capital was subscribed for: *Ystalyfera Iron Co.* v. *Neath, &c., Ry. Co.*, L. R. 17 Eq. 142, 43 L. J. Ch. 476, 29 L. T. N. S. 662, 22 W. R. 149.

(2) As to the meaning of the word "take," see *Spencer* v. *Metropolitan Board of Works*, 22 Ch. D. 142, 47 L. T. N. S. 459, 31 W. R. 347. It would seem from this case that the word "take" as used in this and special Acts, ought not to be confined to the taking actual possession, but that there is a "taking" of lands, when we take either from the landlord what the landlord has got, viz., his title, or from the tenant and occupier what the tenant and occupier has got, viz., possession. It would seem also that proceedings for the purchase, prior to the conveyance, are not a "taking" of lands, but the getting a conveyance from the landlord is.

(3) This notice, called a "notice to treat," should state accurately the full particulars of the land proposed to be taken: *Stone* v. *Commercial Ry. Co.*, 4 My. & Cr. 122, 1 Rail. Cas. 375; *Sims* v. *Commercial Ry. Co.*, 1 Rail. Cas. 431. A diagram or plan showing the quantity and particulars of the land proposed to be taken, is generally sent with the notice (*ib.*); and the notice will be sufficient, though this plan bears no scale of admeasurement (*ib.*)

Where a special Act provided that before the company entered upon or took any tenement, they should give to the occupier of such tenement six months' notice of their intention to take, it was held that a six months' notice given to the occupier was a good notice, binding on the company, although the notice did not comply with the requirements of this section: *Morgan* v. *Metropolitan Ry. Co.*, L. R. 4 C. P. 97, 38 L. J. C. P. 87, 19 L. T. N. S. 655, 17 W. R. 261. See further, as to the sufficiency of the notice to treat: *Wood* v. *Epsom & Leatherhead Ry. Co.*, 8 C. B. N. S. 731, 30 L. J. C. P. 82; *Harrington* v. *Metropolitan Ry. Co.*, 13 L. T. N. S. 658.

A notice including lands which the company are not authorised to take, is bad and the company may be restrained by injunction from proceeding on it: *Wrigley* v. *Lancashire & Yorkshire Ry. Co.*, 4 Giff. 352, 9 Jur. N. S. 710, 8 L. T. N. S. 267. See also *Dowling* v. *Pontypool, &c., Ry. Co.*, L. R. 18 Eq. 714, 43 L. J. Ch. 761. Lands within the limits of deviation, although not shown to be bounded on all the four sides, may be taken by the company up to the line of deviation (*ib.*) And see *In re Corporation of Huddersfield and Jacomb*, L. R. 10 Ch. 92, 44 L. J. Ch. 96.

A variance in the description of lands in the notice to treat and in the precept, is an irregularity merely, and is waived by proceeding before the jury: *Ex parte Bailey*, 1 B. C. C. 66.

This notice need not be given where both parties agree to refer the matter to arbitration: *Collins* v. *South Staffordshire Ry. Co.*, 7 Exch. 5, 16 Jur. 843, 21 L. J. Ex. 247, 18 L T. 26.

It would seem that a notice to treat for the purchase of a right or easement over lands, such as a right of way, is not a notice warranted by this section: *Pinchin* v. *London & Blackwall Ry. Co.*, 5 De G. M. & G. 851, 24 L. J. Ch. 417. So a notice to treat is not necessary where the special Act gives a company power to take easements and rights over lands, the owner's remedy being, under section 68, as for lands injuriously affected: *Macey* v. *Metropolitan Board of Works*, 33 L. J. Ch. 377, 10 L. T. N. S. 66, 12 W. R. 619.

Mortgagees are "parties interested" within this section, and entitled to a notice to treat: *Martin* v. *London, Chatham & Dover Ry. Co.*, L. R. 1 Ch. 501, 12 Jur. N. S. 775, 35 L. J. Ch. 795, 14 L. T. N. S. 814, 14 W. R. 880. But a tenant from year to year, who has received from his landlord a notice to quit, is not entitled to a notice to

treat, when his land is required after the end of his tenancy: *Ex parte Nadin*, 17 L. J. Ch. 421. See also *Syers* v. *Metropolitan Board of Works*, 36 L. T. N. S. 277.

Where a railway company, after the compulsory powers of their original Act had expired and the railway was opened for traffic, obtained another Act enabling them to widen their line and take additional pieces of land, it was held that the company could not proceed to take a piece of land, subject to the compulsory powers of both Acts, under a notice to treat given under their original Act, and that a second notice was necessary: *Richmond* v. *North London Ry. Co.*, L. R. 3 Ch. 679, 37 L. J. Ch. 886.

A company, authorised to construct a line of railway under a public street, is not bound to give notice to treat or pay compensation to the owner of the land adjoining the street, in respect of any part of the soil of such public street: *Souch* v. *East London Ry Co.*, L. R. 16 Eq. 108, 42 L. J. Ch. 477, 21 W. R. 590; but see S. C. 22 W. R. 566.

A notice to treat constitutes the relative situation of vendor and purchaser as between a company and the owner of property: *Doo* v. *London & Croydon Ry. Co.*, 1 Rail. Cas. 257; *Stone* v. *Commercial Ry. Co.*, 4 My. & Cr. 122, 1 Rail. Cas. 375, 3 Jur. 946. But only to a certain extent and for certain purposes, as fixing the lands to be taken, &c., but not to such an extent as to entitle either party to enforce specific performance in equity: *Adams* v. *London & Blackwall Ry. Co.*, 2 Mac. & G. 118, 6 Rail. Cas. 271, 14 Jur. 679, 19 L. J. Ch. 557, 16 L. T. 277. And this is so, whether the notice is given by trustees under an Act of Parliament for a public purpose, or by a company formed for a private speculation: *Steele* v. *Mayor of Liverpool*, 7 B. & S. 261. But this does not apply to a notice given by commissioners appointed under a public Act to do, on behalf of the executive government, things for the benefit of the public: *R.* v. *Commissioners of Woods and Forests*, 15 Jur. 35, 15 Q. B. 761, 19 L. J. Q. B. 497. And where a notice to treat has been given, and the price has been fixed, though not paid, a contract is established which is enforceable in equity, and on which an action for specific performance can be maintained: *In re Pigott and The Great Western Ry. Co.*, 18 Ch. D. 146, 50 L. J. Ch. 679, 44 L. T. N. S. 792, 29 W. R. 727; and in such case, such an action can be maintained either by the vendor: *Adams* v. *London & Blackwall Ry. Co.*, 2 Macq. Ry. Cas. 271; *Mason* v. *Stokes Bay Pier and Ry. Co.*, 32 L. J. Ch. 110, 11 W. R. 80; *Harding* v. *Metropolitan Ry. Co.*, L. R. 7 Ch. 154, 41 L. J. Ch. 371, 26 L. T. N. S. 109, 20 W. R. 321; or by the company: *Regent's Canal Co.* v. *Ware*, 23 Beav. 575, 5 W. R. 617; but until the price is fixed, there is no binding contract capable of being specifically enforced: *Ex parte Arnold*, 9 Jur. N. S. 883, 8 L. T. N. S. 623, 11 W. R. 793. So a notice to treat constitutes the company equitable owner of the land: *Bristol & North Somerset Ry. Co.* v. *Somerset & Dorset Ry. Co.*, 22 W. R. 399; and after the notice the landowner will be restrained by injunction from selling the land: *Metropolitan Ry. Co.* v. *Wodehouse*, 34 L. J. Ch. 297, 11 Jur. N. S. 296, 12 L. T. N. S. 113, 13 W. R. 516. A mere notice to treat, on which nothing has been done, does not constitute "a debt owing or accruing," which can be attached under Order XLV., r. 1: *Richardson* v. *Elmit*, 2 C. P. D. 9, 36 L. T. N. S. 58; nor in such case does it constitute a contract by the owner for the sale of his property, so as to cause a conversion of it into personalty in case of his death: *Haynes* v. *Haynes*, 1 Dr. & Sm. 426, 30 L. J. Ch. 578; *Ex parte Arnold, supra.* But, if the price has been fixed, there will be a conversion: *In re Wootton's Trusts*, 1 N. R. 193, 7 L. T. N. S. 620.

Lessees, who have received a notice to treat, remain liable to the lessors for breaches of covenant committed by them after the notice to treat, and until the company take possession under an assignment to them by the lessees: *Mills* v. *East London Union*, L. R. 8 C. P. 79, 42 L. J. C. P. 46, 27 L. T. N. S. 557, 21 W. R. 142. A notice to treat under this section is not equivalent to requiring possession under section 121: *R.* v. *Stone*, L. R. 1 Q. B. 529, 35 L. J. M. C. 208, 14 L. T. N. S. 552, 14 W. R. 791.

When a notice has once been given, the company cannot withdraw it without the consent of the landowner, even though they offer to pay all costs incurred in consequence of such notice: *R.* v. *Hungerford Market Co.*, 4 B. & Ad. 327, 1 N. & M. 112; *Tawney* v. *Lynn & Ely Ry. Co.*, 4 Rail. Cas. 615, 16 L. J. Ch. 282. But if the company be required by a counter-notice to take the whole, under section 92, they can abandon their notice and refuse to take any part: *King* v. *Wycombe Ry. Co.*, 28 Beav. 104, 29 L. J. Ch. 462; *Grierson* v. *Cheshire Lines Committee*, L. R. 19 Eq. 83, 44 L. J. Ch. 35, 31 L. T. N. S. 428,

Section 18. 23 W. R. 68. Commissioners, acting under a statute in a public capacity and for the executive government, can withdraw their notice: *R.* v. *Commissioners of Woods and Forests, ante*, p. 901; but this power of rescinding a notice is confined to commissioners acting on behalf of the executive government, and does not extend to all trustees for public purposes: *Steele* v. *Mayor of Liverpool*, 14 W. R. 311. If a company give a tenant from year to year notice of their intention to take his premises at the expiration of six months, and afterwards withdraw the notice, they are bound to pay the tenant's expenses: *R.* v. *Rochdale Improvement Act* (*Commissioners*), 2 Jur. N. S. 861. A notice to treat will be considered as abandoned if there be great delay in proceeding upon it, and the company are not entitled to proceed under it: *Hedges* v. *Metropolitan Ry. Co.*, 28 Beav. 109, 6 Jur. N. S. 1275, 3 L. T. N. S. 643; *Stretton* v. *Great Western and Brentford Ry. Co.*, L. R. 5 Ch. 751, 40 L. J. Ch. 50, 23 L. T. N. S. 379, 18 W. R. 1078. But a notice to treat, once given, cannot be said to be abandoned so long as the company have power to execute the works: *Ystalyfera Iron Co.* v. *Neath & Brecon Ry. Co.*, L. R. 17 Eq. 142, 43 L. J. Ch. 476, 29 L. T. N. S. 662, 22 W. R. 149. See also, *Richmond* v. *North London Ry. Co.*, L. R. 3 Ch. 679, 37 L. J. Ch. 886; *Bentley* v. *Rotherham and Kimberworth Local Board of Health*, 4 Ch. D. 588, 46 L. J. Ch. 284.

A company is not restricted to one notice, but may give a further notice for taking other lands within the prescribed limits, such additional lands being necessary for the works: *Stamps* v. *Birmingham, Wolverhampton and Stour Valley Ry. Co.*, 2 Ph. 673, 17 L. J. Ch. 431; *Simpson* v. *Lancaster, &c., Ry. Co.*, 4 Rail. Cas. 625, 15 Sim. 580, 11 Jur. 879.

A corporation served the usual notice on a landowner, before applying to Parliament for power to take his land. The Act, when obtained, gave them power to take more of his land than was described in the notice, it was held that the corporation was not prevented from taking more land than was described in the notice: *In re Corporation of Huddersfield and Jacomb*, L. R. 10 Ch. 92, 44 L. J. Ch. 96, 31 L. T. N. S. 466, 23 W. R. 100. In such a case the corporation are not obliged to take the mines and minerals under the land taken by them (*ib.*) A corporation requiring property for the improvement of a town, and not acting for their own profit, are not confined, like railway companies, to the property actually required for the purpose specified, but can take all the property specified in the Schedule of the Act: *Quinton* v. *Corporation of Bristol*, L. R. 17 Eq. 524, 43 L. J. Ch. 783, 30 L. T. N. S. 112, 22 W. R. 434.

An interest in property, created by an agreement entered into by the owner, after a notice to treat has been served on him, is not a subject for compensation: *Ex parte Edwards*, L. R. 12 Eq. 389, 40 L. J. Ch. 697, 25 L. T. N. S. 149, 19 W. R. 1047. And if the company incur costs in resisting such interests, they are not entitled to deduct these costs from the compensation money due to the owner; nor can the court order the owner to pay costs, but they can deprive him of his costs: *Ex parte Topple*, 25 L. T. N. S. 407, 19 W. R. 1058. So the point of time with reference to which the owner's interest is to be determined and for which he is to be compensated is the date of the notice to treat: *Tyson* v. *Mayor of London*, L. R. 7 C. P. 18, 41 L. J. C. P. 6, 25 L. T. N. S. 640, 20 W. R. 112.

In a suit for specific performance of a contract founded on a notice to treat, the notice does not require to be stamped as an agreement: *Rawlings* v. *Metropolitan Ry. Co.*, 37 L. J. Ch. 824, 18 L. T. N. S. 871.

Notice to treat having been served, surveyors appointed by the owner and the company, but not in writing, settled the value of the property, and the owner verbally agreed to accept the sum named. It was held that the notice to treat, followed by the valuation of the surveyors was, notwithstanding the Statute of Frauds, a valid contract: *Watts* v. *Watts*, L. R. 17 Eq. 217, 43 L. J. Ch. 77, 29 L. T. N. S. 671, 22 W. R. 105. See also, as to the effect of the Statute of Frauds in such cases: *Inge* v. *Birmingham, Wolverhampton & Stour Valley Ry. Co.*, 3 De G. M. & G. 658.

For enforcing the contract created by the notice to treat, the owner can, after the notice, apply at once for a mandamus to compel the company to complete the purchase: *Per* the Lord Chancellor in *Pinchin* v. *London and Blackwall Railway Co., ante*, p. 900.

As to the effect of delay in applying for a mandamus, see *Ex parte Quicke*, 12 L. T. N. S. 580, 13 W. R. 924. So, though there may be a disagreement as to the amount of the compensation, the company cannot countermand the notice, but the owner is entitled to

all the parties interested in such lands (1), or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice (2) shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works (3).

Secs. 18, 19.

19. All notices required to be served by the promoters of the undertaking upon

Service of

a mandamus to compel the company to issue their warrant to summon a jury: *R.* v. *Hungerford Market Co.*, 1 N. & M. 112, 4 B. & Ad. 327; *Lind* v. *Isle of Wight Ferry Co.* 7 L. T. N. S. 416, and in such cases the issue of such warrant may be enforced by an action for a mandamus, under the 68th section of the Common Law Procedure Act, 1854: *Fotherby* v. *Metropolitan Railway Co.*, L. R. 2 C. P. 188, 36 L. J. C. P. 88, 12 Jur. N. S. 1005, 15 L. T. N. S. 243, 15 W. R. 112. See *Guest* v. *Poole and Bournemouth Railway Co.*, L. R. 5 C. P. 553, 39 L. J. C. P. 329, 22 L. T. N. S. 589, 18 W. R. 836. Where a company give an occupier six months' notice of their intenton to take the lands, the occupier is entitled, after the expiration of the six months, to a mandamus to compel the company to serve a notice to treat and complete the purchase: *Morgan* v. *Metropolitan Railway Co.*, L. R. 4 C. P. 97, 37 L. J. C. P. 265, 19 L. T. N. S. 655, 17 W. R. 261.

But if, after a notice to treat, the price has been fixed, then the remedy for enforcing the contract is by a suit in equity for specific performance: *Regent's Canal Co.* v. *Ware*, 23 Beav. 575, 26 L. J. Ch. 566; *Mason* v. *Stokes Bay Pier and Railway Co.*, 32 L. J. Ch. 110, 11 W. R. 80; *Harding* v. *Metropolitan Railway Co.*, L. R. 7 Ch. 154, 41 L. J. Ch. 371, 26 L. T. N. S. 109, 20 W. R. 321; *Hill* v. *Great Northern Railway Co.*, 23 L. J. Ch. 524, 2 Eq. Rep. 1069; *Haynes* v. *Haynes*, 1 Dr. & Sm. 426, 30 L. J. Ch. 587; *Adams* v. *London and Blackwall Railway Co.*, *ante*, p. 901. These cases may be considered as having overruled *Walker* v. *Eastern Counties Railway Co.*, 6 Hare, 594, 5 Rail. Cas. 469, 12 Jur. 787, where it was held, that the mere service of the notice to treat, without more, was sufficient to entitle the owner to maintain a suit for specific performance.

In *Earl St. Germans* v. *Crystal Palace Railway Co.*, L. R. 11 Eq. 568, 24 L. T. N. S. 288, 19 W. R. 584, it was held that an unpaid vendor was entitled, upon petition, to have the amount due for principal, interest, and costs, raised by a sale of the lands, and in the meantime to have an injunction restraining the company from continuing in possession of the lands, and a receiver. But an injunction was refused in *Munns* v. *Isle of Wight Railway Co.*, L. R. 5 Ch. 414, 39 L. J. Ch. 522, 23 L. T. N. S. 96. See *Lycett* v. *Stafford and Uttoxeter Railway Co.*, L. R. 13 Eq. 261, 41 L. J. Ch. 474, 25 L. T. N. S. 870, where it was held that the Court would not, for the enforcing of the lien of an unpaid vendor, grant an injunction restraining the company from running trains or engines over the land until the sale. See also, *Williams* v. *Aylesbury and Buckingham Railway Co.*, 28 L. T. N. S. 547, 21 W. R. 819; *Ware* v. *Aylesbury and Buckingham Railway Co.*, 28 L. T. N. S. 893, 21 W. R. 819.

(1) A quarterly tenant has no interest, legal or equitable, in the premises he occupies, within the meaning of this section. A company in giving such a tenant notice to quit are merely exercising their right as reversioners, under their purchase from the freeholder: *Syers* v. *Metropolitan Board of Works*, 36 L. T. N. S. 277.

(2) See note (3), *ante*, p. 900.

(3) As to damage caused by the execution of the works, see *Clout* v. *Metropolitan and District Railways Joint Committee*, 48 L. T. N. S. 257. An owner of land had a right of pre-emption over a piece of land adjoining, a company gave him notice to treat for the land of which he was owner, saying nothing as to the right of pre-emption, it was held that the owner was not entitled to compensation for his right of pre-emption, it being a merely personal right, as he had suffered no damage within the meaning of section 21: *Ib.*

Secs. 19-23.

notices on owners and occupiers of lands.

the parties interested in or entitled to sell any such lands, shall either be served personally on such parties or left at their last usual place of abode, if any such can, after diligent inquiry, be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notice on a corporation aggregate.

20. If any such party be a corporation aggregate such notice shall be left at the principal office of business of such corporation, or, if no such office can, after diligent inquiry, be found, shall be served on some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

21. If for twenty-one days after the service of such notice (1) any such party shall fail to state the particulars (2) of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special Act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works (3), the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

Dispute as to compensation where the amount claimed does not exceed £50 to be settled by two justices.

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this Act enabled to sell and convey or release any lands taken or required for or injuriously affected (4) by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices (5).

Compensation exceeding £50

23. If the compensation claimed or offered in any such case shall exceed fifty

(1) This term of twenty-one days does not apply to the case of a counter-notice, under section 92, in which case it is not necessary that there should be a second formal notice by the company under section 18, but under this section the company must give a reasonable opportunity to the landowner to agree with them before causing a jury to be summoned: *Schwinge* v. *London and Blackwall Railway Co.*, 3 Sm. & G. 30, 1 Jur. N. S. 368, 24 L. J. Ch. 405, 25 L. T. 124.

(2) As to what particulars it is necessary for the claimant to state, see note (1), *post*, p. 933.

(3) See note (3), *ante*, p. 903.

(4) As to the meaning of the words "lands taken or injuriously affected," see note (1), *post*, p. 928.

(5) Or one metropolitan police magistrate by section 14 of 2 & 3 Vict. c. 71, and one stipendiary magistrate by section 1 of 21 & 22 Vict. c. 73. Where justices make an order under this section (that is when the sum does not exceed £50), with regard to lands "injuriously affected," such order is an "order for the payment of money or otherwise" within section 1 of Jervis's Act (11 & 12 Vict. c. 43), and is bad under section 11 of that Act, if the complaint, on which the order is founded, be made more than six months after the cause of complaint arose: *In re Edmundson*, 17 Q. B. 67, 17 L. T. 93, on return to certiorari, reported as *R.* v. *Leeds and Bradford Railway Co.*, 18 Q. B. 343, 16 Jur. 817, 21 L. J. M. C. 193, 19 L. T. 86. But it has since been held that an adjudication by two justices is not an order for the payment of money within section 1 of the above Act, and that the six months limitation does not apply: *R.* v. *Hannay*, 44 L. J. M. C. 27, disapproving of, *In re Edmundson*, *supra*, but distinguishing it on the ground that it referred to lands "injuriously affected," not taken. But now it has been held that justices have power to determine the compensation for lands injuriously affected, though the application is made more than six months after the lands have been so injuriously affected: *R.* v. *Edwards*, L. R. 13 Q. B. D. 586, 53 L. J. M. C. 149 (overruling *re Edmundson*, *supra*).

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to be settled by arbitration or jury, at the option of the party claiming compensation.

pounds, and if the party claiming compensation desire to have the same settled by arbitration and signify such desire by notice in writing (1) to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation (2), and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided (3).

(1) Where both parties agree to refer the amount of compensation to arbitration, it is not necessary to go through the form of giving this notice: *Collins* v. *South Staffordshire Railway Co.*, 7 Exch. 5, 16 Jur. 843, 21 L. J. Exch. 247. In every such case, the submission by writing under the hand of the clerk or secretary is sufficient by section 25: *Ib.*

(2) It is not sufficient for an owner to state in this notice that he has *an estate and interest* in the lands; he must state what his interest in the lands is. *In re North Staffordshire Railway Co.*, 6 Rail. Cas. 17, 2 Exch. 235, 17 L. J. Exch. 350. So in the award, the umpire must find the nature and value of the interest of the owner, otherwise the award will be bad: *Ib.*

(3) This section, which provides that if, when a matter has been referred to arbitration, the arbitrators fail for three months to make their award, the question of compensation shall be settled by a jury, applies to a case of reference under section 68, of the amount of compensation in respect of land already taken or injuriously affected, as well as to arbitrations in respect of lands intended to be taken: *Evans* v. *Lancashire and Yorkshire Railway Co.*, 1 E. & B. 754, 22 L. J. Q. B. 254, 17 Jur. 878, 21 L. T. 87, 1 C. L. R. 82. It would seem that all arbitrations contemplated by the Act fall under this section: *Ib.*

The mode of computing the time within which the award is to be made is as follows:—"The arbitrators have twenty-one days in the first instance; they may enlarge it for themselves to the expiration of the three months; they have no longer time allowed for themselves to do that, but whenever it happens either at the expiration of the twenty-one days, or the expiration of the enlarged time, that the duty of the umpire commences, then the umpire has three months to perform his duty." Per Lord Cottenham, L.C., in *Skerratt* v. *North Staffordshire Railway Co.*, 2 Ph. 475, 5 Rail. Cas. 166, 17 L. J. Ch. 161, 12 Jur. 46, 11 L. T. 23. See also, *In re Bradshaw's Arbitration*, 12 Q. B. 562, 5 Rail. Cas. 527, 17 L. J. Q. B. 362, 12 Jur. 998, 12 L. T. 268; *Harding* v. *Watts*, 15 East, 556; *In re South Yorkshire, Doncaster and Goole Railway Co.*, 18 L. J. Q. B. 333, and in a recent case it was held, that the three months allowed by this section, for an umpire to make his award, is to be calculated from the date of his appointment, and not from the time when the awarding power of the arbitrators comes to an end: *In re Pullen and the Corporation of Liverpool*, 51 L. J. Q. B. 285, 46 L. T. N. S. 391, 46 J. P. 468.

An award made by an arbitrator after the expiration of the statutory period is out of time and no action lies upon it: *Evans* v. *Lancashire and Yorkshire Railway Co.*, *ante*, but the parties can consent to extend the time beyond the statutable term of three months, and the court will not set aside the award on the ground that it is made beyond the prescribed time, and that the parties cannot by consent dispense with the provisions of the statute: *Palmer* v. *Metropolitan Railway Co.*, 31 L. J. Q. B. 259, 10 W. R. 714: *Caledonian Railway Co.* v. *Lockhart*, 3 Macq. H. L. Cas. 808, 6 Jur. N. S. 1311; in this latter case both parties concurred in appointing a single arbitrator, who, from time to time, enlarged the period for making his award, and the parties also by consent enlarged the time, and it was held by the House of Lords that the award was valid, though not made within three months. So a party, though not expressly consenting to an extension of the time, may by his conduct, as by continuing

Secs. 24, 25.

Method of proceeding for settling dispute as to compensation by justices.

24. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, snd the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof (1).

Appointment of arbitrator when questions are to be determined by arbitration.

25. When any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorised or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator (2), each party, on the request of the other party, shall nominate and appoint an arbitrator (3), to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their

to attend before the arbitrator after the time, estop himself from afterwards alleging that there had been no extension of time by consent: *Tyerman* v. *Smith*, 6 E. & B. 719, 25 L. J. Q. B. 359. The Court may extend the time for making the award: *Re Dare Valley Ry. Co.*, L. R. 4 Ch. 554, 20 L. T. N. S. 717, 17 W. R. 717; *Dare Valley Ry. Co.* v. *Rhys*, 38 L. J. Ch. 417.

An action for the compensation fixed by the award cannot be maintained until a conveyance of the land has been executed: *Guardians of East London Union* v. *Metropolitan Railway Co.*, L. R. 4 Ex. 309, 38 L. J. Ex. 225. "An arbitrator does not order, or at least ought not to order, the payment of money; he only finds what is the proper amount of compensation, which does not become due until the claimant has done his part, that is to say, has executed a conveyance." *Per* Bramwell, L.J., in *Bidder* v. *North Staffordshire Railway Co.*, 4 Q. B. D. at p. 424, 48 L. J. Q. B. 248, 40 L. T. N. S. 801, 27 W. R. 540.

Where proceedings by arbitration under this and the following sections have proved abortive in consequence of the non-appointment of an umpire within the time limited by the statute, the owner is not bound to proceed anew under section 68, but in the event of a refusal by the company, he is entitled to a mandamus to compel them to issue their warrant to summon a jury: *In re South Yorkshire, Doncaster and Goole Ry. Co.*, 7 D. & L. 36, 18 L. J. Q. B. 333, compare *R.* v. *Metropolitan Ry. Co.*, 13 L. T. N. S. 444.

(1) As to the time within which the order of the justices must be made, see note (5), *ante*, p. 904.

When justices determine the amount of compensation to be paid to a tenant from year to year, under section 121, they need not put their decision into writing, but may give it verbally: *R.* v. *Combe*, 32 L. J. M. C. 67, 11 W. R. 441.

(2) Where the amount claimed for compensation is not paid or agreed to be paid within twenty-one days, as provided by section 68, it is the duty of the claimant before nominating an arbitrator on his behalf, to attempt to procure the appointment of a single arbitrator: *Yates* v. *Mayor of Blackburn*, 29 L. J. Ex. 447, 6 H. & N. 61, but an omission to attempt to settle a claim by a single arbitrator is no objection to an umpire's award under this section: *Eagle* v. *Charing Cross Ry. Co.*, 36 L. J. C. P. 297, 16 L. T. N. S. 593.

(3) If an improper appointment of an arbitrator be made, as by appointing an interested person, the party objecting ought to retire from the arbitration, as by proceeding with the arbitration, though protesting against the appointment, he waives the objection: *In re Elliot and South Devon Ry. Co.*, 2 De G. & S. 17.

And if an arbitrator is unfit or incompetent to act, any judge of the Court can now (since the Judicature Act, 1873, section 25, sub-section 8) restrain him by injunction from acting: *Beddow* v. *Beddow*, 9 Ch. D. 89, 47 L. J. Ch. 588, 26 W. R. 570; *Malmesbury Ry. Co.* v. *Budd*, 2 Ch. D. 113, 45 L. J. Ch. 271.

secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator (1), and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made (2); and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation (3); and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties (4), and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final (5).

Vacancy of arbitrator to be supplied.

26. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte;* and every arbitrator so to be substituted as aforesaid shall

(1) "This section seems to enact, first, that an endeavour should be made by the parties to concur in choosing a single arbitrator; and that in the event of this failing a request should be made by the one to the other that the latter should nominate an arbitrator; that then each should make appointments in writing and deliver them to their respective arbitrators, which are to be deemed the submission and irrevocable." *Per* Martin, B., in *Yates* v. *Mayor of Blackburn*, 6 H. & N. at pp. 70, 71, 29 L. J. Ex. 447.

(2) It would seem that the submission to arbitration by a party takes place, not when he appoints his arbitrator, but when he delivers his appointment to the arbitrator, and a tender made before such submission is a good tender, so as to relieve the party making it from costs: *Yates* v. *Mayor of Blackburn*, *ante.* The appointment of an arbitrator, being by this section a submission to arbitration on the part of the party by whom it is made, the arbitration is an arbitration by consent within section 5 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125): *Rhodes* v. *Airedale Drainage Commissioners*, 1 C. P. D. 402, 45 L. J. C. P. 861, 35 L. T. N. S. 46, 24 W. R. 1053 (reversing the decision of the court below, and overruling, *In re Harper and Great Western Ry. Co.*, L. R. 20 Eq. 39, 44 L. J. Ch. 507, 32 L. T. N. S. 214, 23 W. R. 371): *Ex parte Harper*, L. R. 18 Eq. 539, 22 W. R. 942. See also *Bidder* v. *North Staffordshire Ry. Co.*, 4 Q. B. D. 412, 48 L. J. Q. B. 248, 40 L. T. N. S. 801, 27 W. R. 540; *In re Dare Valley Ry. Co.*, L. R. 4 Ch. 554, 20 L. T. N. S. 717.

(3) See *Caledonian Ry. Co.* v. *Lockhart*, 3 Macq. H. L. Cas. 808, 6 Jur. N. S. 1311, 3 L. T. N. S. 65, where it was held that the submission did not expire on the death of the landowner.

(4) Before a party can appoint an arbitrator to act on behalf of both parties, he must himself have previously appointed an arbitrator on his own behalf, and notified such appointment to the other side: *Bradley* v. *London and North Western Ry. Co.* 5 Exch. 769, 20 L. J. Ex. 3. A notice by a party stated that it was *his intention* to appoint M. as his arbitrator, and that if within fourteen days after the notice, the company failed to appoint an arbitrator for them, he would appoint M. to act for both parties, held that a notice of a mere *intention* to appoint was not enough to enable him to appoint M. to act for both parties: *Ib.*

(5) As to the extent of an arbitrator's powers, see *In re Ware and Regent's Canal Co.*, 9 Exch. 395; 23 L. J. Ex. 145, 7 Rail. Cas. 780. *In re Byles*, 11 Exch. 464, 25 L. J. Ex. 53.

Secs. 26–31. have the same powers and authorities as were vested in the former arbitrator at the time of such his death or disability as aforesaid.

Appointment of umpire.

27. Where more than one arbitrator shall have been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ (1), or which shall be referred to him under the provisions of this or the special Act, and if such umpire shall die, or become incapable to act, they shall, forthwith after such death or incapacity appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Board of Trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

28. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration, neglect to appoint an umpire (2), the Board of Trade *in any case in which a railway company shall be one party to the arbitration, and two justices in any other case* (3) shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

In case of death of single arbitrator the matter to begin *de novo.*

29. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special Act in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act the other to proceed *ex parte.*

30. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte* (4), and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators fail to make their award

31. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their

(1) As to the time within which the umpire ought to be appointed, see *In re Bradshaw's Arbitration*, 12 Q. B. 562, 5 Rail. Cas. 527, 12 Jur. 998, 17 L. J. Q. B. 362. In this case the company appointed an arbitrator on the 23rd of March; the claimant another on the 6th of April. The arbitrators, having neglected for seven days after request by the company to appoint an umpire, the Board of Trade, on the application of the company, appointed an umpire on the 17th of May. Held that such appointment was in time. See, further, as to the appointment of an umpire, *Ex parte Fooks*, 3 Exch. 728; *Holdsworth* v. *Barsham*, 31 L. J. Q. B. 145, 8 Jur. N. S. 672, 6 L. T. N. S. 286, 10 W. R. 646.

(2) As to the neglect of the arbitrators to appoint an umpire, see *In re South Yorkshire, &c., Railway Co.*, 18 L. J. Q. B. 333, 7 D. & L. 36.

As to the time within which an umpire ought to be appointed and make his award, see preceding note, and note (3) to section 23, *ante*, p. 905.

(3) The words in italics in this section have been repealed by the Lands Clauses (Umpire) Act, 1883 (46 & 47 Vict. c. 15), s. 1, *post*, p. 986.

As to the way in which appointments are made by the Board of Trade, see 14 & 15 Vict. c. 64, s. 3.

As to arbitrations by the Board of Trade, see "Regulation of Railways Act, 1868" (31 & 32 Vict. c. 119), sections 30—33, and section 2 of Lands Clauses Act, 1869, *post*, p. 985.

By the Board of Trade Arbitrations, &c., Act, 1874 (37 & 38 Vict. c. 40), section 6, the Board of Trade can, in railway or canal cases, appoint the railway commissioners, arbitrators or umpire, except in cases where application is made to the Board of Trade for the appointment of an umpire under this section.

(4) As to an umpire proceeding *ex parte*, when one of the parties refuse to attend, see *In re Hewitt and the Portsmouth Waterworks Co.*, 10 W. R. 780. See also *In re Hawley and North Staffordshire Ry. Co.*, 5 Rail. Cas. 383, 2 De G. & S. 33.

hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid (1).

Secs. 31–34.

within twenty-one days the matter to go to the umpire.

32. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath (2) and administer the oaths necessary for that purpose.

Power of arbitrators to call for books, &c.

33. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him, he shall in the presence of a justice make and subscribe the following declaration (3), that is to say,

Arbitrator or umpire to make a declaration.

"I, *A. B.* do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the Act [*naming the special Act.*] *A. B.*

Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

Costs of arbitration, how to be borne.

34. All the costs of any such arbitration (4), and incident thereto, to be settled by the arbitrators (5), shall be borne by the promoters of the undertaking, unless

(1) Where two arbitrators have been appointed by the parties, the appointment of an umpire by the Board of Trade more than twenty-one days after the appointment of the last arbitrator, is valid. *In re Bradshaw's Arbitration*, 12 Q. B. 562; 5 Rail. Cas. 527; 17 L. J. Q. B. 362.

As to the extension of time by the arbitrators and the time within which the arbitrators and umpire must make their award, see note (3) to section 23, *ante*, p. 905.

(2) The evidence before an arbitrator ought to be taken on oath; and if taken otherwise both parties must waive its being taken on oath: *Wakefield* v. *Llanelly Ry. and Dock Co.*, 34 Beav. 245; *Bottomley* v. *Ambler*, W. N. 1877, p. 245.

(3) Arbitrators and an umpire may make this declaration before a justice of the peace for any county, they are not limited to make it before a justice of the county where the matter in dispute arose: *Davies* v. *South Staffordshire Ry. Co.*, 21 L. J. M. C. 52; 2 L. M. & P. 599.

An umpire, appointed on the 17th of May, made his declaration on the 27th of May, before he entered on the matters referred, held, that this declaration was made in time. *In re Bradshaw's Arbitration*, cited above. When a submission contained other matters than the question of compensation, and was therefore extra the 8 & 9 Vict. c. 18, and it did not distinctly appear that the party applying was ignorant that the declaration required to be made by the arbitrator, the Court refused to set the award aside on that ground: *Levick* v. *Epsom and Leatherhead Ry. Co.*, 1 L. T. N. S. 60. It seems the declaration may be dispensed with by consent: *Palmer* v. *Metropolitan Ry. Co.*, 31 L. J. Q. B. 259.

(4) As to the meaning of the words "any such arbitration," see *Metropolitan District Ry. Co.* v. *Sharpe*, *post*, p. 910.

(5) The costs so settled need not be incorporated in the award, but may be ascertained at a subsequent time by the persons who made the award: *Gould* v. *Staffordshire Potteries Waterworks Co.*, 6 Rail. Cas. 568, 5 Exch. 214 (not following *London and North Western Ry. Co.* v. *Quick*, 5 Rail. Cas. 520, 5 D. & L. 685).

Such adjudication of the costs need not be within three months after the time of reference (*ib.*). The term "arbitrators" means either the arbitrator or the umpire, according as the award was made by the one or the other (*ib*).

Where a party claiming compensation by agreement submitted the matter to arbitration instead of taking the verdict of a jury, and the deed of reference and the award were silent as to costs, the provisions of the Act under which claim made with regard to costs were held not to apply, though the award was in favour of the claimant: *Ex parte Reynal*, 5 Rail. Cas. 60, 16 L. J. Q. B. 304.

As to the power of an arbitrator over costs when by consent he is to determine the costs and expenses, see *Rowcliffe* v. *Devon and Somerset Ry. Co.*, 21 W. R. 433.

Secs. 34, 35. the arbitrators shall award the same or a less sum than shall have been offered (1) by the promoters of the undertaking, in which case each party shall bear his own costs (2) incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Award to be delivered to the promoters

35. The arbitrators shall deliver their award in writing to the promoters of the

(1) A company made an offer, at the same time giving notice that they had appointed an arbitrator—the claimant had not yet appointed an arbitrator. This offer was held to be good, as being made before the beginning of the arbitration, and was not invalidated by a previous smaller offer, even though made with a view to the settlement of the claim by a jury. The sum awarded being less than the second offer, the claimant was held not entitled to costs: *Fitzhardinge (Earl)* v. *Gloucester and Berkeley Canal Co.*, L. R. 7 Q. B. 776, 41 L. J. Q. B. 316, 27 L. T. N. S. 196, 20 W. R. 800.

Where the claimant had nominated an arbitrator, but had not delivered his appointment to him, an offer then made by the company before appointing their arbitrator is in time: *Yates* v. *Mayor of Blackburn*, 6 H. & N. 61, 29 L. J. Ex. 447.

An offer made after the arbitration has begun is too late, and if a less sum than that offered be awarded, the claimant is entitled to costs: *Gray* v. *North Eastern Ry. Co.*, 1 Q. B. D. 696, 45 L. J. Q. B. 818, 34 L. T. N. S. 757, 24 W. R. 758. An offer made to a tenant for life was refused and the umpire awarded a less sum than that offered, the costs of the tenant for life were ordered to be paid out of the purchase-money: *In re Aubrey's Estate*, 7 Rail. Cas. 611, 17 Jur. 874, 1 Eq. Rep. 249, 21 L. T. 192; *Ex parte Perpetual Curate of Whitworth*, 24 L. T. N. S. 126. If an individual claim be wholly disallowed by the arbitrators, the company, though they have made no offer in respect of such claim, are not, of necessity, by this section bound to pay the claimant's costs: *R.* v. *Biram*, 17 Q. B. 969, 16 Jur. 640; nor are they, under the like circumstances, to bear the like costs, the consequence of distinct claims similarly disallowed, though such claims were joined with others, which are allowed: *Ib.*

If no offer be made by the company, in consequence of the claimant not having given notice under section 68 of the amount claimed, the claimant will be entitled to his costs of reference: *Martin* v. *Leicester Waterworks Co.*, 3 H. & N. 463, 27 L. J. Ex. 432.

As to the case where the umpire merely provides that the costs are to be paid according to the provisions of this Act without finding whether the sum awarded is greater or less than the sum offered, see *In re Wilts, Somerset & Weymouth Ry. Co.*, 3 Exch. 728.

(2) As to the taxation of costs under this section, see section 1 of the Lands Clauses Consolidation Act, 1869, *post*, p. 984.

As to the costs of an abortive inquiry, see *R.* v. *North London Ry. Co.*, 51 L. J. 241, S. C. *nom. R.* v. *Manley Smith*, 30 W. R. 272. In this case an inquisition was quashed on ground of misdirection, the claimant was held entitled to the costs of the abortive inquiry as well as of the costs of the inquiry which resulted in a good verdict.

Where an arbitration takes place to determine the compensation for land taken by a local board under the powers of this Act, incorporated by the Public Health Act, 1875, the procedure with regard to such arbitration and the right to costs are wholly governed by the provisions of this Act, and not by those of the Public Health Act: *Ex parte Rayner*, 3 Q. B. D. 446, 47 L. J. Q. B. 660, 39 L. T. N. S. 232; compare *Catling* v. *Great Northern Ry. Co.*, 21 L. T. N. S. 769, 18 W. R. 121.

A landowner is not entitled to a lien on the land sold for the costs of an arbitration payable by the company: *Earl Ferrers* v. *Stafford & Uttoxeter Ry. Co.*, L. R. 13 Eq. 524, 41 L. J. Ch. 362, 26 L. T. N. S. 652, 20 W. R. 478.

Costs awarded to the owner under this section become payable within a reasonable time after the award has been made, and the execution of the conveyance and the investigation of title are not, in the absence of fraud, conditions precedent to his right to recover such costs: *Capell* v. *Great Western Ry. Co.*, L. R. 11 Q. B. D. 345, 52 L. J. Q. B. 345, 31 W. R. 555. So the right to costs is entirely independent of the taxation of them, and an action can be maintained for the costs, though the amount of such costs has not been previously settled or ascertained by taxation: *Metropolitan District Ry. Co.* v. *Sharpe*, 5 App. Cas. 425, 50 L. J. Q. B. 14, 43 L. T. N. S. 130, 28 W. R. 617, 44 J. P. 716.

undertaking, and the said promoters shall retain the same (1), and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

Secs. 35, 36.

of the undertaking.

36. The submission to any such arbitration may be made a rule of any of the superior courts (2) on the application of either of the parties.

Submission may be made a rule of Court.

A special Act, incorporating this Act, directed that arbitrations under it should be conducted by an arbitrator appointed by the Board of Trade, but contained no directions as to the award of costs. An arbitrator under it awarded compensation but said nothing as to costs, the claimant was held entitled to costs, as under this Act: *Ib.* See also *Holdsworth* v. *Wilson*, 4 B. & S. 1, 32 L. J. Q. B. 289, 8 L. T. N. S. 434, 11 W. R. 733; *Martin* v. *Leicester Waterworks Co.*, and *Yates* v. *Mayor of Blackburn*, *ante*, p. 910. In *Ex parte Lister*, *In re Milford Docks Co.*, it was held that unpaid vendors of land taken compulsorily by a company are not "creditors" within section 82 of the Companies Act, 1862, in respect of the costs of the arbitration, unless such costs have been taxed.

(1) Where an award has been made, the court will compel the company by mandamus, at the landowner's instance, to take it up: *R.* v. *South Devon Ry. Co.*, 15 Q. B. 1043, 15 Jur. 464. The promoters must for that purpose pay the fees due on the award, the arbitrators or umpire having a lien for such fees which the promoters are bound to satisfy, except so far as the obligation may be limited by section 34: *Ib.* As to what is a good return to a mandamus commanding a company to take up an award, see *R.* v. *West Midland Ry. Co.*, 11 W. R. 857, the company is not bound to take up the award, unless the arbitrator has been properly appointed, and the arbitrator would not be properly appointed if the claimant was not entitled to any compensation: *Ib.* A return to a mandamus to take up an award that the claimant is not entitled to any compensation under the Act is a good return: *R.* v. *Cambrian Ry. Co.*, L. R. 4 Q. B. 320, 38 L. J. Q. B. 198, 20 L. T. N. S. 437, 17 W. R. 667.

A person who has obtained an award of compensation in respect of lands injuriously affected under section 68 may, under this section, require the promoters to take up the award: *Ex parte Harper*, 23 W. R. 67. In an action on an award, where the defendant pleaded that the compensation awarded is in respect of matters not the subject of compensation, it seems that the award is not evidence that the compensation awarded is in respect of matters the subject of compensation: *Rhodes* v. *Airedale Drainage Commissioners*, 1 C. P. D. 402, 45 L. J. C. P. 861, 35 L. T. N. S. 46, 24 W. R. 1053.

(2) A reference to arbitration under section 25 is a "submission to arbitration by consent" within the meaning of the 17th section of the Common Law Procedure Act, 1854, and the submission may be made a rule of court: *Ex parte Harper*, L. R. 18 Eq. 539, 22 W. R. 942; *In re Dare Valley Ry. Co.*, *ante*, p. 906, overruling *In re Newbold and Metropolitan Ry. Co.*, 14 C. B. N. S. 405; and *In re Harper*, L. R. 20 Eq. 39, 44 L. J. Ch. 507, 32 L. T. N. S. 214, 23 W. R. 371); and the umpire can make his award in the form of a special case for the opinion of the court: *Ib.* And the Court of Appeal has jurisdiction to hear an appeal from the High Court upon a special case so stated by an umpire: *Bidder* v. *North Staffordshire Ry. Co.*, 4 Q. B. D. 412, 48 L. J. Q. B. 248, 40 L. T. N. S. 801, 27 W. R. 540.

As to what evidence of the appointment of the landowner's arbitrator the Court of Chancery requires before making the submission a rule of court, see *In re Hawley and North Staffordshire Ry. Co.*, 2 De G. & S. 33, 12 Jur. 389. Neither the appointment of the umpire nor the award need be made a rule of court; it is sufficient if the submission be so made: *In re Bradshaw's Arbitration*, 12 Q. B. 562, 12 Jur. 998, 5 Rail. Cas. 527, 17 L. J. Q. B. 362.

This section authorises the making such submission only a rule of court as is in pursuance of the Act, so that a submission with reference to matters not within the Act cannot be made a rule of court under it: *In re Ware and Regent's Canal Co.*, 9 Exch. 395, 7 Rail. Cas. 780, 23 L. J. Ex. 145.

Section 37. 37. No award made with respect to any question referred to arbitration under the provisions of this or the special Act shall be set aside for irregularity or error in matter of form (1).

Award not void through error in form.

It would seem that the proper course to make the submission a rule of court is by motion ex parte: *In re Oglesby's Arbitration*, W. N. (1879), p. 151.

Where an award has been made a rule of court it comes within section 15 of the Common Law Procedure Act, 1854, and if it be referred back by the court for re-determination, and no award be made for three months, the court has a discretion to enlarge the time: *Dare Valley Ry. Co.* v. *Rhys*, 38 L. J. Ch. 417; but if great delay take place the court ought not to exercise this power so as to deprive a landowner of a trial by jury: *In re Dare Valley Ry. Co.*, L. R. 4 Ch. 554, 20 L. T. N. S. 717.

An action may be maintained for the sum fixed by the award, but not before execution of a conveyance of the land: *East London Union* v. *Metropolitan Ry. Co.*, L. R. 4 Ex. 309, 38 L. J. Ex. 225.

(1) If the submission be made a rule of court, the court can set aside the award of the umpire, though neither the appointment of the umpire nor his award has been made a rule of court: *In re Bradshaw's Arbitration*, *ante*, p. 911. It is no objection to an award that the price of the land and the compensation for damage by severance are assessed in a gross sum: *Ib.* But see *Wakefield* v. *Llanelly Railway and Dock Co.*, 34 Beav. 245, where it was held that an award fixing one sum to be paid for all the claimant's interest of whatever nature in the premises, was bad. See also *In re North Staffordshire Ry. Co. and Wood*, 6 Rail. Cas. 25, 2 Exch. 244, 17 L. J. Ex. 354; *In re North Staffordshire Ry. Co. and Landor*, 6 Rail. Cas. 17, 2 Exch. 235; *In re Brogden and Llynvi Valley Ry. Co.*, 9 C. B. N. S. 229, 30 L. J. C. P. 61, 4 L. T. N. S. 361; *Beckett* v. *Midland Ry. Co.*, L. R. 1 C. P. 241, 12 Jur. N. S. 231, 35 L. J. C. P. 163, 13 L. T. N. S. 672, 14 W. R. 393. Where the arbitrator was to determine the value of the land, and what "other, if any," sum for severance damage and he awarded one sum for value only, the award was held to be good: *In re Duke of Beaufort and Swansea Harbour Trustees*, 6 Jur. N. S. 979, 29 L. J. C. P. 241, 8 C. B. N. S. 146.

Ordering a company to pay an amount is an error in form only, and so where an arbitrator ascertains the purchase-money, even though he exceeds his jurisdiction in ordering the money to be paid, the award will be good: *Lindsay* v. *Direct London and Portsmouth Ry. Co.*, 1 L. M. & P. 529, 15 Jur. 224, 19 L. J. Q. B. 417; *In re Harper*, L. R. 20 Eq. 39, 44 L. J. Ch. 507, 32 L. T. N. S. 214, 23 W. R. 371.

A recital in the award that the arbitrator had heard the evidence of the claimant and of this company where no evidence was offered for the company, is an irregularity merely and does not invalidate the award: *Skerratt* v. *North Staffordshire Ry. Co.*, 5 Rail. Cas. 166.

If the parties consent to enlarge the time for making an award, the court will not set it aside, on the ground that it is made beyond the prescribed time: *Palmer* v. *Metropolitan Ry. Co.*, 31 L. J. Q. B. 259.

The mere fact that the award was signed on a day subsequent to the day on which money was paid into court and a bond given under section 85 does not make the proceedings under that section necessarily invalid: *Stamps* v. *Birmingham, Wolverhampton, and Stour Valley Ry. Co.*, 7 Hare, 256. So an award is not bad for not expressly awarding compensation in respect of damage done to land before the making of the award by reason of the land having remained untenanted in consequence of the notice: *In re Ware and Regent's Canal Co.*, 9 Exch. 395, 7 Rail. Cas. 780, 23 L. J. Ex. 145.

An award is not bad simply because the arbitrator finds that there was no damage: *In re Bradby and Southampton Local Board*, 4 E. & B. 1014, 3 C. L. R. 771, 24 L. J. Q. B. 239, 19 Jur. 778, 25 L. T. 82.

As to setting aside an award for an improper appointment of an umpire or arbitrator, see *In re Elliott and South Devon Ry. Co.*, 2 De G. & S. 17. An order *nisi* to set aside the award may be obtained in the Court of Chancery: *Ib.* On a motion to set aside an award the evidence of an arbitrator in explanation of his award is admissible, and when it appears from such evidence that there has been a mistake on his part, either as

Secs. 38, 39.

Promoters of the undertaking to give notice before summoning a jury.

38. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation they shall give not less than ten days' notice (1) to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state (2) what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works (3).

Warrant for summoning jury to be addressed to the sheriff.

39 (4). In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury the promoters of the undertaking shall issue their warrant (6) to the sheriff (5), requiring him to summon a

to the subject-matter referred to him, or in point of legal principle affecting the basis on which the award is made, it will be set aside or referred back to the arbitrator: *In re Dare Valley Ry. Co.*, L. R. 6 Eq. 429, 37 L. J. Ch. 719. So in an action on the award the arbitrator may be called as a witness, and may be asked questions as to what passed before him and as to what matters were presented to him for consideration, but not as to what passed in his own mind when exercising his discretion on the matters submitted to him: *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418, 41 L. J. Ex. 137, 27 L. T. N. S. 1. Where the court refers an award back to the umpire for re-determination, that award is altogether avoided: *Dare Valley Ry. Co.* v. *Rhys*, 38 L. J. Ch. 417.

(1) This section applies only to cases where the promoters are about to take or injuriously affect land, and in such cases the ten days' notice of the intention to summon a jury here mentioned is necessary, but the section does not apply to cases coming under section 68 in reference to claims for lands which have already been taken or injuriously affected, and in such cases this notice is not necessary: *Railstone* v. *York, Newcastle and Berwick Ry. Co.*, 15 Q. B. 404, 19 L. J. Q. B. 464, 14 Jur. 1021; but see *Richardson* v. *South Eastern Ry. Co.*, 11 C. B. 154, 20 L. J. C. P. 236, 2 L. M. & P. 409, 15 Jur. 660; affirmed in the Ex. Ch. 15 C. B. 810, 21 L. J. C. P. 122; but it has since been held, following the former case, that this section, which provides for giving notice of the summoning of the jury, does not apply to inquiries taken, under section 68, as to lands injuriously affected: *Hayward* v. *Metropolitan Ry. Co.*, 4 B. & S. 787, 33 L. J. Q. B. 73, 9 L. T. N. S. 680, 10 Jur. N. S. 418; *Metropolitan Ry. Co.* v. *Turnham*, 14 C. B. N. S. 212, 32 L. J. M. C. 249, 8 L. T. N. S. 280, 11 W. R. 695. See also *Pearson* v. *Great Northern Ry. Co.*, L. R. 7 Q. B. 785 n., 18 W. R. 259; *R.* v. *Smith; Re Westfield and Metropolitan District Ry. Cos.*, 12 Q. B. D. 481, 53 L. J. Q. B. 115, 32 W. R. 275.

(2) See preceding note and cases cited therein. The offer referred to in this section does not apply to claims for lands injuriously affected under section 68: see note (3) to section 51, *post*, p. 920.

(3) See note (1), *post*, p. 928.

(4) By section 41 of the Regulation of Railways Act, 1868, 31 & 32 Vict. c. 119, any question of compensation, where a public railway is concerned, which, under this Act, is to be settled by a jury, may, by leave of a judge, be tried in one of the superior courts. See *New River Co.* v. *Midland Ry. Co.*, 36 L. T. N. S. 539.

(5) By section 3 the word "sheriff" includes under-sheriff or other legal competent deputy.

By section 3 of the Lands Clauses Consolidation Act, 1869, *post*, p. 985, if the lands be situate within the city of Westminster, the high bailiff of the city or his deputy shall be substituted for the sheriff throughout this Act, as far as relates to the reference to a jury.

(6) The land which is described in the warrant as being that of which the jury are to assess the value, must be neither more nor less than that specified in the notice to treat: *Stone* v. *Commercial Ry. Co.*, 4 My. & Cr. 122, 1 Rail. Cas. 375. But any irregularity in this respect may be waived by the claimant's appearing before the jury, and after the objection had been taken and overruled, proceeding with the inquiry: *Ex parte Bailey*, 1 B. C. C. 66. See *Walker* v. *London & Blackwall Ry. Co.*, 3 Q. B. 744. Where pro-

Section 39. jury for that purpose, and such warrant shall be under the common seal of the promoters of the undertaking if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute (1) such application shall be made to

ceedings by arbitration have proved abortive, in consequence of the non-appointment of the umpires within the proper time, the owner is not bound to proceed anew under section 68, but in the event of a refusal by the company, he is entitled to a *mandamus* to compel them to issue their warrant to summon a jury; *Ex parte Senior*, 7 D. & L. 36, 14 Jur. 1093, 18 L. J. Q. B. 333, and a neglect to issue the warrant, after a demand made upon the solicitors of the company, is a sufficient refusal to entitle the claimant to the writ, *ib.*

Where a notice to treat has been served and also a notice by the owner that he requires the compensation to be settled by a jury, and no further steps are taken before the expiration of the compulsory powers of the company, the owner is, nevertheless, entitled to a *mandamus* to compel the company to issue their warrant for a jury: *R.* v. *Birmingham & Oxford Junction Ry. Co.*, 15 Q. B. 634, 20 L. J. Q. B. 304. But a *mandamus* will not be granted where it appears that the works calculated to damnify the claimant are still *boná fide* proceeding, though the applicant also claims for land taken by the company, and considerable delay has taken place: *Ex parte Parkes*, 9 Dowl. 614, 5 Jur. 435. See also, *R.* v. *North Union Ry. Co.*, 1 Rail. Cas. 729.

After the necessary steps have been taken, the landowner can also maintain an action for a *mandamus* under the Common Law Procedure Act, 1854, against the company to compel them to issue their warrant to the sheriff to summon a jury: *Fotherby* v. *Metropolitan Ry. Co.*, L. R. 2 C. P. 188, 36 L. J. C. P. 88, 12 Jur. N. S. 1005, 15 L. T. N. S. 243; 15 W. R. 112; *Morgan* v. *Metropolitan Ry. Co.*, L. R. 4 C. P. 97; 37 L. J. C. P. 265, 19 L. T. N. S. 655, 17 W. R. 261, and in such an action the plaintiff may recover more than nominal damages: *Ib.;* and it is a bad plea by the company that the whole of the capital has not been subscribed for the undertaking: *Guest* v. *Poole & Bournemouth Ry. Co.*, L. R. 5 C. P. 553, 39 L. J. C. P. 329, 22 L. T. N. S. 589, 18 W. R. 836, and to a rule for a *mandamus* against a company to complete the purchase, it is no answer that the period for the compulsory powers of the company had nearly expired, if there was still time, during which the company might take the necessary initiatory steps: *R.* v. *York, Newcastle & Berwick Ry. Co.*, 6 Rail. Cas. 648, 20 L. J. Q. B. 503. On a return to a *mandamus* to the Commissioners of Woods and Forests to cause a jury to be summoned, it was held that the Commissioners, in giving notice to take land for a public park, were acting under the statute in a public capacity, and that the notice did not constitute a quasi-contract enforceable by *mandamus: R.* v. *Commissioners of Woods and Forests*, 15 Q. B. 761, 19 L. J. Q. B. 497, 15 Jur. 35, 15 L. T. 561.

The *mandamus* must agree with the rule, and so where a rule for a *mandamus* was drawn up to summon a jury to assess the value of the land only and the *mandamus* was drawn up including both the value and damage by severance, the *mandamus* was quashed as varying from the rule: *R.* v. *East Lancashire Ry. Co.*, 9 Q. B. 980, 16 L. J. Q. B. 127, 11 Jur. 169.

See further as to *mandamus* under this section, *R.* v. *London and South Western Ry. Co.*, 13 Jur. 10; *R.* v. *South Wales Ry. Co.*, 14 Q. B. 902, 6 Rail. Cas. 489, 14 Jur. 828, 19 L. J. Q. B. 272, 14 L. T. 546; *R.* v. *London and South Western Ry. Co.*, 12 Q. B. 775, 5 Rail. Cas. 669, 12 Jur. 973, 17 L. J. Q. B. 326, 11 L. T. 433; *R.* v. *North Union Ry. Co.*, 1 Rail. Cas. 729; *R.* v. *Hungerford Market Co.*, 4 B. & Ad. 327; *Birch* v. *Marylebone Vestry*, 20 L. T. N. S. 697, 17 W. R. 1014; *Suffern* v. *Town Council of Belfast*, 10 Ir. L. R. 40; *Walker* v. *London and Blackwall Ry. Co.*, 12 L. J. Q. B. 88, 3 Q. B. 744, 7 Jur. 323.

(1) The direction in respect of the interest of the sheriff in this section is introduced for the protection of the party against whom the interest would operate, and he may therefore waive the protection if he so elects: *Ex parte Baddeley*, 5 D. & L. 575, 5 Rail.

some coroner (1) of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested, such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-coroner shall have power, if he think fit, to appoint a deputy or assessor.

Provisions applicable to sheriff to apply to coroner.

40. Throughout the enactments contained in this Act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place (2), and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the

Cas. 542. A railway company, having issued their warrant to the sheriff to summon a jury, the under-sheriff before whom the inquisition was to be taken informed the party whose land was to be assessed that he (the under-sheriff) was a shareholder in the company, it was held that, as the party did not object, but proceeded with the inquisition before the under-sheriff, he must be taken to have waived any objection arising from the interest of the under-sheriff under the statute: *Ib.*; *Corrigal* v. *London and Blackwall Ry. Co.*, 2 D. N. S. 851, 3 Rail. Cas. 411, 5 M. & G. 219, 12 L. J. C. P. 209; but such an objection is not waived by the party appearing if he had no knowledge of it at the time: *R.* v. *Sheriff of Warwickshire*, 24 L. T. 211.

Under this section the promoters may properly issue their warrant to the sheriff to summon a jury, although the under-sheriff be interested as a shareholder in the company. In such a case the sheriff should either take the inquisition himself or appoint some disinterested deputy, and if he does not do so that is not the fault of the promoters: *Worsley* v. *South Devon Ry. Co.*, 20 L. J. Q. B. 254, 16 Q. B. 539, 15 Jur. 970, 16 L. T. 363. The interpretation clause, section 3, does not in such case incorporate the word "undersheriff" into the word "sheriff," as used in this section: *Ib.* But if the sheriff is interested, his under-sheriff, though disinterested, cannot act: *R.* v. *Sheriff of Warwickshire*, 24 L. T. 211. In such case the warrant should be directed to the coroner: *Ib.*

The interest which at common law disqualifies an officer from acting in a judicial inquiry must be direct and certain, and not merely remote or contingent, and the same principle must be applied to section 39 of this Act: *R.* v. *Manchester, Sheffield, and Lincolnshire Ry. Co.*, L. R. 2 Q. B. 336, 36 L. J. Q. B. 171, 16 L. T. N. S. 173, 15 W. R. 676.

Where, therefore, at the time of the summoning of the jury and the taking of an inquisition before the sheriff as to the compensation, there was an executory agreement, not yet carried out, by which the company would ultimately become amalgamated with another railway company, and the sheriff was a shareholder in the latter company, it was held that the sheriff was "not interested in the matter in dispute" within this section, so as to invalidate the proceedings: *Ib.*

Where there are two sheriffs and one of them is interested, the warrant ought to go to the other: *Letsom* v. *Bickley*, 5 M. & Sel. 144.

It would seem that, when an under-sheriff acts for the sheriff, he ought to certify in the name of the sheriff and not in his own name: *Stroud* v. *Watts*, 3 D. & L. 799; *R.* v. *Perkin*, 7 Q. B. 165.

(1) The coroner should summon a jury to take an inquisition if the sheriff is interested in the transaction (as being a shareholder in the company requiring the land), and a *certiorari* will issue to bring up the inquisition, though by section 145 no proceeding shall be quashed for want of form, nor shall the same be removed by *certiorari*: *R.* v. *London and North Western Ry. Co.*, 9 L. T. N. S. 423, 12 W. R. 208. See also *R.* v. *Sheriff of Warwickshire*, 24 L. T. 211.

(2) As to the right of a coroner to appoint a deputy, see section 1 of 6 & 7 Vict. c. 83, and *R.* v. *Perkin*, 7 Q. B. 165.

Secs. 40–45. delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

Jury to be summoned.

41. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified (1) to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Jury to be impannelled.

42. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to preside, witnesses to be summoned.

43. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law (2); and if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior Courts.

Penalty on sheriff and jury for default.

44. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry, he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior Courts; and if any person summoned and returned upon any jury under this or the special Act, whether common or special, do not appear, or if appearing, he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds, and every such penalty payable by a sheriff or juryman shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such juryman shall be subject to the same regulations, pains, and penalties as if such jury had been returned for the trial of an issue joined in any of the superior Courts.

Penalty on witnesses making default.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness refuse to be

(1) The court will not set aside the verdict, on the ground that some of the jurymen were not qualified to act as jurors, the remedy in such case being by challenge: *In re Chelsea Waterworks Co.*, 10 Exch. 731, 24 L. J. Ex. 79, 1 Jur. N. S. 143.

(2) Where the Act under which proceedings are taken provides for the payment of only certain of the costs of the inquiry, a provision such as this does not extend the claimant's right to costs: *R.* v. *Gardner*, 6 A. & E. 112, 6 L. J. Q. B. 130. "These words, 'deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law,' were clearly intended, not for the purpose which has been attributed to them, but to regulate the general course of proceedings, and to remove doubts concerning the right to begin, and to show in other respects how the inquisition shall be conducted": *Per* Lord Denman, C.J. (*ib.*)

examined on oath touching the subject matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds.

Notice of inquiry.

46. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party.

If the party make default the inquiry not to proceed.

47. If the party claiming compensation shall not appear (1) at the time appointed for the inquiry such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided (2).

Jury to be sworn.

48. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make oath that they will truly and faithfully inquire of and assess such compensation and damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence.

Sums to be paid for purchase of lands and for damage to be assessed separately.

49. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately (3) for the sum of money to be paid for the purchase of the lands required for the works, or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen (4), or which, under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for

(1) It would seem that this provision applies to a person who was in a state of mental imbecility, but without having been the subject of a commission of lunacy: *Re East Lincolnshire Railway Act*, 1 Sim. N. S. 260.

The claimants (trustees) had been served with 378 notices to treat, each referring to a distinct parcel of land or building, in all of which they claimed a reversion. The promoters served an offer of compensation for a nominal sum, and a notice of their intention to summon a jury in each of the 378 cases. The jury was sworn, without objection, to try all the cases, no request being made to swear them separately for each case. The claimants appeared in the first case called on, but being dissatisfied with the result, protested and withdrew from the inquiry, and the inquiry proceeded. The jury gave a finding in each case; it was held that the claimants could not then withdraw, and that an appearance by them in one case was an appearance in all, and that they were bound by the verdict in all the cases: *Re Trustees of Estate of Marquis of Donegal*, 12 Ir. L. R. 539.

(2) See 59th and following sections.

(3) This provision as to separate assessment of damages is directory only: *Corrigal v. London and Blackwall Ry. Co.*, 3 Rail. Cas. 411, 5 M. & G. 219, 6 Scott, N. R. 241, 2 Dowl., N. S. 851, 12 L. J. C. P. 209; where the jury gave a verdict for £250, "for the purchase of the house by the company, and also by way of satisfaction for all damages in respect of the tenant's fixtures in the said dwelling-house, or in any respects whatsoever," this general finding of the jury was held to be good: *Ib.* See *In re North London Ry. Co., ex parte Hayne*, 12 L. T. N. S. 200, 13 W. R. 492; *In re London and Greenwich Ry. Co.*, 2 A. & E. 678, 4 N. & M. 458, 1 H. & W. 81. Where a verdict was for "severance and level crossing," without distinguishing how much was for each, it being impossible to reduce the verdict *quoad* the level crossing, it was overturned *in toto*, level crossing not being the subject of damages: *Caledonian Ry. Co.* v. *Ogilvy*, 2 Mac. H. L. Cas. 229. See also, *In re Bradshaw's Arbitration*, 5 Rail. Cas. 527, 12 Q. B. 562.

(4) Where a jury is summoned to assess the interests of several parties, according to their respective estates, an inquisition finding a lump sum is bad and may be removed by *certiorari*: *R.* v. *Trustees of Norwich and Watton Road*, 5 A. & E. 563, 6 L. J. Q. B. 41, 1 N. & P. 32. Where a jury have awarded compensation to be paid to a claimant, without noticing the interest of any other person, it is not to be presumed, in the absence of any affidavit, that they have given such compensation for a larger interest than the claimant really had, or had overlooked any other person's interest: *R.* v. *Nottingham Old Waterworks Co.*, 6 A. & E. 355, 1 N. & P. 480, 6 L. J. Q. B. 89.

Section 49 the damage, if any (1), to be sustained by the owner of the lands by reason of the

(1) The jury can find that the claimant has not sustained any damage, and therefore that no damage or sum of money be assessed: *R.* v. *Lancaster and Preston Junction Ry. Co.*, 6 Q. B. 759, 3 Rail. Cas. 725, 9 Jur. 303, 14 L. J. Q. B. 84.

But where the jury awarded not only the purchase money and compensation for severance, but also an additional sum for the expense to be incurred by the landowner in building a bridge between the several portions, it was held that as to the last item there was an excess of jurisdiction, because it was for the justices, under 8 & 9 Vict, c. 20, ss. 68 and 69, to enforce the making of a bridge between the severed parts, at the expense of the company, and that a *certiorari* might issue, at the instance of the company, to remove the whole proceedings: *R.* v. *South Wales Ry. Co.*, 13 Q. B. 988, 6 Rail. Cas. 197, 13 Jur. 1095, 18 L. J. Q. B. 310.

Where a jury awarded, in addition to a sum for the purchase and damage, that the trustees should erect a hedge on the owner's land, at their own expense, this verdict was upheld, as it did not appear that less compensation was awarded on that account: *R.* v. *South Holland Drainage Trustees*, 1 P. & D. 79, 8 A. & E. 429. A party who causes any alteration or defect in the procedure, is not competent afterwards to make any objection on that ground (*ib.*). See also *R.* v. *Swansea Harbour Trustees*, 3 Jur. 85, 1 P. & D. 512, 8 A. & E. 439.

The jury can only estimate the value of the property taken, and the estate and interest, if it appeared to be divided among several persons; but they have no power to decide whether the title was in the claimant: *In re Chabot*, 12 Jur. 1023, 17 L. J. Q. B. 336, S. C. *nom.; Chabot* v. *Morpeth (Lord)*, 15 Q. B. 446, 19 L. J. Q. B. 377. So the jury cannot inquire into the title of the claimant, but can only decide as to the amount of compensation, and the sheriff ought not to submit to the jury any question of title, as, in this case, the existence of a legal right of way: *R.* v. *London and North-Western Ry. Co.*, 3 E. & B. 443, 23 L. J. Q. B. 185. See also *Brandon* v. *Brandon*, 2 Dr. & S. 305, 11 Jur. N. S. 30, 34 L. J. Ch. 333.

A compensation jury have no jurisdiction to determine whether the lands have been injuriously affected: their jurisdiction is limited to assessing the amount of compensation: *Horrocks* v. *Metropolitan Ry. Co.*, 4 B. &. S. 315, S. C. *sub. nom.; R.* v. *Metropolitan Ry. Co.*, 32 L. J. Q. B. 367, 10 Jur. N. S. 204, 8 L. T. N. S. 663, 11 W. R. 910. In this latter case the right of the claimant to the lateral support of the soil was submitted by the assessor to the jury, and determined by them in the negative; it was held that the assessor ought not to have submitted the question of right to the jury (*ib.*); nor have they jurisdiction to determine whether the promoters are excused from the obligation to pay the claimant by reason of any collateral agreement: *In re Byles and The Ipswich Dock Commissioners*, 11 Exch. 464, 25 L. J. Ex. 53, 26 L. T. 151.

So also, as regards leasehold interests, the jury can only ascertain the value of the leasehold interest claimed by the owner, and if too large an interest be claimed, the Court itself will, after the compensation money has been paid in by the company, direct a proper apportionment, and order the excess (if any) to be returned to the company: *Ex parte Cooper*, 2 Dr. & Sm. 312, 11 Jur. N. S. 103, 34 L. J. Ch. 373.

The assessment of damages by a jury under this Act, in respect of lands injuriously affected, is not conclusive that the lands were damaged and injuriously affected; and, therefore, in an action upon such verdict and the judgment thereon to recover the damages awarded and costs, the defendants are not estopped from pleading that the lands and the plaintiff's interest therein were not damaged and injuriously affected: *Read* v. *Victoria Station and Pimlico Ry. Co.*, 1 H. & C. 826, 32 L. J. Exch. 167, 11 W. R. 1032.

So the verdict of the jury in such cases is conclusive only as to the amount of compensation, and not as to the right of the claimant to compensation, which may be contested elsewhere: *Barber* v. *Nottingham and Grantham Ry. Co.*, 15 C. B. N. S. 726, 33 L. J. C. P. 193, 9 L. T. N. S. 829, 12 W. R. 376.

"The cases decided with respect to the Lands Clauses Act seem clearly to have settled that, after the jury have fixed the amount, the question may still be raised, whether there

severing (1) of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

Verdict and judgment to be recorded.

50. The sheriff before whom such inquiry (2) shall be held shall give judgment (3) for the purchase money or compensation assessed by such jury, and the verdict and judgment (4) shall be signed by the sheriff, and being so signed shall

was any right to compensation at all. If there is any such right, then the verdict of the jury is conclusive as to the amount. If the plaintiffs can make out that they are damaged in the way alleged, to the extent of one shilling, they will then be entitled to claim the whole sum. The line of decisions on the Lands Clauses Act seems to be that, if the party injured is entitled to recover anything at all, it must be that sum which the jury have found:" *Per* Erle, C.J. (*ib.*). See also, *East and West India Docks and Birmingham Junction Ry. Co.* v. *Gattke*, 6 Rail. Cas. 371, 15 Jur. 261, 3 Mac. & G. 155, 20 L. J. Ch. 217, 17 L. T. 85; *Chapman* v. *Monmouthshire Railway and Canal Co.*, 2 H. & N. 267, 27 L. J. Ex. 97; and *Mortimer* v. *South Wales Ry. Co.*, 1 E. & E. 375, 28 L. J. Q. B. 129, 7 W. R. 292.

As to what facts stated in the inquisition and warrant are sufficient to show the jurisdiction of the sheriff and jury, see *Taylor* v. *Clemson*, 11 C. & F. 610, 8 Jur. 833; *Ostler* v. *Cooke*, 18 Q. B. 831, 17 Jur. 370, 22 L. J. Q. B. 71.

Where an inquisition had been duly held before the sheriff, under an Act which provided that the verdict should be final, the Court refused an application for a *mandamus* to compel the issuing of a new warrant, though made on the ground of misdirection, of the improper rejection of evidence, of the verdict being against evidence, and the damages grossly insufficient: *R.* v. *Eastern Counties Ry. Co.*, 2 D. N. S. 945, 3 Rail. Cas. 466, 7 Jur. 628, 12 L. J. Q. B. 271.

(1) The jury can give compensation for prospective value, as where by the construction of a railway, part of an owner's land was taken, and several acres were severed from the rest, and all access cut off; the land was, at the time, agricultural, but had a prospective value for building, it was held that the jury ought to award compensation for this prospective value: *R.* v. *Brown*, L. R. 2 Q. B. 630, 36 L. J. Q. B. 322, 16 L. T. N. S. 827, 15 W. R. 988.

There may be an injury from severance within the meaning of the Act, though the land taken be not immediately contiguous to that retained. Compensation can be recovered for the whole of a rifle range, though the part taken is separated from the part retained: *Holt* v. *Gaslight and Coke Co.*, L. R. 7 Q. B. 728, 41 L. J. Q. B. 351, 27 L. T. N. S. 442. See also section 63 and note, *post*, p. 925.

(2) If the sheriff refuse to hold the inquiry, he may be compelled by *mandamus* to do so: *Walker* v. *London and Blackwall Ry. Co.*, 3 Rail. Cas. 396, 3 Q. B. 744, 12 L. J. Q. B. 88, 7 Jur. 323, S. C. *sub. nom.*; *R.* v. *Sheriff of Middlesex*, 3 Rail. Cas. 396, 3 G. & D. 549.

(3) See *R.* v. *Eastern Counties Ry. Co.*, 2 Dowl. N. S. 945, 3 Rail. Cas. 466, 12 L. J. Q. B. 271. So a *certiorari* to remove an inquisition will not be granted, unless for error on the face of the inquisition or for clear excess of jurisdiction. Misdirection by the judge or the verdict being against evidence, is not sufficient: *R.* v. *Mayor of Halifax*, 14 L. T. N. S. 447. See *In re Penny and South Eastern Ry. Co.*, 7 E. & B. 660, 26 L. J. Q. B. 225.

In an action brought upon a judgment, to recover the money awarded, the defendants cannot dispute the quantum of damages awarded by the sheriff's jury, it being proved that the lands were injuriously affected to some extent: *Mortimer* v. *South Wales Ry. Co.*, 1 E. & E. 375, 28 L. J. Q. B. 129, 7 W. R. 292.

(4) The statute requiring no regular form of inquisition, the enactment that such inquisitions should be kept among the records of sessions, and should be records, did not render it necessary to draw them up with the formality required in setting out the judgment of an inferior court. *Per* Littledale, J., in *R.* v. *Trustees of Swansea Harbour*, 8 A. & E. at p. 448, 3 Jur. 85, 1 P. & D. 512.

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be kept by the clerk of the peace among the records (1) of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all Courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Costs of the inquiry how to be borne.

51 (2). On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered (3) by the promoters of

(1) Where there is no excess of jurisdiction shown, and the verdict and judgment are binding and conclusive, the recording of them is not a condition precedent to their validity. The sheriff after ordering the payment of the sum assessed, is *functus officio: Chabot* v. *Morpeth (Lord)*, 15 Q. B. 446, 19 L. J. Q. B. 377, 15 L. T. 364. But see *In re Chabot*, 17 L. J. Q. B. 336.

Where the verdict of the jury has never been recorded, as provided by this section, parol evidence can be given of their finding, and of the grounds on which it proceeded: *Manning* v. *Eastern Counties Ry. Co.*, 12 M. & W. 237, 3 Rail. Cas. 637, 13 L. J. Ex. 265.

(2) Compare section 34, *ante*, as to the costs of arbitrations. This section which provides for the costs of inquiries before a jury, applies to inquiries taken under section 68, as to lands injuriously affected: *Hayward* v. *Metropolitan Ry. Co.*, 33 L. J. Q. B. 73, 4 B. & S. 787, 9 L. T. N. S. 680, 10 Jur. N. S. 418; and see next note.

This section is not incorporated with section 94, and, therefore, a landowner is not entitled to his costs of an inquiry under that section, where the company had made no previous offer: *Cobb* v. *Mid Wales Ry. Co.*, L. R. 1 Q. B. 342, 12 Jur. N. S. 228, 35 L. J. Q. B. 117, 14 W. R. 775.

(3) In cases coming under section 68, that is, in claims for lands already taken or injuriously affected, section 38 does not apply, but this section does apply, and in all such cases the words "previously offered" in this section, mean previously to the ten days' notice of the time and place of holding the inquiry, required by section 46, and the offer must be made by the company before (or, possibly, at the time) they give the claimant notice of the time and place of inquiry under section 46: *Metropolitan Ry. Co.* v. *Turnham*, 14 C. B. N. S. 212, 32 L. J. M. C. 249, 8 L. T. N. S. 280, 11 W. R. 695. An offer made six days before the inquiry was held too late (*ib.*): *Hayward* v. *Metropolitan Ry. Co.*, *supra*. The promoters may make fresh offers of compensation so long as they make them before giving the requisite notice of the time and place of inquiry. *Ib.*

But, in all cases coming under section 18, that is, in all claims for lands intended to be taken, or sought to be purchased, section 38, which provides for giving notice of the summoning of the jury, applies, and in such cases, the "sum previously offered" in this section means the sum that is to be offered, under section 38, ten days previously to the summoning of the jury as provided by that section: *Pearson* v. *Great Northern Ry. Co.*, L. R. 7 Q. B. 785 n., 18 W. R. 259; and the company, having made no offer before issuing their warrant, the claimant was held entitled to costs (*ib.*). See also, *R.* v. *Smith, Re Westfield and Metropolitan Ry. Cos.*, 12 Q. B. D. 481, 53 L. J. Q. B. 115, 32 W. R. 275. Where the company, in their notice, under section 38, of their intention to summon a jury, offered a certain sum, but afterwards offered a larger sum, and where a verdict was given for more than the first offer, but less than the second, they were held bound to pay the costs of the inquiry, as the second offer was too late. *Ib.*

The offer must be an unconditional offer of compensation for the injury done, and is bad if it be an offer of one sum for compensation and costs: *Balls* v. *Metropolitan Board of Works*, L. R. 1 Q. B. 337, 35 L. J. Q. B. 101, 7 B. & S. 177, 12 Jur. N. S. 183, 13 L. T. N. S. 702, 14 W. R. 370. An offer of £100 for compensation and costs, where the jury found the amount of the injury to be £75, was held to be bad, and the claimant was entitled to costs. *Ib.*

the undertaking, all the costs of such inquiry (1) shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same (2) or a

Section 51.

Where no offer is made, and the company is not liable to any part of the claim, this section does not apply, and the claimant is not entitled to costs: *Todd* v. *Metropolitan District Ry. Co.*, 24 L. T. N. S. 435, 19 W. R. 720.

(1) The "costs of such inquiry" means the costs of the whole inquiry which has resulted from the issuing of the warrant to the sheriff: *R.* v. *North London Ry. Co.*, *infra*.

The costs of the inquiry include the costs of witnesses, attendance by solicitor at the inquest, conferences and briefs, in addition to the expenses of the sheriff and jury, but the expenses of surveyors, who have not been called as witnesses, are not included: *R.* v. *Justices of the City of York*, 1 A. & E. 828, 3 N. & M. 685. See also, *R.* v. *Sheriff of Warwickshire*, 2 Rail. Cas. 661.

Where the claimant recovers a sum larger than that offered, he can recover, in an action, the costs of the inquiry as well as the compensation, section 51 being, for this purpose incorporated in section 68: *South Eastern Ry. Co.* v. *Richardson*, 15 C. B. 810, 21 L. J. C. P. 122, 16 Jur. 151.

It would seem that a *mandamus* directing the payment of costs, will not be granted, until they are ascertained in the proper manner: *R.* v. *London and Blackwall Ry. Co.*, 4 Rail. Cas. 119, 3 D. & L. 399, 15 L. J. Q. B. 42.

As to the costs being provided for by agreement, see *Ex parte Great Western Ry. Co.* 3 Rail. Cas. 516.

As to costs under a special Act, see *R.* v. *Gardner*, 1 N. & P. 308, 6 A. & E. 112, W. W. & D. 7, 1 Jur. 181.

Where a local Act was silent as to the costs of holding the inquisition, the claimant, is not entitled to recover them: *Corrigal* v. *London and Blackwall Ry. Co.*, 2 D. N.S. 851, 5 M. & G. 219, 3 Rail. Cas. 411, 6 Scott N. R. 241, 12 L. J. C. P. 209. Nor can the claimant recover against the company, the costs arising from a mistake made by the sheriff, as by dismissing the jury when he ought not to have done so: *Walker* v. *London and Blackwall Ry. Co.*, 7 Jur. 1154. See also, where claimant was not entitled to costs: *Ex parte Turner*, 1 W. W. & H. 305, and *In re Laws*, 1 Exch. 441, 17 L. J. Ex. 126.

But where, after proceedings had been taken to summon a jury, an agreement was come to, fixing the price, and the company agreed to pay all such costs as they were liable to pay under this Act, or otherwise; the company was held liable to pay the costs of the vendors in the proceedings to summon a jury: *Ex parte Morris*, L. R. 12 Eq. 418, 40 L. J. Ch. 543, 25 L. T. N. S. 20, 19 W. R. 943. See also, *In re Carney's Trusts*, 26 L. T. N. S. 308, 20 W. R. 407. So, where an inquisition was removed by *certiorari*, into the Queen's Bench Division and there quashed, on the ground that the under-sheriff had misdirected the jury: and where a further inquiry was held on the same warrant by the sheriff, and compensation was duly awarded by the jury to the claimants, it was held that the claimants were entitled, as well to the costs of and incidental to the abortive inquiry, as to the costs of the inquisition which resulted in a good verdict: *R.* v. *North London Ry. Co.*, 51 L. J. Q. B. 241; S. C. *sub. nom.*; *R.* v. *Manley Smith*, 30 W. R. 272.

An express power contained in an Act of Parliament to award certain specified costs, does not exclude the inherent jurisdiction of the Court of Chancery over the costs of proceedings authorised by the Act: *In re Spitalfields Schools and Commissioners of Woods and Forests*, L. R. 10 Eq. 671, 22 L. T. N. S. 569, 18 W. R. 799.

As to the time when the costs become payable to the claimant by the promoters, compare *Capell* v. *Great Western Ry. Co.*, and *Sharpe* v. *Metropolitan District Ry. Co.*, cited in note (2), section 34, *ante*, p. 910.

(2) Where the owner recovers an equal or less sum, the company is entitled only to one-half of the formal costs of the inquiry, and not to one-half of the costs of witnesses, and counsel also: *Bray* v. *South Eastern Ry. Co.*, 7 D. & L. 307, 19 L. J. Q. B. 11, 14 L. T. 184.

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less sum (1) than the sum previously offered by the promoters of the undertaking, or if the owner of the lands shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one half of the costs of summoning, impannelling, and returning the jury, and of taking the inquiry and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Particulars of the costs.

52 (2). The costs of any such inquiry (3) shall, in case of difference, be settled by one of the masters (4) of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impannelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry.

Payment of costs.

53 (5). If any such costs shall be payable by the promoters of the undertaking,

(1) See *Ex parte Whitworth* (*Perpetual Curate of*), 24 L. T. N. S. 126.

(2) The taxation of the cost of arbitrations is now provided for by 32 & 33 Vict. c. 18, s. 1, *post*, p. 984.

(3) The words "such inquiry" in this section refer to the inquiry mentioned in the earlier part of the 51st section, namely, where the landowner recovers more than the sum offered: *Bray* v. *South Eastern Ry. Co.*, 7 D. & L. 307, 19 L. J. Q. B. 11. See note (1) of previous section. It has been held by the Court of Queen's Bench in Ireland that the master has no jurisdiction, under this section, to tax the costs between solicitor and client incident to a railway inquiry: *O'Farrell* v. *Limerick and Waterford Ry. Co.*, 13 Ir. L. R. 365.

(4) The power of settling costs, given to the master by this section, invests him with the character of an original arbitrator, and there is no review of his decision: *Re Ross and York, Newcastle and Berwick Ry. Co.*, 5 Rail. Cas. 516, 5 D. & L. 695, 18 L. J. Q. B. 199, 13 Jur. 610, 13 L. T. 102. Though some doubts on this point were expressed in *Metropolitan Ry. Co.* v. *Turnham*, 14 C. B. N. S. 212, 32 L. J. M. C. 249, it is now settled that there is no power to review the taxation. See *Tennant* v. *Mayor, &c., of Belfast*, 11 Ir. L. R. 290. Nor will the court grant a *mandamus* to compel the master to review his taxation under this section: *Scully* v. *Great Southern and Western Ry. Co.*, 11 Ir. L. R. 292. See also *In re Sheffield Waterworks Act*, 1864, L. R. 1 Ex. 54, 35 L. J. Ex. 60, 4 H. & C. 74, 13 L. T. N. S. 440, 14 W. R. 143; and in *Owen* v. *London and North Western Ry. Co.* L. R. 3 Q. B. 54, 37 L. J. Q. B. 35, 17 L. T. N. S. 210, 7 B. & S. 758, 16 W. R. 125, it was held that where the costs of an inquiry before a sheriff are settled under this section, the court has no jurisdiction over the master's taxation on a motion to review.

And so where the costs of an inquiry before arbitrators under this Act are taxed and settled by a taxing master under section 1 of 32 & 33 Vict. c. 18, the court has no jurisdiction over the master's taxation on a motion to review: *In re Sandbach Charity Trustees and North Staffordshire Ry. Co.*, 3 Q. B. D. 1, 47 L. J. Q. B. 10, 37 L. T. N. S. 391, 26 W. R. 229 (following and approving *Owen* v. *London and North Western Ry. Co.*).

"There is no ground for an application for a *mandamus*, for the master has not declined jurisdiction, neither can the court grant a writ of *certiorari*, because the master has jurisdiction, and has exercised it. The main question is, has the Queen's Bench Division jurisdiction to review the master's taxation? I am quite satisfied with the reasons given in *Owen* v. *London and North Western Ry. Co.*, that there is no jurisdiction to review the master's taxation." *Per* Bramwell, L.J. *Ib.*

(5) To enforce payment of costs, the landowner ought first to have the amount of his costs ascertained in the manner prescribed by the Act; then to make a demand on the company for the payment of the costs so settled, and, if refused, he ought then to pro-

and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application (1) to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking, out of any money awarded by the jury to such owner, or determined by the valuation of a surveyor under the provision hereinafter contained; and the payment or deposit of the remainder, if any, of such money shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

Special jury to be summoned at the request of either party.

54. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury (2), such question shall be so tried, provided that notice (3) of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Deficiency of special jurymen.

55. The special jury on such inquiry shall consist of twelve of the said twenty, who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names

ceed by distress: *R.* v. *London and Blackwall Ry. Co.*, 4 Rail. Cas. 119, 3 D. & L. 399, 15 L. J. Q. B. 42. It is doubtful whether the court will grant a *mandamus* to compel a company to pay costs, but if so, not before the amount of the costs has been ascertained in the proper manner: *Ib.* See further, *Corrigal* v. *London and Blackwall Ry. Co.*, 3 Rail. Cas. 411, 2 D. N. S. 851, 5 M. & G. 219, 12 L. J. C. P. 209.

(1) The magistrate, upon an application for a distress warrant to levy the costs, is bound to consider the decision of the master as final: *Metropolitan Ry. Co.* v. *Turnham*, 14 C. B. N. S. 212, 32 L. J. M. C. 249, 8 L. T. N. S. 280, 11 W. R. 695.

(2) An inquisition before a sheriff for awarding compensation is not rendered void by an omission to strike the special jury in sufficient time to allow three days before the day of taking the inquisition. It is at most an irregularity only, and does not vitiate the proceedings: *Ex parte Great Western Ry. Co.*, 18 L. T. 92.

(3) A landowner gave notice, under section 68, of his desire to have the compensation settled by a jury; but before the expiration of the twenty-one days limited by that section for the company to issue their warrant to the sheriff to summon a jury, the owner gave a second notice of his desire to have the question settled by a special jury, under section 54, which fixes no time within which the company are to issue their warrant; it was held that the second notice did not operate as a waiver of the first, but that the company were bound to issue a warrant within twenty-one days after the receipt of the first notice, and in default thereof to pay the compensation claimed: *Glyn* v. *Aberdare Ry. Co.*, 6 C. B. N. S. 359, 28 L. J. C. P. 271, 33 L. T. 185, 7 W. R. 443.

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of any other disinterested persons qualified (1) to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court, or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable (2), as hereinbefore provided in the case of a trial by a common jury.

Other inquiries before same special jury by consent.

56. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Jurymen not to attend more than once a year.

57. No juryman shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

58 (3). The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor (4) as two justices shall nominate for that purpose as hereinafter mentioned.

Two justices to nominate a surveyor.

59. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear (5) on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate (6) an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Declaration to be made by the surveyor.

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination; (that is to say,)

"I, *A.B.*, do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. *A.B.*

Made and subscribed in the presence of ."

And if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

(1) The want of qualification in such supplemental jurors is ground of challenge only, and in default of such challenge the proceedings cannot be questioned, nor the verdict set aside, for want of jurisdiction or irregularity: *In re Chelsea Waterworks Co.*, 24 L. J. Ex. 79, 1 Jur. N. S. 143, 24 L. T. 223, 10 Exch. 731.

(2) See sections 44 and 45, *ante*.

(3) Where there is a doubt as to the true ownership of the land, but neither claimant is absent or prevented from treating, this section does not apply: *Ex parte London and South Western Ry. Co.*, 38 L. J. Ch. 527.

(4) In a deed appointing a surveyor under this section, it is not necessary that a description of the lands to be valued should be inserted. It is sufficient that the surveyor should know what he had to survey: *Poynder* v. *Great Northern Ry. Co.*, 16 Sim. 3, 5 Rail. Cas. 196, 2 Phil. 330.

(5) See section 47, *ante*.

(6) A nomination by the justices of the surveyor employed by the company, who has already, in the course of his employment, valued the land does not necessarily invalidate a bond given under section 85: *Langham* v. *Great Northern Ry. Co.*, 1 De G. & S. 486, 5 Rail. Cas. 263, 11 Jur. 839, 16 L. J. Ch. 437, 9 L. T. 452.

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61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Valuation, &c., to be produced to the owner of the lands on demand.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Expenses to be borne by promoters.

63 (1). In estimating the purchase money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith.

Purchase money and compensation, how to be estimated.

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained (2), by reason that the owner of or party entitled to convey such lands or such interest therein as aforesaid could not be found or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the monies so deposited under the provisions herein contained by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized (3) or required to be submitted to arbitration.

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Question to be submitted to the arbitrators.

66 (4). If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs by action or suit in any of the superior courts.

If further sum awarded, promoters to pay or deposit same within 14 days.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

Costs of the arbitration.

68 (5). If any party shall be entitled (6) to any compensation in respect of any

To be settled by arbitration or jury, at the option of the party claiming compensation.

(1) Compare section 49 and notes thereto, *ante*, p. 917. This section does not require that the purchase-money and damages for severance should be separately assessed. *In re Bradshaw's Arbitration*, 12 Q. B. 562, 5 Rail. Cas. 527, 17 L. J. Q. B. 362, 12 Jur. 998, 12 L. T. 218. As to the powers of an arbitrator under this Act, see *In re Ware*, 9 Exch. 395, 7 Rail. Cas. 780, 23 L. J. Ex. 145.

(2) See section 76, *post*, p. 944.

(3) See sections 25—37, *ante*, pp. 906, *et seq.*

(4) As to the taxation of costs in cases of arbitrations, see 32 & 33 Vict. c. 18, s. 1, *post*, p. 984, and notes to section 52, *ante*, p. 922.

(5) This section applies only to cases where lands have been actually taken or actually affected by the execution of the works: *Burkinshaw* v. *Birmingham and Oxford Junction Ry. Co.*, 5 Exch. 475, 20 L. J. Ex. 246, 6 Rail. Cas. 600, and it applies to the case of lands entered upon and used under section 85, and the owner in such case is bound to

Section 68. initiate proceedings to settle the compensation : *Doe d. Armistead* v. *North Staffordshire Ry. Co.*, 16 Q. B. 526, 15 Jur. 944, 20 L. J. Q. B. 249, 17 L. T. 59 ; *Adams* v. *London and Blackwall Ry. Co.*, 6 Rail. Cas. 271, 2 Mac. & G. 118, 2 Hall & T. 285, 14 Jur. 679, 19 L. J. Ch. 557. And to persons under disability, claiming compensation for permanent injury to land, as well as to owners in fee : *Stone* v. *Mayor of Yeovil*, 1 C. P. D. 691, 45 L. J. C. P. 657, 34 L. T. N. S. 874, 24 W. R. 1073 ; affirmed, 2 C. P. D. 99, 46 L. J. C. P. 137, 36 L. T. N. S. 279, 25 W. R. 240. And also to the case of a tenant from year to year, whose property is not wholly or partly required to be given up, but is merely injuriously affected by the execution of the works of a company. Such a case does not fall within the restrictive words of section 121 : *R.* v. *Sheriff of Middlesex*, 31 L. J. Q. B. 261, 10 W. R. 717, S. C. *sub. nom.* 8 Jur. N. S. 617.

Section 38, which provides for giving notice of the summoning of the jury, does not apply to inquiries taken under section 68, as to lands injuriously affected : *Hayward* v. *Metropolitan Ry. Co.*, 4 B. & S. 787, 33 L. J. Q. B. 73, 9 L. T. N. S. 680, 10 Jur. N. S. 418, *Railstone* v. *York, Newcastle and Berwick Ry. Co.*, 19 L. J. Q. B. 464, 15 Q. B. 404, 14 Jur. 1021. But see *Richardson* v. *South Eastern Ry. Co.*, 20 L. J. C. P. 236, 11 C. B. 154, 15 Jur. 660, 2 L. M. & P. 409, 17 L. T. 165 ; on appeal, 15 C. B. 810, 21 L. J. C. P. 122, 16 Jur. 151, where it was held that section 38 did apply to cases coming under section 68.

See also *Pearson* v. *Great Northern Ry. Co.*, L. R. 7 Q. B. 785 n., 18 W. R. 259, *In re Westfield and Metropolitan District Ry. Co.*, L. R. 12 Q. B. D. 481, 53 L. J. Q. B. 115, 32 W. R. 275. Section 51, which provides for the costs of inquiries before a jury, applies to inquiries under section 68, as to lands injuriously affected : *Hayward* v. *Metropolitan Ry. Co.*, *supra*, and *Richardson* v. *South Eastern Ry. Co.*, *supra*.

By a special Act, the Lands Clauses Act, 1845, "except so much as related exclusively to the purchase and taking of land by compulsion," was incorporated with it, it was held that section 68 of the Lands Clauses Act was not excepted : *Broadbent* v. *Imperial Gaslight Co.*, 7 De G. M. & G. 436, 26 L. J. Ch. 276 When the entire Lands Clauses Act is incorporated in a special Act no other enactment is required beyond section 68, to confer the right to compensation for lands injuriously affected by the works under the special Act : *R.* v. *Vestry of St. Luke, Chelsea*, L. R. 7 Q. B. 148, 41 L. J. Q. B. 81, 25 L. T. N. S. 914, 20 W. R. 209. Where, by a special Act, arbitrations were to be conducted by an arbitrator appointed by the Board of Trade, there being no specific provision as to costs and the general Act being incorporated with it "except where expressly varied by the special Act." It was held that the claimant was entitled to costs, as the substitution of one form of proceedings in the arbitration different from that in the general statute, varied the provisions of the general statute as to that matter, but did not repeal the provision as to costs in the general statute : *Metropolitan District Ry. Co.* v. *Sharpe*, 5 App. Cas. 425, 43 L. T. N. S. 130, 28 W. R. 617.

And when a special Act incorporated this Act, but excluded the operation of those provisions which relate to "the purchase and taking of lands otherwise than by agreement," which words are the descriptive heading of sections 16—68 of the Act, it was held (reversing the judgment of the court below, L. R. 4 Ex. 1) that section 68 was not incorporated in the local Act : *Ferrar* v. *Commissioners of Sewers for City of London*, L. R. 4 Ex. 227, 38 L. J. Ex. 102, 17 W. R. 709.

"The case of *Broadbent* v. *Imperial Gaslight Co.* is plainly distinguishable, for there the local Act incorporated the Lands Clauses Act, 1845, with the exception of so much only as related *exclusively* to the purchase and taking of land by compulsion. It, therefore, left untouched that which related to responsibility for injuriously affecting lands. The 68th section, therefore, was not excluded, but remained untouched." *Per* Cockburn, C. J., in delivering the judgment of the court (*ib.*), L. R. 4 Ex. at p. 231.

So when a special Act provided that the Lands Clauses Act, "so far as the provisions thereof were not expressly varied or excepted," should be incorporated, and also that "so much of the Lands Clauses Act as relates to the purchase of lands otherwise than by agreement" should not be incorporated, it was held that this section was not incorporated : *Dungey* v. *Mayor of London*, 38 L. J. C. P. 298, 20 L. T. N. S. 921, 17 W. R.

1106. See also, *R.* v. *Mayor, &c. of London*, L. R. 2 Q. B. 292, 16 L. T. N. S. 280.

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For sections of a special Act avoiding the effect of the rule laid down in *Ricket's* and *M'Carthy's* cases that no compensation can be given except in respect of actionable damage ; and the rule in *Brand's* case that compensation cannot be given for subsequent use of the works, see Hodges on Railways, 6th ed., pp. 216, 230.

(6) Under this section the arbitrators or a jury have no jurisdiction to inquire into the title of the claimant to the land, for which he claims compensation, but can only decide on the question of the amount of compensation : *R.* v. *London and North Western Ry. Co.*, 23 L. J. Q. B. 185, 3 E. & B. 443, 22 L. T. 346, 18 Jur. 993. Nor can they determine whether the promoters are excused from the obligation to pay by any collateral matter : *In re Byles and the Ipswich Dock Commissioners*, 25 L. J. Ex. 53, 11 Exch. 464, 26 L. T. 151.

The verdict of the jury is conclusive only as to the amount and not as to the right of the claimant to compensation, which may be contested elsewhere : *Barber* v. *Nottingham and Grantham Ry. Co.*, 33 L. J. C. P. 193, 15 C. B. N. S. 726, 9 L. T. N. S. 829, 12 W. R. 376. "In *R.* v. *London and North Western Ry. Co., ante*, it was held that the question for arbitrators or a compensation jury under section 68 of the Lands Clauses Act, was the amount of compensation only. In *Read* v. *Victoria Station and Pimlico Ry. Co., supra*, the point raised was distinctly whether, after the verdict of the jury giving compensation under that section of the Lands Clauses Act, the question whether or no the lands were injuriously affected could be again raised, and the court held that it could." *Per* Erle, C. J. (*ib.*), 33 L. J. Q. B. at p. 196 : *Chapman* v. *Monmouthshire Railway and Canal Co.*, 2 H. & N. 267, 27 L. J. Ex. 97 ; *Read* v. *Victoria Station and Pimlico Ry. Co.*, 32 L. J. Ex. 167, 1 H. & C. 826, 9 Jur. N. S. 1061, 11 W. R. 1032.

But if in an action on the verdict it be proved that the lands were injuriously affected to some extent, the defendant cannot dispute the quantum of damages awarded by the sheriff's jury : *Mortimer* v. *South Wales Ry. Co.*, 28 L. J. Q. B. 129, 1 E. & E. 375, 7 W. R. 292. So also the jury can find that the claimant has received no damage : *R.* v. *Lancaster and Preston Junction Ry. Co.*, 6 Q. B. 759, 14 L. J. Q. B. 84, 3 Rail. Cas. 725, 9 Jur. 303.

If there be any doubt as to whether the claimants land, for which he claims compensation, is injuriously affected within the meaning of section 68, the Court of Chancery will not, at the instance of the company, grant an injunction to restrain the defendant from taking proceedings to assess the damage : *South Staffordshire Ry. Co.* v. *Hall*, 20 L. J. Ch. 397, 15 Jur. 322, 1 Sim. N. S. 373, 6 Rail. Cas. 389, 17 L. T. 2. "If the company dispute both the right of the party to recover any damages and the amount claimed, the only course given them by the statute is to proceed to summon a jury and then, supposing the jury to assess some amount of damage as due, to refuse payment of the sum assessed, leaving the party to recover it by action. In this action the question of right would be determined. If the company do not dispute the amount claimed, but only deny the right to any compensation, they will, of course, refuse to summon a jury and will leave the party to bring his action for the amount claimed, and in such an action the right will at once be tried." *Per* Lord Cranworth, V.-C. (*ib.*), 20 L. J. Ch., at p. 399.

See also, *East and West India Docks, &c. Ry. Co.* v. *Gattke*, 20 L. J. Ch. 217, 15 Jur. 261, 6 Rail. Cas. 371, 3 Mac. & G. 155, 17 L. T. 85 ; *London and North Western Ry. Co.* v. *Bradley*, 3 Mac. & G. 336, 6 Rail. Cas. 551, 15 Jur. 639, overruling *London and North Western Ry. Co.* v. *Smith*, 1 Mac. & G. 216, 19 L. J. Ch. 193. But where there is an original equity affecting the claim, the court will grant an injunction : *Duke of Norfolk* v. *Tennant*, 9 Hare, 745, 16 Jur. 398, 19 L. T. 225.

Where separate interests are claimed in the same property every person making a separate claim is entitled to have a separate assessment by a separate jury : *Abrahams* v. *Mayor, &c. of London*, L. R. 6 Eq. 625, 37 L. J. Ch. 732, 18 L. T. N. S. 811 ; but a person having several distinct interests in one property or in several distinct properties, cannot object to having one assessment for all such interests : *Starr* v. *Mayor, &c. of London*, L. R. 7 Eq. 236, 20 L. T. N. S. 937.

Section 68. lands, or of any interest therein, which shall have been taken for or injuriously affected (1) by the execution of the works, and for which the promoters of the

(1) Several important principles have been established by the House of Lords with regard to claims for compensation for lands "injuriously affected" within this section.

Thus, compensation can be given under this section only in cases where the company is doing what is authorized by its own private Act, but which nevertheless causes damage to an individual. For anything else the common law remedy is properly applicable: *Imperial Gaslight and Coke Co.* v. *Broadbent*, 7 H. L. Cas. 600, 29 L. J. Ch. 377, 5 Jur. N. S. 1319; *Caledonian Ry. Co.* v. *Colt*, 3 Mac. H. L. Cas. 833.

So, unless an injury to an individual, caused by the act of a company, would have been the subject of a claim for damages, before the company obtained statutory powers to do that which caused the injuries, it could not (except expressly so provided) be a subject for compensation, when caused by something done in the exercise of those powers: *Ricket* v. *Metropolitan Ry. Co.*, L. R. 2 H. L. 175, 36 L. J. Q. B. 205, 16 L. T. N. S. 542, 15 W. R. 937. See also, *R.* v. *Vaughan*, L. R. 4 Q. B. 190, 38 L. J. M. C. 49, 17 W. R. 115; *Rhodes* v. *Airedale Drainage Commissioners*, 1 C. P. D. 402, 45 L. J. C. P. 861, 35 L. T. N. S. 46, 24 W. R. 1053.

"Unless the particular injury would have been actionable before the company had acquired their statutory powers, it is not an injury for which compensation can be claimed." *Per* Lord Campbell, C.J., in *In re Penny and South Eastern Ry. Co.*, 7 E. & B., at p. 669, 26 L. J. Q. B. 225, 29 L. T. 124, 5 W. R. 612. See also, *City of Glasgow Union Ry. Co.* v. *Hunter*, L. R. 2 H. L. (Sc.) 78; *Caledonian Ry. Co.* v. *Ogilvy*, 2 Mac. H. L. Cas. 229.

And in a recent case the House of Lords laid down that no compensation ought to be given for damages if the thing done was one for which, if done without any statutory power, no action could have been maintained: *Caledonian Ry. Co.* v. *Walker's Trustees*, 7 App. Cas. 259, 46 L. T. N. S. 826; 30 W. R. 569, 46 J. P. 676.

But it does not follow that, in every case where a party would have been entitled to bring an action for an act done before the statute, he can claim compensation for such an act, when done by the company under their statute.

Thus, to found a claim to compensation under the 68th section, for an interest in land "injuriously affected," there must be an injury and damage, not temporary, but permanent, peculiarly affecting the house or land itself, in which the person claiming compensation has an interest. A mere personal incovenience, obstructon, or damage to a man's trade or the good-will of his business, will not be sufficient, although any of them might, but for the Act of Parliament, which authorizes the doing of the thing causing the injury, have been the subject of an action against the person causing it: *Metropolitan Board of Works* v. *M'Carthy*, L. R. 7 H. L. 243, 43 L. J. C. P. 385, 31 L. T. N. S. 182, 23 W. R. 115; *Beckett* v. *Midland Ry. Co.*, L. R. 3 C. P. 82, 37 L. J. C. P. 11, 17 L. T. N. S. 499, 16 W. R. 221.

So in *R.* v. *Metropolitan Board of Works*, L. R. 4 Q. B. 358, 38 L. J. Q. B. 201, 17 W. R. 1094, it was held that the principle of the decision of the House of Lords in *Ricket* v. *Metropolitan Ry. Co.*, *supra*, is that to entitle a claimant to compensation under this section, the injury must be done to land or some interest in land, and a mere personal injury, though connected with the enjoyment of particular land, is not ground for compensation. See also, *Glover* v. *North Staffordshire Ry. Co.*, 20 L. J. Q. B. 376, 15 Jur. 673, 16 Q. B. 912, 17 L. T. 73, and *Caledonian Ry. Co.* v. *Walker's Trustees*, *supra*.

So no compensation can be given when the damage arises, not out of the execution, but only out of the subsequent use of the works (*ib*). The damage must be done by the construction of the works and not afterwards, when the works have been completed: *City of Glasgow Union Ry. Co.* v. *Hunter*, L. R. 2 H. L. (Sc.) 78. See also, *Hammersmith &c., Ry. Co.* v. *Brand* L. R. 4 H. L. 171, 38 L. J. Q. B. 265, 21 L. T. N. S. 238, 18 W. R. 12; and *Hopkins* v. *Great Northern Ry. Co.*, 2 Q. B. D. 224, 46 L. J. Q. B. 265, 36 L. T. N. S. 898.

So a person, no part of whose land has been taken for a railway, cannot, either under this Act or the Railways Clauses Act, recover statutory compensation in respect of damage

or annoyance arising from vibrations caused (without negligence) by the passing of trains after the railway is brought into use, even though the value of the property has been actually diminished thereby: *Hammersmith and City Ry. Co.* v. *Brand*, *ante*, p. 928.

See *East & West India Docks, &c., Ry. Co.* v. *Gattke*, *ante*, p. 927, and *London & North Western Ry. Co.* v. *Bradley* (6 Rail. Cas. 551; 3 Mac. & G. 336; 15 Jur. 639), where the injury complained of was that the beer in the claimant's cellar turned sour on account of the vibration of passing trains, and Lord Truro, L.C., dissolved an injunction to prevent the claimant from proceeding at law to recover compensation for that injury.

But, though compensation cannot be granted to a person annoyed by the smoke and vibration caused by trains passing along the railway where no part of his land has been taken, compensation may be given for deterioration in the value of his property caused in a like manner where a part of his land had been taken: *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418, 41 L. J. Ex. 137, 27 L. T. N. S. 1; *In re Stockport, &c., Ry. Co.*, 33 L. J. Q. B. 251, 10 Jur. N. S. 614, 10 L. T. N. S. 426. See also, *City of Glasgow Union Ry. Co.* v. *Hunter* (L. R. 2 H. L. (Sc.) 78), where it was held, reversing the judgment appealed from, that statutory compensation cannot be claimed by reason of the noise or smoke of trains, where, though part of the land was taken, yet the damages complained of did not arise out of anything done on the land taken, nor in respect of any property of the claimant connected with the land so taken, but from the construction of a railway bridge over the land of another person.

"Anticipated damage from the noise and smoke of trains does not appear to be a proper subject of estimate for compensation under the railway statutes:" *per* Hatherley, L.C., *ib.*

Where a railway company have express legislative powers to use locomotive engines on their line, constructed close to a public highway, they cannot be indicted for what, but for these express powers, would be a public nuisance, in consequence of their engines frightening the horses of persons using the public highway: *R.* v. *Pease*, 4 B. & Ad. 30.

Nor are they liable in an action for damage from fire by sparks emitted from an engine travelling on their line, provided they have taken every precaution to prevent injury from fire: *Vaughan* v. *Taff Vale Ry. Co.*, 5 H. & N. 679, 6 Jur. N. S. 899, 29 L. J. Ex. 247, 2 L. T. N. S. 394, 8 W. R. 549.

Compensation is not recoverable for the loss of trade, caused by the obstruction of a highway, during the execution of the works of a company, as such loss is not an "injurious affecting" of the tradesman's interest in his premises: *Ricket* v. *Metropolitan Ry. Co.*, L. R. 2 H. L. 175, 36 L. J. Q. B. 205, 16 L. T. N. S. 542, 15 W. R. 937.

Nor for an injury to the goodwill, nor a loss of profit in the business of a shop, caused by an obstruction, temporary or permanent, of a highway, by the execution of the works, where no part of the land on which the business is carried on is taken, or otherwise injuriously affected: *Cameron* v. *Charing Cross Ry. Co.*, 19 C. B. N. S. 764, 11 Jur. N. S. 282, 12 L. T. N. S. 121, 13 W. R. 390 (reversing the judgment of the Common Pleas, 16 C. B. N. S. 430, 33 L. J. C. P. 313, 10 Jur. N. S. 635, 10 L. T. N. S. 381, 12 W. R. 803, and overruling *Senior* v. *Metropolitan Ry. Co.*, 2 H. & C. 258, 9 Jur. N. S. 802, 32 L. J. Ex. 225, 8 L. T. N. S. 544, 11 W. R. 836).

Nor for loss of trade or custom by reason of a work, not otherwise affecting the house in, or upon, which the trade has been carried on: *Caledonian Ry. Co.* v. *Walker's Trustees*, *ante*, p. 928. Nor for an indirect injury to his trade, resulting from the diminution of traffic, caused by the authorised works, but only for direct structural injury caused by unauthorised works: *Bigg* v. *Corporation of London*, L. R. 15 Eq. 376.

As to the case of damage being too remote, and so not recoverable, see *In re Clarke and Wandsworth District Board of Works*, 17 L. T. N. S. 549.

As to loss of trade where a company pull down houses near the claimant's house, and to loss of trade profits in the case of a publican, see *R.* v. *Vaughan*, L. R. 4 Q. B. 190, 9 B. & S. 892, 38 L. J. M. C. 49, 17 W. R. 115. See further, as to compensation for loss of trade and goodwill, *Ex parte Farlow*, 2 B. & Ad. 341; *R.* v. *Hungerford Market Co.*, 1 P. & D. 492, 9 A. & E. 463; and *R.* v. *Hungerford Market Co.*, 4 B. & Ad. 592, 1 N. & M. 404 and 548. Compensation can be recovered under the 6th and 16th sections of the Railway Clauses Act, for damage caused by the works of a company to goods on the premises of the claimant, these sections not being confined to structural damage

Section 68. and depreciation in value of the premises: *Knock* v. *Metropolitan Ry. Co.*, L. R. 4 C. P. 131, 38 L. J. C. P. 78, 19 L. T. N. S. 239, 17 W. R. 10, and for damage caused by the works to goods on the premises of the claimant not required for the works, and for loss of trade arising from customers being compelled to walk on the other side of the road: *East and West India, &c., Dock Ry. Co.* v. *Gattke, ante*, p. 927.

Compensation is recoverable for the erection of gates and the passage of trains on a level crossing over a private road, the only approach to the claimant's house: *Glover* v. *North Staffordshire Ry. Co.*, 20 L. J. Q. B. 376, 15 Jur. 673, 16 Q. B. 912, and also for a private and particular injury from the diversion or obstruction of a public road, which, if done without statutory powers, would have given a right of action: *Wood* v. *Stourbridge Ry. Co.*, 16 C. B. N. S. 222, but not for stoppages and other mere inconveniences incident to the crossing of a public road by a railway company on the level: *Caledonian Ry. Co.* v. *Ogilvy*, 2 Macq. H. L. C. 229. Nor for deterioration in the value of property by reason of its being overlooked by persons on the railway and railway platform: *In re Penny and South Eastern Ry. Co.*, 7 E. & B. 660, 3 Jur. N. S. 957, 26 L. J. Q. B. 225. See also *Chamberlain* v. *West End of London and Crystal Palace Ry. Co.*, 2 B. & S. 605, 8 Jur. N. S. 935, 31 L. J. Q. B. 201, 6 L. T. N. S. 318, 10 W. R. 645; but where a railway company erected an embankment on a part of the highway, opposite the claimant's house, thereby narrowing the road and diminishing the value of the house, compensation is recoverable: *Beckett* v. *Midland Ry. Co.*, L. R. 3 C. P. 82, 37 L. J. C. P. 11, 17 L. T. N. S. 499, 16 W. R. 221; and also where the plaintiff was lessee of certain houses erected and in course of erection situate on a high road, and a company made an obstruction and deviation in the road near the houses, so that part of the road running past the houses was no longer used as a high road, and the access to the houses was less convenient and their value as shops greatly diminished: *Chamberlain* v. *West End of London and Crystal Palace Ry. Co., supra;* and so where a railway company took some land of L. and proposed to make their railway on it so close to a cotton mill belonging to L. that by reason of the danger of fire from trains using the line the building was less suitable for a cotton mill, and would only be insured at an increased premium, and was rendered of less saleable value, L. was held entitled to compensation in respect of the mill: *In re Stockport, Timperley, and Altringham Ry. Co., ante*, p. 929; and also for lowering a road, whereby the claimant's land was injured, and access to it impeded: *R.* v. *Eastern Counties Ry. Co.*, 2 Q. B. 347, 2 Rail. Cas. 736, 1 Gale & D. 589, 11 L. J. Q. B. 66, 6 Jur. 557, and for the raising of the level of a street impeding access to a house of which the claimant was lessee: *R.* v. *Vestry of St. Lukes, Chelsea, ante*, p. 928. But not for the erection of a hoarding in a street, by a company authorised to maintain the sewers, whereby the access to the plaintiff's premises (no part of which was taken) was made less convenient: *Herring* v. *Metropolitan Board of Works*, 19 C. B. N. S. 510, 34 L. J. M. C. 224.

And where a company took some houses, the property of the claimant, and tunnelled under the part of the passage between them, of which he was the owner, he can claim compensation for the subsoil of the passage, as well as for the houses: *Souch* v. *East London Ry. Co.*, 22 W. R. 566, and in such case it makes no difference whether the passage is a public or private right of way, as the owner has a good title to the subsoil (*ib.*); but see S. C. L. R. 16 Eq. 108, 42 L. J. Ch. 477, 21 W. R. 540, where Malins, V.C., held that if the passage were a public way, the claimant would not be entitled to compensation in respect of it.

It would seem that an easement is not "land," within the meaning of this Act, per the Lord Chancellor in *Pinchin* v. *London and Blackwall Railway Co.*, 24 L. J. Ch. 417, 5 De G. M. & G. 851, 1 Jur. N. S. 241. But an easement attaching to land is an interest in land for the invasion of which compensation can be claimed: *Eagle* v. *Charing Cross Ry. Co.*, L. R. 2 C. P. 638, 36 L. J. C. P. 297, 16 L. T. N. S. 593, 15 W. R. 1016. But a mere right of shooting over land does not entitle the owner to compensation for his right being diminished in value by a railway: *Bird* v. *Great Eastern Ry. Co.*, 19 C. B. N. S. 268, 34 L. J. C. P. 366, 11 Jur. N. S. 782, 13 L. T. N. S. 365, 13 W. R. 989. Nor the mere chance of the renewal of a lease: *R.* v. *Liverpool and Manchester Ry. Co.*, 4 A. & E. 650, 6 N. & M. 186, 5 L. J. Q. B. 106. See further as to compensation for an easement over the land of the claimant: *Thicknesse* v. *Lancaster Canal Co.*, 4 M. & W. 472. In some cases the special Act provides that the word "lands" should include

"easements and interests in land": See *Macey* v. *Metropolitan Board of Works*, 10 Jur. N. S. 333, 33 L. J. Ch. 377, 10 L. T. N. S. 66, 12 W. R. 619; *Temple Pier Co.* v. *Metropolitan Board of Works*, 34 L. J. Ch. 262, 12 L. T. N. S. 369, 13 W. R. 535. **Section 68.**

The diversion of a stream is a "taking and using" it within the meaning of section 85 of this Act; and before such diversion can be made, the value of the stream must be ascertained and secured to the owner of the land through which it passes: *Ferrand* v. *Corporation of Bradford*, 21 Beav. 412, 2 Jur. N. S. 175, 27 L. T. 11. So the abstraction by a waterworks company of water from a stream does not entitle a riparian owner below to require the company to purchase his part of the stream under the sixth section of the Waterworks Clauses Act, but only entitles such owner to claim compensation under this section for the stream being injuriously affected: *Bush* v. *Trowbridge Waterworks Co.*, L. R. 10 Ch. 459, 44 L. J. Ch. 645, 33 L. T. N. S. 137, 23 W. R 641. So if a company give notice to take the whole of a stream, they are bound to make compensation at once for the whole interest of the owner, and not merely to compensate the owner from time to time: *Stone* v. *Corporation of Yeovil*, 2 C. P. D. 99, 46 L. J. C. P. 137, 36 L. T. N. S. 279, 25 W. R. 240.

So a waterworks company is not entitled to compensation for unused water pipes which had been buried beneath an embankment of the railway, as they had no interest in land: *New River Co.* v. *Midland Ry. Co.*, 36 L. T. N. S. 539.

Compensation is recoverable for the taking of a waterway and substitution of a road for it: *Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R. 5 H. L. 418, 41 L. J. Ex. 137, 27 L. T. N. S. 1, and for the taking of an easement appurtenant to the lands of the claimant, where the lands themselves are injuriously affected (*ib.*).

And for an occasional flooding of lands, caused by the proper execution of the statutory powers: *Ware* v. *Regent's Canal Co.*, 3 De G. & J. 212, 28 L. J. Ch. 153.

And for damage caused to the plaintiff's mines, by the oozing or leaking of the water into the mines from a reservoir of a company authorised to construct a reservoir: *Barber* v. *Nottingham and Grantham Ry. Co.*, 33 L. J. C. P. 193, 15 C. B. N. S. 726, 12 W. R. 376.

As to compensation for flooding mines, see *Bagnall* v. *London and North Western Ry. Co.*, 7 H. & N. 423, 31 L. J. Ex. 121, 8 Jur. N. S. 16, 5 L. T. N. S. 621; affirmed in the Exchequer Chamber, 31 L. J. Ex. 480, 10 W. R. 802; and compare *Rylands* v. *Fletcher*, L. R. 3 H. L. Cas. 330, 37 L. J. Ex. 161, 19 L. T. N. S. 220; and *Fletcher* v. *Smith*, L. R. 2 App. Cas. 781, *nom. Musgrave* v. *Smith*, 47 L. J. Q. B. 4, 37 L. T. N. S. 367, 26 W. R. 83.

Compensation is recoverable for the obstruction of ancient lights by schools built by a school board: *Clark* v. *London School Board*, L. R. 9 Ch. 120, 43 L. J. Ch. 421, 29 L. T. N. S. 903, 22 W. R. 354; and the plaintiff's remedy, in such a case, is by claiming compensation under this section, and not by bill for an injunction: *Duke of Bedford* v. *Dawson*, L. R. 20 Eq. 353, 44 L. J. Ch. 549, 33 L. T. N. S. 156.

But compensation is not recoverable for obstructing ancient lights where the company have power to execute the works without making compensation: *Baker* v. *Vestry of St. Marylebone*, 35 L. T. N. S. 129, 24 W. R. 848.

Nor by the owner of a ferry for loss of traffic, caused by the construction of a railway-bridge and foot-bridge, across a river, half a mile above the ferry: *Hopkins* v. *Great Northern Ry. Co.*, 2 Q. B. D. 224, 46 L. J. Q. B. 265, 36 L. T. N. S. 898 (overruling *R.* v. *Cambrian Ry. Co.*, L. R. 6 Q. B. 422, 40 L. J. Q. B. 169, 25 L. T. N. S. 84, 19 W. R. 1138).

But a ferry, if attached to the land of the claimant, is a private right, in respect of which compensation might be assessed: *In re Cooling and the Great Northern Ry. Co.*, 19 L. J. Q. B. 25, 6 Rail. Cas. 246, 14 Jur. 128, 13 L. T. 484; S. C., *R.* v. *Great Northern Ry. Co.*, 14 Q. B. 25.

Where the occupier of premises near the Thames had been used to draw water from the river, and to bring barges to a draw-dock, as public rights, and not as rights attached to the premises, and was obstructed in the enjoyment of these rights by the execution of the works of the embankment, compensation was not recoverable under this section: *R.* v. *Metropolitan Board of Works*, L. R. 4 Q. B. 358, 38 L. J. Q. B. 201, 17 W. R. 1094; but otherwise, if, by the destruction of the dock, the claimant's premises be permanently damaged and diminished in value: *Metropolitan Board of Works* v. *M'Carthy*, *ante*, p. 928.

Section 68. undertaking shall not have made satisfaction under the provisions of this or the special Act, or any Act incorporated therewith (1), and if the compensation claimed

Prospective profits may be awarded, as when a company took lands where a cotton mill would probably have been built, and the owner had other lands on which he had made a reservoir, from which water might be supplied to such mill when built, it was held (affirming the decree of the M.R.) that the umpire was right in receiving evidence, and in awarding compensation, in respect of such prospective profits: *Ripley* v. *Great Northern Ry. Co.*, L. R. 10 Ch. 435, 23 W. R. 685.

So contingent and prospective damages may be awarded: *Caledonian Ry. Co.*, v. *Lockhart*, 3 Macq. H. L. Cas. 808, 6 Jur. N. S. 1311, 3 L. T. N. S. 65.

Where part of an owner's land was taken and several acres were severed from the rest and all access cut off, and the land at the time the railway was made was agricultural, but had a prospective value for building, it was held that the jury, valuing it as building land, might estimate the damage by severance as if all access were cut off, without regard to the power of justices to order accommodation works under sections 68 and 69 of the Railways Clauses Act: *R.* v. *Brown*, L. R. 2 Q. B. 630, 36 L. J. Q. B. 322, 16 L. T. N. S. 827, 15 W. R. 988.

So, a landowner is not precluded from insisting on a further compensation for future unforeseen damages, subsequently sustained, by reason of his having received compensation for land and "in respect of damages which might be sustained by reason of making a railway": *Lancashire & Yorkshire Ry. Co.* v. *Evans*, 15 Beav. 322. So, though the company have constructed their line according to the provisions of their Act, they are liable, in an action, for a contingent and unforeseen injury (as causing the plaintiff's land to be flooded by the flood waters not being able to spread as before the works) arising from the mode of construction of the railway: *Lawrence* v. *Great Northern Ry. Co.*, 6 Rail. Cas. 656, 16 Q. B. 643, 20 L. J. Q. B. 293, 15 Jur. 652, 17 L. T. 39. If such damage in fact arise afterwards, the remedy of the party is under this section: *In re Ware and Regent's Canal Co.*, 7 Rail. Cas. 780, 9 Exch. 395, 23 L. J. Ex. 145; but, if such damage could have been reasonably foreseen, compensation in respect thereof should have been claimed at the time of the original assessment: *R.* v. *Leeds & Selby Ry. Co.*, 5 N. & M. 246, 3 A. & E. 683. But see further as to the liability of a company for unforeseen damage: *Croft* v. *London & North Western Ry. Co.*, 3 B. & S. 436, 9 Jur. N. S. 962, 32 L. J. Q. B. 113, 7 L. T. N. S. 741, 11 W. R. 360. In this case Cockburn, C. J., laid down the principle that in no case was the claimant entitled to a second inquiry, even for unforeseen damage, but that the compensation should be determined at once and finally.

The plaintiffs, who were brewers, were owners in fee of a public house, let for an unexpired term of seven years, and there was in the lease a covenant by the tenant not to sell on the premises any beer other than the plaintiff's beer, the additional value of the premises, by reason of this covenant, may be taken into consideration in ascertaining the compensation: *Bourne* v. *Mayor of Liverpool*, 33 L. J. Q. B. 15, 10 Jur. N. S. 125, 8 L. T. N. S. 573.

As to compensation to a lessee, see *Johnson* v. *Edgware, Highgate & London Ry. Co.*, 14 L. T. N. S. 45; *Ex parte Luntley*, 13 L. T. N. S. 490.

Where a company take leasehold lands in the occupation of a tenant for life, and it appears that, if not taken, they would now let for an increased rent, the Court will allow a slight increase on the original rent, by way of income, out of the purchase money: *In re North's Estate*, 19 L. T. N. S. 43. See also, *Jeffreys* v. *Conner*, 28 Beav. 328. As to the difference between taking and using lands under section 84, and injuriously affecting them within this section, see *Macey* v. *Metropolitan Board of Works*, and *Temple Pier Co.* v. *Metropolitan Board of Works*, *ante*, p. 93.

It seems, then, in assessing compensation to parties, whose premises may be injuriously affected by works done by a company under their statutory powers, the company are not entitled to set off any benefit accruing to such parties, or to the neighbourhood by the construction of the works: *Senior* v. *Metropolitan Ry. Co.*, 32 L. J. Ex. 225, 2 H. & C. 258, 9 Jur. N. S. 802, 8 L. T. N. S. 544, 11 W. R. 836.

(1) As to the incorporation of special Acts with this Act, and the effect thereof on claims for compensation, see preceding note, *ante*, p. 927.

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in such case shall exceed the sum of fifty pounds, such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice (1) in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of interest (1) in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall enter into a written agreement (2) for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration (3) in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire (4) to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided (5), and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed (6), and the same may be recovered by him, with costs, by action in any of the superior courts.

(1) A mere misnomer in the name of the company, if not calculated to mislead, will not vitiate this notice: *Eastham* v. *Blackburn Ry. Co.*, 23 L. J. Ex. 199, 9 Exch. 758, 2 C. L. R. 1016.

A claimant must give in his notice for a jury, within this section, such reasonable information as to his interest as will enable the promoters to judge whether they will pay the whole claim, or what amount they ought to offer; and where the claimant is occupier under a lease for years, it is not sufficient to state in the notice that "he holds under a lease": *Healey* v. *Thames Valley Ry. Co.*, 34 L. J. Q. B. 52, 5 B. & S. 769, 10 Jur. N. S. 1182, 11 L. T. N. S. 268, 13 W. R. 44; but see *Cameron* v. *Charing Cross Ry. Co.*, 33 L. J. C. P. 313, 16 C. B. N. S. 430, 10 L. T. N. S. 381, 12 W. R. 803; on appeal, 11 Jur. N. S. 282, 12 L. T. N. S. 121, 13 W. R. 390. See also, *R.* v. *East London Ry. Co.*, 17 L. T. N. S. 291.

(2) As to the effect of an agreement for compensation for part of the plaintiff's claim, see *Duke of Norfolk* v. *Tennant*, 9 Hare, 745.

(3) Where the amount claimed is not paid or agreed to be paid within twenty-one days, as provided by this section, it is the duty of the claimant, before nominating an arbitrator on his behalf, to attempt to procure the appointment of a single arbitrator: *Yates* v. *Mayor of Blackburn*, 29 L. J. Ex. 447, 6 H. & N. 61, 2 L. T. N. S. 746.

(4) Where the owner gave notice of his desire to have the question of compensation settled by a jury, but before the expiration of the twenty-one days limited by this section for the company to issue their warrant, the owner gave a second notice of his desire to have the claim settled by a special jury, under section 54, it was held that the second notice did not operate as a waiver of the first, but that the company were bound to issue their warrant within twenty-one days after the receipt of the first notice, and in default thereof to pay the compensation claimed: *Glyn* v. *Aberdare Ry. Co.*, 28 L. J. C. P. 271, 6 C. B. N. S. 359, 33 L. T. 185, 7 W. R. 443.

(5) As to the effect of the words "in manner herein provided," in incorporating previous sections, see *Railstone* v. *York, &c., Ry. Co.*; *Richardson* v. *South Eastern Ry. Co.*; *Hayward* v. *Metropolitan Ry. Co.*; *Pearson* v. *Great Northern Ry. Co.*, and *R.* v. *Manley Smith*, cited in note (1) to this section.

(6) If, after service of a notice to treat, the owner replies by a notice of claim, and the company neither refer the matter to arbitration, nor summon a jury, they thereby acquiesce in the offer made, and the owner has a right of action, under this section, for the amount claimed: *Eaton* v. *Midland Great Western Ry. Co.*, 10 Ir. L. R. 310. Compare *Tanner* v. *Swindon, &c., Ry. Co.*, 45 L. T. N. S. 209.

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And with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

Purchase money payable to parties under disability amounting to £200 to be deposited in the bank.

69 (1). If the purchase money or compensation which shall be payable in respect of any lands or any interest therein, purchased or taken by the promoters of the undertaking from any corporation (2), tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic (3) or idiot, trustee, executor or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same, except under the provisions of this (4) or the special Act, or the compensation to be paid for any permanent damage to any such lands, amount to or exceed the sum of two hundred pounds, the same shall be paid (5) into the bank, in the name and with the privity of the Accountant-General (6) of the Court of Chancery in England if the same relate to lands in England or Wales, or the Accountant-General of the Court of Exchequer in Ireland if the same relate to lands in Ireland, to be placed to the account there of such Accountant-General, *ex parte* the promoters of the undertaking (describing them by their proper name), in the

(1) Payment into Court, under this section, of the purchase money of lands belonging to an infant does not make the infant a ward of Court: *Ex parte Brewer*, 2 Dr. & Sm. 552.

(2) In cases where land belonging to a corporation is taken and the purchase-money paid into the bank, the Court will not allow any steps to be taken with reference to the final application of such money, unless it be satisfied that the freemen are represented: *In re Great Northern Ry. Co.'s Act, Ex parte Mayor of Lincoln*, 6 Rail. Cas. 738, 16 Jur. 756, 21 L. J. Ch. 621, 18 L. T. 298.

Where a company under pressure paid the purchase-money to the vendors, who were a corporation, instead of paying it into court under this section, on a bill filed by the company, the vendors were, on motion, ordered to pay into court the purchase-money in their hands for the purpose of *interim* protection: *London and North Western Ry. Co.* v. *Corporation of Lancaster*, 15 Beav. 22, 16 Jur. 677, 18 L. T. 132.

(3) Land belonging to a lunatic having been taken by a company, an order was made for the payment of the purchase-money to the credit of the lunacy, and for its investment, to the joint account of the lunatic and the company, without its being first paid into Court under this section: *In re Milnes*, L. R. 1 Ch. D. 28, 34 L. T. N. S. 46, 24 W. R. 98; the application for such an order must be made in the Chancery Division as well as in the Lunacy, (*ib*); but in the case of a permanent investment, the name of the company will be omitted from the account: *In re Buckingham*, 2 Ch. D. 690.

(4) See section 7, *ante*, by which parties under disability are enabled to sell and convey.

(5) Payment into court under this section may be dispensed with where the money is immediately required to be paid to another account, *e.g.*, to a lunatic's account: *In re Milnes*, 1 Ch. D. 28, 34 L. T. N. S. 46, 24 W. R. 98.

Where money is paid into the bank, interest ceases to be payable by the company, unless there is a special agreement to do so: *Lewis* v. *South Wales Ry. Co.*, 10 Hare, 113, 22 L. J. Ch. 209, 16 Jur. 1149, 21 L. T. 3.

But a company may, under certain circumstances, be bound by an implied contract with a tenant for life, to pay interest on the purchase-money, after payment into court and before investment: *Ex parte Earl of Hardwicke*, 1 De G. M. & G. 297, 18 L. T. 281. See also *Blount* v. *Great Southern and Western Ry. Co.*, 2 Ir. R. Ch. 40; *In re Crystal Palace Ry. Co.*, 1 Jur. N. S. 995.

(6) By the Court of Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), the office of Accountant-General of the Court of Chancery has been abolished, and the duties thereof transferred to the Paymaster-General. See sections 24, 30, of the Judicature Act, 1875 (38 & 39 Vict. c. 77), and section 2 of the Supreme Court of Judicature (Funds, &c.) Act, 1883 (46 & 47 Vict. c. 29); and see r. 39 of the Supreme Court Funds Rules, 1884. By this rule the nature of the disability to sell and convey, by reason of which the money shall be so paid in, ought to be briefly stated.

matter of the special Act (citing it), pursuant to the method prescribed by any Act for the time being in force for regulating moneys paid into the said courts (1); and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes; (that is to say,)

Section 69.

Application of monies deposited.

In the purchase or redemption of the land tax (2), or the discharge of any debt or incumbrance (3) affecting the land in respect of which such money shall have been paid, or affecting other lands settled (4) therewith to the same or the like uses, trusts, or purposes; or

In the purchase of other lands (5) to be conveyed, limited, and settled upon the

(1) See last note.

(2) A tenant for life, who had redeemed the land tax before the passing of the Act, may reimburse himself out of the purchase-money: *Ex parte Northwick*, 1 Y. & C. 166; and the company are liable to pay the costs of such redemption: *Ex parte Beddoes*, 2 Sm. & G. 466; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378. So the fund may be applied in the redemption of the land tax on other lands of the persons entitled, and the company are bound to pay the costs of such application under section 80: *In re Bethlem Hospital*, L. R. 19 Eq. 457, 44 L. J. Ch. 406, 23 W. R. 644; *In re London, Brighton & S. C. Ry. Co.*, 18 Beav. 608. See also *Ex parte Trafford*, 2 Y. & C. 522; and *In re Vicar of Queen Camel*, 11 W. R. 503.

(3) This includes the payment of bonds given by a corporation for moneys borrowed for sanitary purposes, the interest on the bonds being paid out of the borough fund, which chiefly consisted of the rents of the real estate of the corporation: *In re Derby Municipal Estates*, 3 Ch. D. 289; and the payment of an incumbrance affecting other lands belonging to the same corporation: *Ex parte Corporation of Cambridge*, 5 Rail. Cas. 204, 6 Hare, 30; but the company is not liable to pay the costs of discharging an incumbrance on other lands of the vendor: *Ex parte Sheffield Town Trustees*, 8 W. R. 602.

A leasehold interest is an "incumbrance" within this section: *Ex parte Corporation of Sheffield*, 21 Beav. 162, 25 L. J. Ch. 587, 2 Jur. N. S. 31, 26 L. T. 146, 4 W. R. 70; *Ex parte Corporation of London*, L. R. 5 Eq. 418, 37 L. J. Ch. 375, 17 L. T. N. S. 489, 16 W. R. 355; and the reversioner in fee can purchase leaseholds as a payment off of incumbrances: *Ib.* So on the petition of the tenant for life the proceeds of settled estates were laid out in buying up leasehold interests in cottages built on other parts of the settled estates: *In re Marquess Townshend's Estates*, W. N. (1882) 7; see also *Ex parte Bishop of London*, 2 De G. F. & J. 14, 6 Jur. N. S. 640, 2 L. T. N. S. 365, 8 W. R. 465; but the purchase-money of glebe land cannot be applied in paying off future instalments of a rent-charge created under the General Land Drainage and Improvement Company's Act, 1849, by a former rector in improving the glebe: *In re Rector of Kirksmeaton*, 20 Ch. D. 203, 51 L. J. Ch. 581, 30 W. R. 539.

(4) The word "settled" here means simply "standing limited," and not in "settlement," in the usual sense of the term: *Kelland* v. *Fulford*, 6 Ch. D. 491, 47 L. J. Ch. 94, 25 W. R. 506.

(5) See the Settled Land Act, 1882, 45 & 46 Vict. c. 38, s. 32. The purchase-money may be laid out in land, to be settled to somewhat different uses, though the applicants are absolutely entitled, and the company must pay the costs of such investment: *In re Jones's Trust Estate*, 39 L. J. Ch. 190, 18 W. R. 312; and it may be reinvested in the purchase of land in the Isle of Man: *In re Taylor's Estate*, 40 L. J. Ch. 454.

The purchase-money of a freehold chapel was allowed to be invested in a leasehold chapel, where there was a difficulty in finding a suitable freehold: *In re Rehoboth Chapel*, L. R. 19 Eq. 180, 44 L. J. Ch. 375, 31 L. T. N. S. 571, 23 W. R. 405.

But generally the court will not sanction the proceeds of freehold and copyhold property being reinvested in leaseholds: *Ex parte Macaulay*, 23 L. J. Ch. 815, 2 W. R. 667; but the proceeds of freehold were reinvested in copyhold property, on the master reporting that the investment was a proper one and beneficial to all concerned: *In re Cann's Estate*, 19 L. J. Ch. 376.

The proceeds of leaseholds may be invested in freeholds: *In re Parker's Estate*, L. R.

Section 69. 13 Eq. 495, 41 L. J. Ch. 473, 26 L. T. N. S. 12, 20 W. R. 289; and in copyholds of inheritance: *In re Liverpool Dock Acts*, 1 Sim. N. S. 202; *In re Browne*, 6 Rail. Cas. 733; and in the purchase of a reversion in fee of other leaseholds: *In re Brasher's Trust*, 6 W. R. 406.

The enfranchisement of copyholds is equivalent to a reinvestment in other lands, and the court will sanction such an application of the fund: *Dixon* v. *Jackson*, 25 L. J. Ch. 588, 4 W. R. 450; *In re Cheshunt College*, 3 W. R. 638. And the fund may be invested in ground rents: *In re Mason*, W. N. (1872) 77; and in the purchase of a leasehold brickfield which was a nuisance to the neighbouring vicarage: *Ex parte Master, &c., of Trin. Coll., Cambridge*, 18 L. T. N. S. 849; but not in the purchase of an equity of redemption: *Ex parte Craven*, 17 L. J. Ch. 215; 11 L. T. 1; *Ex parte Portadown, &c., Ry. Co.*, Ir. R. 10 Eq. 368.

So the purchase-money will, in a proper case, be ordered by the court to be employed in erecting new buildings on land already settled to the same uses, but not in repairs or permanent improvements not placing new buildings on the land: *Drake* v. *Trefusis*, L. R. 10 Ch. 364, 33 L. T. N. S. 85, 23 W. R. 762.

"We never intended to go further than this, that the expending money in building a house on a vacant piece of ground forming part of the settled property is in substance the same thing as buying a house; and that money to be invested in the purchase of real estate may, therefore, be properly applied in the erection of new buildings. Repairs and permanent improvements do not come within this principle:" *per* James, L.J., *Ib.*, L. R. 10 Ch. at p. 366; and in erecting new farm buildings where a railway severed the lands from the farm buildings: *Ex parte Melward*, 27 Beav. 571, 29 L. J. Ch. 245, 6 Jur. N. S. 478; and in building cottages on another part of the estate which was lying waste: *Re Dummer's Will*, 2 De G. J. & S. 515, 12 L. T. N. S. 626, 13 W. R. 908. In such a case no part of the money will be paid out till the buildings are completed: *Ib.* See *In re Partington's Estate*, 1 N. R. 177, 7 L. T. N. S. 522, 11 W. R. 160; *Ex parte Shaw*, 4 Y. & C. 506; *In re Wight's Devised Estates*, 6 W. R. 718; and in making lateral additions to a house, part of the settled estate: *In re Speer's Trust*, 3 Ch. D. 262, 24 W. R. 880; and in altering buildings into a dwelling-house: *In re Trustees of Lymington Baptist Chapel*, W. N. (1877) 226. See also *In re Newman's Settled Estates*, L. R. 9 Ch. 681, 43 L. J. Ch. 702, 31 L. T. N. S. 265.

The purchase-money of glebe lands may be applied in building a new vicarage: *In re Incumbent of Whitfield*, 1 J. & H. 610, 9 W. R. 764; *Ex parte Rector of Bradfield St. Claire*, 32 L. T. N. S. 248 (in this case the consent of the bishop was required); *Ex parte Rector of Hartington*, 23 W. R. 484; and in making necessary improvements and additions to the rectory house, the money to be paid to the bishop's secretary: *Ex parte Rector of Claypole*, L. R. 16 Eq. 574, 42 L. J. Ch. 776, 29 L. T. N. S. 51; and for the repairs of the rectory buildings: *Ex parte Rector of Grimoldby*, 2 Ch. D. 225, 24 W. R. 723; see also *In re Nether Stowey Vicarage*, L. R. 17 Eq. 156, 29 L. T. N. S. 604, 22 W. R. 180; and for expenses incurred by the rector under an inclosure Act: *Ex parte Lockwood*, 14 Beav. 158; and for drainage of glebe lands: *In re Vicar of Queen Camel*, 11 W. R. 503; and for the erection of farm buildings on the remainder of the glebe: *Ex parte Rector of Shipton*, 19 W. R. 549; and for repaying to the rector past outlay in building a farm-house on the glebe: *Ex parte Rector of Gamston*, 1 Ch. D. 477, 33 L. T. N. S. 803, 24 W. R. 359; *Ex parte Rector of Holywell*, 27 W. R. 707; but in such cases the buildings must form a permanent and valuable improvement: *Ib.* But the court will not sanction the purchase-money of glebe land being applied in restoring the chancel of the church, nor in paying off a loan from the governors of Queen Anne's bounty: *Ex parte Rector of Grimoldby, supra;* nor in repaying advances made by the rector, before the money was paid into court, for the rebuilding of the rectory house: *Williams* v. *Aylesbury and Buckingham Ry. Co.*, L. R. 9 Ch. 684, 43 L. J. Ch. 825, 31 L. T. N. S. 521; *secus*, if the money has not been already expended by the rector: *Ex parte Rector of Hartington, supra;* and see *Ex parte Rector of Gamston, supra.*

Nor will a fund, the proceeds of land belonging to a corporation, be expended on the petition of the corporation in erecting new municipal buildings: *Ex parte Corporation of Liverpool*, L. R. 1 Ch. 596, 12 Jur. N. S. 720, 35 L. J. Ch. 655, 14 L. T. N. S. 785, 14 W. R. 906. An order for the application to building purposes of the purchase-money

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like uses, trusts, and purposes, and in the same manner, as the lands in respect of which such money shall have been paid stood settled (1); or

If such money shall be paid in respect of any buildings taken under the authority of this or the special Act, or injured by the proximity of the works, in removing or replacing such buildings or substituting others in their stead (2), in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled (3) to such money.

of land will not be made except under special circumstances showing such application to be beneficial to all interested: *Ib.* But if there be such special circumstances showing that the proposed application of the fund to buildings is for the benefit of all interested it will be allowed: *In re Johnson's Settlements*, L. R. 8 Eq. 348; *In re Leadbitter*, 30 W. R. 378.

Nor will the fund be applied in making roads on the property for the purpose of improving it and increasing the value of the inheritance: *In re Belfast Water Commissioners*, Ir. R. 5 Eq. 63. Nor in recouping the tenant for life what he has already expended, unless the expenditure was properly a charge on the estate. But the court can order the fund to be applied in building or rebuilding houses on the estate, but will only do so when the remaindermen do not object: *In re Leigh's Estate*, L. R. 6 Ch. 887, 40 L. J. Ch. 687, 25 L. T. N. S. 644, 19 W. R. 1105. For such an application of the fund the remaindermen ought to be served with the petition: *Ib.* But if the expenditure of the tenant for life be such as to constitute a charge on the estate, he ought to be reconped out of the fund: *Ex parte Davis*, 3 De G. & J. 144, 4 Jur. N. S. 1029, 6 W. R. 844. See also *Williams* v. *Aylesbury and Buckingham Ry. Co.*, *ante*, p. 936; and *Ex parte Rector of Gamston*, *ante*, p. 936. Nor can a tenant for life recoup himself for an expenditure (such as erecting new malt houses for a brewery) which he had incurred without any expectation of having it repaid, even though such expenditure be for the permanent benefit of the estate: *In re Stock's Devised Estates*, 42 L. T. N. S. 46. See also *In re Wight's Devised Estates*, 6 W. R. 718.

Where the proceeds of leaseholds, part of a settled estate, were paid into court, the trustee of the estate entered into a contract for effecting permanent repairs on a copyhold house, which formed the remainder of the estate, on a petition being presented by him and the tenant for life, the court ordered the price of the repairs to be paid to him, and did not require service of the petition on the remaindermen: *In re Aldred's Estate*, 21 Ch. D. 228, 51 L. J. Ch. 942, 46 L. T. N. S. 379, 30 W. R. 777.

(1) See note (4), *ante*, p. 935.

(2) The procuring and fitting up of houses for the temporary accommodation of the patients of an hospital, whose original buildings have been taken by a railway company under this Act, is a proper reinvestment within sections 69 and 80, and the company is bound to pay the costs: *In re St. Thomas's Hospital*, 11 W. R. 1018.

An application of a fund, the proceeds of houses taken by a railway company in pulling down dilapidated houses and building on the sites large artizans' dwellings, was sanctioned as beneficial to the estate and as a proper investment of the money: *Matthews* v. *Wilson*, W. N. (1883) p. 111.

(3) Trustees of a settlement or will, with a power of sale, are persons "becoming absolutely entitled" under this section, and the fund may be paid out to them, to be held on the trusts of the settlement: *In re Hobson's Trusts*, 7 Ch. D. 708, 47 L. J. Ch. 310, 38 L. T. N. S. 365, 26 W. R. 470. See also *In re Gooch's Estate*, 3 Ch. D. 742; *In re East*, 2 W. R. 111; *In re Thomas's Settlement*, 45 L. T. N. S. 746, 30 W. R. 244. In such a case service of the petition on any of the *cestui que trusts* is not required (*ib.*); and it makes no difference whether the time for exercising the power of sale has arrived or not: *In re Evans' Settlement*, 14 Ch. D. 511, 43 L. T. N. S. 172; *In re Vestry of St. Luke's, Middlesex*, W. N. (1880), 58. Compare *In re Morgan's Estates*, L. R. 9 Eq. 587.

But it would seem that trustees for sale, whose *cestui que trusts* are under disability (as infancy), are not "absolutely entitled:" *In re Reaston's Estate*, L. R. 13 Eq. 564, 26 L. T. N. S. 148, 20 W. R. 355.

So in *In re Horwood's Estate*, 3 Giff. 218, the Court declined to order the fund to be paid to the trustees. See also *In re Sowry*, L. R. 8 Ch. 736, 21 W. R. 717. But where the

Section 69. trustees had power to give receipts for the fund, the fund was directed to be paid out to them: *In re Illman's Will*, 22 L. T. N. S. 836, 18 W. R. 962.

So, where trustees had a power of advancement, a part of the fund was ordered to be paid out to them for the advancement of an infant child, one of the *cestui que trusts*, and the company was ordered to pay the costs under section 80: *In re Curwen's Settlement*, W. N. (1880), p. 83.

Where the fund is the price of charity land it may be paid to the trustees of the charity, as persons absolutely entitled: *In re Spurstowe's Charity*, L. R. 18 Eq. 279, 43 L. J. Ch. 512, 30 L. T. N. S. 355, 22 W. R. 566; *Ex parte The Trustees of Tid St Giles' Charity*, 17 W. R. 758. But see *In re Faversham Charities*, 5 L. T. N. S. 787, 10 W. R. 291. And on the petition of the trustees of charity lands taken, an order may be made for the payment of the interest to the secretary, and to his successors, the secretaries for the time being, of the trustee of the charity, of which there was no treasurer: *In re Codrington's Charity*, L. R. 18 Eq. 658; and in *Ex parte The Governors of the Charity for Relief of Widows and Children of Norfolk Clergy*, W. N. (1882), p. 53, Fry, J., declining to follow *In re Spurstowe's Charity* (*supra*), ordered the funds to be invested in consols and the dividends to be paid to the treasurer for the time being. On a petition presented by trustees of a charity for the re-investment in land of a fund in Court, the proceeds of land belonging to the charity, the consent of the Charity Commissioners is not required: *In re William of Kyngeston's Charity*, 30 W. R. 78; *In re Lister's Hospital*, 6 De G. M. & G. 184. But see *In re Faversham Charities*, *supra*.

The proceeds of the sale of a settled estate will not be paid out to the tenant in tail under the settlement, unless he has executed a disentailing deed: *In re Butler's Will*, L. R. 16 Eq. 479; *In re Broadwood's Settled Estates*, 1 Ch. D. 438, 45 L. J. Ch. 168, 24 W. R. 108; *In re Reynolds*, 3 Ch. D. 61, 35 L. T. N. S. 293, 24 W. R. 991, C. A.

Where the fund belongs to a married woman, the Court will pay it out to her, without deed acknowledged, but simply upon her examination: *In re Hayes*, 9 W. R. 769; *In re Clarke's Estate*, 13 W. R. 401, 11 Jur. N. S. 7. See also *Standering* v. *Hall*, 11 Ch. D. 652, 48 L. J. Ch. 382, 27 W. R. 749. As to the case of a woman married since the commencement of the Married Women's Property Act, 1882, see *Riddell* v. *Errington*, L. R. 26 Ch. D. 220, 50 L. T. N. S. 584, 32 W. R. 680, where in a petition under the Settled Estates Act, 1877, it was held that an examination is not now necessary.

A dowress has been held entitled to have the value of her right of dower paid to her out of the fund in Court: *In re Hall's Estate*, L. R. 9 Eq. 179, 39 L. J. Ch. 392.

So mortgagees in possession have been held entitled not only to the fund representing the value of the mortgaged premises, but also to the fund representing the loss of profits of the business: *Ex parte Lambton*, 3 Ch. D. 36, 45 L. J. Ch. 841, 35 L. T. N. S. 18, 24 W. R. 1003.

So a person having a right of purchase at a fixed price under a will, is entitled to the fund in Court on paying that price: *In re Cant's Estate*, 4 De G. & J. 503.

And a person who had been in adverse possession of land for nineteen and a half years, was held to be absolutely entitled to the purchase-money thereof, though when the land was taken he had not got a complete title by reason of twenty years' adverse possession: *Ex parte Winder*, 6 Ch. D. 696, 46 L. J. Ch. 572, 25 W. R. 768. See also *Ex parte Chamberlain*, 14 Ch. D. 323, 49 L. J. Ch. 354, 42 L. T. N. S. 358, 28 W. R. 565.

The purchase-money paid into Court under this section for land of which an infant is absolutely seised in fee, remains impressed with the character of real estate, and on the death of the infant descends to his heir-at-law: *Kelland* v. *Fulford*, 6 Ch. D. 491, 47 L. J. Ch. 94, 25 W. R. 506.

"Till the person becomes entitled to the money to his or her own use there is a constructive reconversion, which he or she on becoming so entitled can always stop, but until that event happens the money is to be laid out in lands or buildings, to stand limited to the same uses as the lands sold stood limited, and, therefore, must be considered as land:" *Per* Jessel, M. R. (*ib.*), 6 Ch. D. 495. See also, *In re Barker*, L. R. 17 Ch. D. 241, 50 L. J. Ch. 334, 44 L. T. N. S. 33, 29 W. R. 873; *In re Tugwell*, L. R. 27 Ch. D. 309, 53 L. J. Ch. 1006, 51 L. T. N. S. 83, 33 W. R. 132, where it was held (dissenting from *Ex parte Flamank*, 1 Sim. N. S. 260) that there was no conversion of the land into personalty.

Section 70.

Order for application and investment meanwhile.

70. Such money may be so applied as aforesaid (1) upon an order of the Court of Chancery in England or the Court of Exchequer in Ireland, made on the petition (2) of the party who would have been entitled to the rents and profits of

By Order LV. rule 2, sub-section 2, applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter, where the cash does not exceed £1000, are to be made in Chambers. And in accordance with this, it has been decided that an application for payment out of a sum not exceeding £1000, deposited under section 85 of this Act, should be made by summons in Chambers, and not by petition: *Ex parte Bala and Festiniog Ry. Co.*, 25 Ch. D. 168, 53 L. J. Ch. 127, 49 L. T. N. S. 777, 32 W. R. 181.

The summons by the company should be sealed with the company's seal, as on petition (*ib*); and an application for payment out of a sum not exceeding £1000 to a person absolutely entitled should be by summons: *In re Calton's Will*, 53 L. J. Ch. 329, 25 Ch. D. 240, 49 L. T. N. S. 566, 32 W. R. 167; *In re Brandram*, 25 Ch. D. 366, 53 L. J. Ch. 331, 49 L. T. N. S. 558, 32 W. R. 180; *In re Madgwick*, 25 Ch. D. 371, 53 L. J. Ch. 333, 49 L. T. N. S. 560.

(1) Money paid into Court under this Act, or any Act incorporating this Act, and liable to be laid out in the purchase of land to be made subject to a settlement, may be invested as capital money arising under the Settled Land Act, 1882 (45 & 46 Vict. c. 38, s. 32). See also *In re Byron's Charity*, L. R. 23 Ch. D. 171, 53 L. J. Ch. 152, 48 L. T. N. S. 515, 31 W. R. 517, where it was held that the purchase money of land belonging absolutely to a charity could be dealt with under section 32 of the Settled Land Act, 1882.

Money paid into Court under this Act, and under the Settled Estates Act, is "cash under the control of the Court," within the meaning of section 10 of the Law of Property Act, 1860 (23 & 24 Vict. c. 38), and the General Order of 1st February, 1861, and may be invested accordingly: *Ex parte St. John's College, Oxford*, 22 Ch. D. 93, 52 L. J. Ch. 268, 48 L. T. N. S. 331, 31 W. R. 55 (overruling *In re Boyd's Settled Estates*, 42 L. J. Ch. 506, 28 L. T. N. S. 799, 21 W. R. 667; *Ex parte The Rector of Kirksmeaton*, 20 Ch. D. 203, 51 L. J. Ch. 581, 30 W. R. 539; and *Ex parte Vicar of St. Mary Wigton*, L. R. 18 Ch. D. 646, 45 L. T. N. S. 134, 29 W. R. 883).

The words "cash under the control of the Court" mean cash standing in the name of the Accountant-General in any cause or matter (*ib.*). Cash under the control of the Court may be invested in East India 3½ per cent. Stock, created since the General Order (*ib.*), and in East India 4 per cent. Stock: *In re Fryer's Settlement*, L. R. 20 Eq. 468, 45 L. J. Ch. 96; *In re Foy's Trusts*, 33 L. T. N. S. 161, 23 W. R. 744; *In re Southwold Railway Company's Bill*, 1 Ch. D. 697 (not following *Ex parte Great Northern Ry. Co.*, L. R. 9 Eq. 274). See also *In re Taddy's Settled Estates*, L. R. 16 Eq. 532; and in guaranteed 5 per cent. Stock of the Great Indian Peninsular Ry. Co.: *In re Buckingham*, 2 Ch. D. 690; and in Debenture Stock of the London and North Western Ry. Co.: *In re Byron's Charity*, L. R. 23 Ch. D. 171, 53 L. J. Ch. 152; but not in Indian Railway Stock: *In re Dowling's Trusts*, 45 L. J. Ch. 568, 24 W. R. 729.

(2) The tenant for life is the proper person to present the petition and a remainderman, even though the plaintiff in an administration suit cannot petition alone under this section: *Nash* v. *Nash*, 37 L. J. Ch. 927, 16 W. R. 1105.

On a petition by a tenant for life for interim investment, it is not necessary to serve persons having charges on the inheritance prior to the life estate; and the costs of such parties, if served, will not be allowed as against the company: *In re Morris' Settled Estates*, L. R. 20 Eq. 470, 23 W. R. 851. Nor remaindermen: *In re Dowling's Trusts*, 45 L. J. Ch 568, 24 W. R. 729; *Ex parte Staples, In re Browne*, 1 De G. M. & G, 294, 6 Rail. Cas. 733; but if the property has been let on lease, it is proper to serve the remainderman and make him a respondent to the petition: *In re Crane's Estate*, L. R. 7 Eq. 322; *In re Mette's Estate*, L. R. 7 Eq. 72; and if the petition is for the reinvestment of the fund in any other kind of investment than lands (such as permanent improvements), the remaindermen ought to be served: *In re Leigh's Estate, ante*, p. 937. But see *In re Aldred's Estate, ante*, p. 937. Where the tenant for life is in possession, mortgagees need not be served: *In re Hungerford's Trust*, 3 K. & J. 455.

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the lands (1) in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said Accountant-General in the purchase of three *per centum* consolidated or three *per centum* reduced bank annuities, or in government (2) or real (3) securities, and the interest, dividends, and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands (1).

Sums from £20 to £200 to be deposited or paid to trustees.

71. If such purchase-money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees, to be nominated by the parties entitled to

Where there are two funds, the proceeds of the same settled estate, taken by different companies, and when the funds have been dealt with by different branches of the Court, if it is desired to invest both funds together, one petition only should be presented: *In re Gore Langton's Estates*, L. R. 10 Ch. 328, 44 L. J. Ch. 405, 32 L. T. N. S.785, 23 W. R. 842; and in such case leave will be given to present one petition in both matters, without transferring either: *In re Lord Arden's Estates*, L. R. 10 Ch. 445, 24 W. R. 190.

The affidavit of no title in any other person required by the Consolidated Orders XXXIV. r. 3, in support of petitions for interim investment, was, in the case of a petition by a large public corporation, under section 70 of this Act, dispensed with, Jessel, M. R., observing that the rule was not intended to apply to large public bodies, such as the present petitioners: *In re The President, &c., of Magdalen College, Oxford*, 42 L. T. N. S. 822.

By Order LV. r. 2, sub-s. 7, R. S. C. (1883), applications for interim and permanent investment, and for payment of dividends of a fund in Court under this Act, are now to be made in Chambers. Although the Lands Clauses Act provides that such applications are to be made by petition, yet this rule is not *ultra vires*, and such application must, as provided by the Order, be now made by summons and not by petition: *Ex parte Mayor of London*, 25 Ch. D. 384, 53 L. J. Ch. 6, 49 L. T. N. S. 437, 32 W. R. 87. If made by petition, the costs of a summons only will be allowed (*ib.*).

(1) When the company are in possession of the land, the dividends of the fund will be paid to the tenant for life before conveyance: *In re Hungerford's Trusts*, 1 K. & J. 413; *Ex parte Cofield*, 11 Jur. 1071. A rector having the freehold of a churchyard and the right to burial fees, is the person entitled, under this section, to the receipt of the rents and profits and the dividends of the fund, the proceeds of the sale of a closed churchyard will be paid to the rector for the time being: *Ex parte Rector of Liverpool*, L. R. 11 Eq. 15, 40 L. J. Ch. 65, 23 L. T. N. S. 354, 19 W. R. 47; *Ex parte Rector of St. Martin's, Birmingham*, L. R. 11 Eq. 23, 19 W. R. 95, 40 L. J. Ch. 69, 23 L. T. N. S. 575. See also *Ex parte Churchwardens and Overseers of Bicester*, 5 Rail. Cas. 702; *In re Brent's Trusts*, 8 W. R. 270; *In re How's Trust*, 15 Jur. 266.

The Court will not examine into the title of the person claiming as tenant in possession, but will order payment of the income to the person so claiming: *In re Perry's Estate*, 1 Jur. N. S. 917. See also *In re Pedley's Estate*, 1 Jur. N. S. 654. And the dividends may be paid to one of several trustees: *In re Coulson's Settlement*, 17 L. T. N. S. 27.

(2) See note (1), *ante*, p. 939.

(3) The Court will sanction an interim investment in a mortgage of a freehold estate if on inquiry the security is sufficient: *In re Smith's Estate*, L. R. 9 Eq. 178, 18 W. R. 369; but not if the Master has reported against it: *Ex parte Franklyn*, 1 De G. & S. 528; *Reading* v. *Hamilton*, 5 L. T. N. S. 628; and such investment will not be treated as a permanent investment for the purpose of costs under section 80: *In re Blyth's Trusts*, L. R. 16 Eq. 468, 28 L. T. N. S. 890, 21 W. R. 819; *In re Sewart's Estate*, L. R. 18 Eq. 278, 30 L. T. N. S. 355 (not following *Re Lomax*, 34 Beav. 294; *In re Flemon's Trusts*, 1 L. R. 10 Eq. 612; *Re Wilkinson's Estate*, 37 L. J. Ch. 384, 18 L. T. N. S. 17, 16 W. R. 537).

the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose (1).

Sums not exceeding £20 to be paid to parties.

72. If such money shall not exceed the sum of twenty pounds (2), the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture, infancy, idiotcy, lunacy, or other incapacity of any such parties, then such money shall be paid for their use, to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

73. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement (3) with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party (4) not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing (5) the passing of the Bill authorising the taking of

(1) On a petition for the investment of £50 in land adjoining the settled estate, the court refused to dispense with the usual order of reference as to title: *In re Blomfield*, 25 W. R. 37.

(2) Where it was probable that after payment of a sum out of court the balance would be less than £20, the court ordered the balance if less than £20, to be paid to the tenant for life: *Re Lord Egremont*, 12 Jur. 618. So a balance, after investment, of £30 was paid to the tenant for life, he undertaking to spend it in permanent improvements: *Ex parte Barrett*, 15 Jur. 3; but the sum of £52 was not allowed to be paid to tenant for life, though he undertook to lay it out in lasting improvements: *In re Bateman's Estate*, 21 L. J. Ch. 691. Nor the sum of £20 10*s.* to a rector for extra costs: *Ex parte Rector of Bredicot*, 17 L. J. Ch. 414, 5 Rail Cas. 209.

(3) An agreement to arise and take effect on the passing of a bill then pending in Parliament, is to be regarded as if it had been *de facto* made after the passing of the bill: *Taylor* v. *Directors, &c., of the Chichester and Midhurst Ry. Co.*, L. R. 4 H. L. 628, 39 L. J. Ex. 217, 23 L. T. N. S. 657.

An agreement by which promoters bind themselves, in the event of the bill passing, to take land for their works, and to pay for it within three months after the passing of the bill, is valid, and may be enforced after the passing of the bill: *ib; Eastern Counties Ry. Co.* v. *Hawkes*, 5 H. L. Cas. 331, 24 L. J. Ch. 601.

(4) The term "contracting party" includes a tenant for life of lands through which a railway is intended to pass, who has entered into any contract with the company; if he enters into a contract not to oppose this bill, he is a "contracting party" within this section: *Pole* v. *Pole*, 2 Dr. & Sm. 420, 11 Jur. N. S. 477.

(5) A tenant for life received a sum of money in consideration of his not opposing a bill for a railway through his property; the bill having passed and the money paid to the tenant for life, he was declared a trustee of the same for himself and the remaindermen, and ordered to pay it accordingly: *Pole* v. *Pole*, 2 Dr. & Sm. 420, 11 Jur. N. S. 477.

A tenant for life opposed the passing of a canal bill, but only obtained the insertion of some clauses for the protection of the estate, the Act having passed and lands of the

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such lands; but all such monies shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy (1). Provided always, that it shall be in the discretion of the Court of Chancery in England or the Court of Exchequer in Ireland, or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works (2).

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

74. Where any purchase money or compensation paid into the bank under the provisions of this or the special Act shall have been paid in respect of any lease (3) for a life or lives or years (4), or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, on the petition of any party interested (5) in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested (5) in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be (6).

tenant for life having been taken taken under it, it was held that the tenant for life was entitled to costs incurred by him in relation to the purchase since the passing of the Act, but not to any costs of opposing the bill in Parliament: *In re Earl of Berkeley's Will*, L. R. 10 Ch. 56, 44 L. J. Ch. 3, 23 W. R. 195, 31 L. T. N. S. 531.

See also, *Eastern Counties Ry. Co.* v. *Hawkes*, 5 H. L. C. 331, 24 L. J. Ch. 601; *Taylor* v. *Directors, &c., of the Chichester and Midhurst Ry. Co.*, *ante*, p. 941, and the cases therein referred to.

(1) The tenant for life is perfectly competent to contract with a company under this section. The section applies as between him and the reversioner or remainderman. The money when paid to him becomes affected by a trust, he being the trustee and the other persons being his *cestuis que trust*: *Taylor* v. *Directors, &c., of the Chichester and Midhurst Ry. Co.*, *ante*, p. 941.

(2) See *Ex parte Rector of Little Steeping*, 5 Rail. Cas. 207; *Ex parte Archbishop of Canterbury*, 2 De G. & S. 365; *In re Duke of Marlborough's Estates*, 13 Jur. 738; *Ex parte Dean of Gloucester*, 19 L. J. Ch. 400; *Ex parte Lockwood*, 14 Beav. 158; *In re Strathmore Estates*, 18 Eq. 338; *Ex parte Curate of Whitworth*, 24 L. T. N. S. 126; *In re Aubrey's Estate*, 17 Jur. 874, 1 W. R. 464.

(3) By section 3, the word "lease" includes an "agreement for a lease."

(4) A tenancy to continue so long as the tenant wished and so long as he paid the rent, when due, but so as not to be longer than the landlord's term, was held to be a leasehold interest within this section: *In re King's Leasehold Estates*, L. R. 16 Eq. 521, 29 L. T. N. S. 288, 21 W. R. 881.

(5) A remainderman is a "party interested" within this section: *In re Crane's Estate*, L. R. 7 Eq. 322.

The interest to be determined is the interest which, at the moment the premises were taken, the claimant would have had if they had not been taken: *Penny* v. *Penny*, L. R. 5 Eq. 227, 37 L. J. Ch. 340, 18 L. T. N. S. 13, 16 W. R. 671. An interest in property created after service of a notice to treat is not a subject of compensation: *Ex parte Edwards*, L. R. 12 Eq. 389, 40 L. J. Ch. 697, 25 L. T. N. S. 149, 19 W. R. 1047. A yearly tenant, holding over after notice to quit, is not "interested" in the property and can claim no compensation: *Ex parte Nadin*, 17 L. J. Ch. 421; and quarterly tenants, after notice to quit from the company, have no interest: *Syers* v. *Metropolitan Board of Works*, 36 L. T. N. S. 277.

(6) Lessors and lessees should deal separately with the company, as the court will not apportion the money between them: *Ex parte Ward*, 2 De G. & S. 4. In this case, by

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Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the undertaking upon a deed poll being executed.

75. Upon deposit in the bank in manner hereinbefore provided of the purchase money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking, under the provisions of this or the special Act or any Act incorporated therewith, the owner of such lands, including in such term all parties by this Act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking, duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title [1] to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute

c nsent, the entire dividends were paid to the lessee till the expiration of the term, he paying the amount of reserved rent to the lessor.

Leaseholds subject to an annuity being taken, and the fund being insufficient to keep down the annuity, part of the *corpus* of the fund was ordered to be sold from time to time to satisfy the growing payments: *Jeffreys* v. *Conner*, 28 Beav. 328; *Ex parte Wilkinson*, 3 De G. & S. 633; *In re Long's Estate*, 1 W. R. 226. See also, *In re Pfleger*, L. R. 6 Eq. 426; *In re Phillips' Trusts*, L. R. 6 Eq. 250, where a reference was directed to an actuary to ascertain how much of the capital ought to be paid in each year to the tenant for life. Where the value of the leasehold taken was £21 a year, the court ordered the payment of £18 a year to the tenant for life, the fund not being sufficient to pay the whole: *In re Birch*, 10 Jur. N. S. 673.

Where the dividends of the fund have exceeded the rent reserved during the lease, the tenant for life is only entitled to the amount of the rent for the remainder of the term, the surplus income during that time to be accumulated: *In re Mette's Estate*, L. R. 7 Eq. 72, 38 L. J. Ch. 445; *In re Wootton's Estate*, L. R. 1 Eq. 589, 35 L. J. Ch. 305, 14 L. T. N. S. 125, 14 W. R. 469. See also, *Ex parte Dean of Christchurch*, 23 L. J. Ch. 149; *Ex parte Dean of Gloucester*, 19 L. J. Ch. 400, 15 Jur. 239, 15 L. T. 520; *Ex parte Archbishop of Canterbury*, 2 De G. & S. 365, 23 L. T. 219; *In re Wilkes' Estate*, 16 Ch. D. 597, 50 L. J. Ch. 199.

A tenant for life was possessed of leaseholds which had eight years to run; these were taken by a company and the fund paid into court and invested; the purchase money was sufficient to provide an annuity for eight years of much larger amount than the net annual proceeds of the leaseholds, it was held by the Court of Appeal that the tenant for life was entitled to receive an annuity of such an amount that the payment of it would exhaust the fund in eight years; *Askew* v. *Woodhead*, 14 Ch. D. 27, 49 L. J. Ch. 320, 42 L. T. N. S. 567, 28 W. R. 874, 44 J. P. 570. See also, *Re Treacher's Settlement*, 18 L. T. N. S. 810; *Littlewood* v. *Pattison*, 10 Jur. N. S. 875.

Where the property consists of renewable leaseholds, and the proceeds when invested give a diminished income, the tenant for life is not generally entitled to be recouped the deficiency of income out of the *corpus* of the fund: *In re Wood's Estate*, L. R. 10 Eq. 572, 40 L. J. Ch. 59, 23 L. T. N. S. 430, 19 W. R. 59; and in *Maddy* v. *Hale*, L. R. 3 Ch. D. 327, 45 L. J. Ch. 791, 35 L. T. N. S. 134, it was held in a somewhat similar case that the leasehold interest ought to be sold and the proceeds invested, and only the income of this fund and of the renewal fund applied as income.

See also, *Hollier* v. *Burne*, L. R. 16 Eq. 163, 28 L. T. N. S. 531, 21 W. R. 805; see further, as to the apportionment of income of the funds arising from the investment of the proceeds of leaseholds: *In re Money's Trusts*, 2 Dr. & S. 94; *Re Beaufoy*, 1 Sm. & G. 20, 16 Jur. 1084; *Ex parte Bishop of Winchester*, 10 Hare, 137, 16 Jur. 649; *Ex parte Precentor of St. Paul's*, 1 K. & J. 538, 1 Jur. N. S. 444; *Penny* v. *Penny*, *ante*, p. 942; *Ex parte Dean, &c., of Westminster*, 18 Jur. 1113.

[1] See *Doe d. Hutchinson* v. *Manchester, &c., Ry. Co.*, 15 L. J. Ex. 208, 14 M. & W. 687; S. C. *nom. Hutchinson* v. *East Lancashire Ry. Co.*, 3 Rail. Cas. 748. The court has no power to order payment of the costs of deducing the title and of the conveyance of lands to a company: *Ex parte Marquis of Bath*, 4 Rail. Cas. 567.

Where the title has not been accepted before the award, and the company, not being in possession, delay paying or depositing the purchase money, they are liable to pay in-

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a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty (1) which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase money or compensation shall have been determined by a jury, or by arbitrators, or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

Where parties refuse to convey, or do not show title, or cannot be found, the purchase money to be deposited.

76. If the owner (2) of any lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail (3) to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the Kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase money or compensation payable in respect of such lands, or any interest

terest at 4 per cent. per annum, not from the date of the award, but from the time they might prudently have taken possession; that is, when a good title was shown: *In re Pigott and the Great Western Ry. Co.*, 18 Ch. D. 146, 50 L. J. 679, 44 L. T. N. S. 792, 29 W. R. 727 (disapproving of *In re Eccleshill Local Board*, 13 Ch. D. 365, 49 L. J. Ch. 214, 28 W. R. 531). See also, *Regent's Canal Co.* v. *Ware*, 23 Beav. 575, 26 L. J. Ch. 566, 5 W. R. 617.

(1) See *Ex parte Birkbeck Freehold Land Society*, 24 Ch. D. 119, 52 L. J. Ch. 777, 49 L. T. N. S. 265.

(2) The plaintiffs contracted to sell land to the defendants, but failed to make any title to a small portion thereof. Thereupon the defendants paid the purchase money of the whole land into court under this section, and executed a deed poll under section 77, purporting to vest the whole of the land in themselves, it was held that the plaintiffs were not "owners" of the strip of land within the meaning of sections 76 and 77, and that under the circumstances the defendants could not acquire the land under those sections: *Wells* v. *Chelmsford Local Board of Health*, 15 Ch. D. 108, 49 L. J. Ch. 827, 43 L. T. N. S. 378, 45 J. P. 6.

"Owner" here means a person having *some* title; a surviving partner, selling partnership lands, in discharge of his duty as survivor, to wind up the partnership, is an "owner" within this section: *Douglass* v. *London & North Western Ry. Co.*, 3 Jur. N. S. 181, 3 K. & J. 173. A person in possession, but showing a bad title, is not the "owner," and where lands are in such possession, and the true owner cannot be found, the promoters must have recourse to the jury clauses of the Act: *ib.* See *Ex parte Winder*, 6 Ch. D. 696, 46 L. J. Ch. 572, 25 W. R. 768. See also, where the Crown sets up an adverse claim as owner of the land when the purchase money has been paid into court under this section: *In re Manor of Lowestoft; Ex parte Reeve*, L. R. 24 Ch. D. 253, 52 L. J. Ch. 912, 49 L. T. N. S. 523, 32 W. R. 309.

(3) Where the owner fails to deliver a statement of title within the time prescribed by the statutory notices published, he must bear his own costs of drawing the money out of court: *Ex parte Dowling*, 7 L. R. Ir. 173. See also, *Cooper* v. *Metropolitan Board*, 53 L. J. Ch. 109, 50 L. T. N. S. 602, 32 W. R. 709.

therein, in the bank (1), in the name and with the privity of the Accountant-General (2) of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

Upon deposit being made a receipt to be given, and the lands to vest upon a deed poll being executed.

77. Upon any such deposit of money as last aforesaid being made the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of monies so deposited.

78. Upon the application by petition (3) of any party making claim (4) to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery in England or the Court of Exchequer in Ireland, may, in a summary way, as to such court shall

(1) As to where payment into the bank does not justify a company in taking possession of the land, see *Newton* v. *Metropolitan Ry. Co.*, 5 L. T. N. S. 542, 8 Jur. N. S. 738. A company had paid into court the sum assessed by a jury and executed a deed-poll under section 77, held that the court had no jurisdiction to order payment of interest on the purchase money: *In re Crystal Palace Ry. Co.*, 1 Jur. N. S. 995.

(2) Now Paymaster-General. See note (6) to section 69, *ante*, p. 934.

(3) See end of note (3) to section 69, *ante*, p. 939, and note (2) to section 70, *ante*, p. 939.

(4) Where after a decree for specific performance against a company, ordering payment of the sum awarded, the company paid the money into court, alleging that the plaintiff had not made out a good title to the lands, on a petition under this section the money was ordered to be paid out to him: *Galliers* v. *Metropolitan Ry. Co.*, L. R. 11 Eq. 410, 40 L. J. Ch. 544, 19 W. R. 795. A mortgagee, or the transferee of a mortgage, can, under this section, obtain payment of money in court: *Re Marriage*, 9 W. R. 843; but a mortgagee can recover under this section only six years arrears of interest: *In re Stead's Mortgaged Estates*, 2 Ch. D. 713, 45 L. J. Ch. 634, 35 L. T. N. S. 465, 24 W. R. 698. So a dowress is entitled to payment out of court of her share of the fund: *In re Hall's Estate*, L. R. 9 Eq. 179, 39 L. J. Ch. 392.

Where money has been paid into court under section 76, the court is bound to decide the question of right; and if it turns out that the claimant has not the interest he claimed, but some different interest, the court will apply its own machinery to ascertain the value of his actual interest, and after paying the amount of such interest to the claimant, will return the surplus to the company: *Brandon* v. *Brandon*, 2 Dr. & S. 305, 11 Jur. N. S. 30, 34 L. J. Ch. 333, 13 W. R. 251, 11 L. T. N. S. 658. In such a case the court has no jurisdiction to order the whole of the money to be returned to the company, leaving them to proceed afresh to determine the actual interest: *In re North London Ry. Co.*, 2 Dr. & S. 312, 11 Jur. N. S. 103, 34 L. J. Ch. 373, 13 W. R. 364, 11 L. T. N. S. 661. See also, *Ex parte Issauchaud*, 3 Y. & C. 721; and *Ex parte Grainge*, 3 Y. & C. 62.

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seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles, or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit (1).

Party in possession to be deemed the owner.

79 (2). If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession (3) of such lands, as being the owners thereof (3), or in receipt of the rents (4) of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them, or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases of money deposited.

80 (5). In all cases of moneys deposited in the bank under the provisions of this or the special Act, or an Act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal (6) of any

(1) The purchase money of land belonging to a person who was in a state of mental imbecility, but was not the subject of a commission in lunacy, was ordered, after his death, not to be re-invested in or considered as land, but to be paid to his executors: *Ex parte Flamank*, 1 Sim. N. S. 260; *In re Lowry's Will*, L. R. 15 Eq. 76; but see, *In re Tugwell*, cited in note (3), *ante*, p. 938, where it was held that there was no conversion of the land into money.

(2) This section applies only to the jurisdiction of equity in ordering money to be paid out, and not to that of a court of law in determining the rights of the parties in an issue: *Ex parte The Freemen, &c., of Sunderland*, 1 Drew. 184.

(3) A person showing title by adverse possession for twenty-six years after the expiration of a lease, will, in the absence of any claim by, or evidence of the existence of, the reversioner, be deemed to be the "owner" of the land and entitled to the purchase money: *Ex parte Chamberlain*, 14 Ch. D. 323, 49 L. J. Ch. 354, 42 L. T. N. S. 358, 28 W. R. 565. So a possessory title of nineteen and a half years was held sufficient: *Ex parte Winder*, 6 Ch. D. 696, 46 L. J. Ch. 572, 25 W. R. 768. But in *Ex parte Hollinsworth*, 19 W. R. 580, 24 L. T. N. S. 347, the same possessory title was held insufficient. See also, *Re Evans*, 42 L. J. Ch. 357; *Ex parte Webster*, W. N. (1866) p. 246. On a petition of the person claiming as tenant in possession, it is not the duty of the court to examine into his title: *In re Perry's Estate*, 1 Jur. N. S. 917; S. C. *nom. Re Sterry's Estate*, 3 W. R. 561; but the company ought to state to the court the difficulties which come to its knowledge (*ib.*).

(4) Trustees, who had received the fees for burials in a closed churchyard, were held entitled to the rents of the burial grounds within this section: *In re St. Pancras Burial Ground*, L. R. 3 Eq. 173, 36 L. J. Ch. 52

(5) This section applies whenever moneys are deposited in court under the Act, whether under the earlier or later sections: *Ex parte Flower*, L. R. 1 Ch. 599, 12 Jur. N. S. 872, 15 L. T. N. S. 258; 14 W. R. 1016, but it only authorises the court to make an order on the company to pay costs, and not an order to pay them out of any particular fund. *Per* Mellish, L.J., *In re Neath and Brecon Ry. Co.*, L. R. 9 Ch. 263, 43 L. J. Ch. 277, 30 L. T. N. S. 3, 22 W. R. 242.

In dealing with the question of costs under this Act where lands have been compulsorily taken, the sympathies of the court will be in favour of those persons whose lands are taken: *Re Long's Trust*, 10 Jur. N. S. 417, 10 L. T. N. S. 21, 12 W. R. 460; and if there be any doubt, the purchaser, in case of a re-investment in land, ought to have the benefit of it: *In re Jones's Settled Estates*, 4 Jur. N. S. 581, 6 W. R. 614, on appeal, *ib.*, 887.

(6) A wilful refusal by the owner to receive the purchase money unless his costs are paid before giving up possession, disentitles the owner to costs of a petition for payment out of Court: *Re Turner's Estate*, 5 L. T. N. S. 524, 10 W. R. 128; *In re Windsor, &c.*,

party entitled thereto to receive the same, or to convey (1) or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required (2), it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking; (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in Government or real securities, and of the reinvestment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividends and interest of the securities upon which such monies shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: Provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery in England or the Court of Exchequer in Ireland that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking (3). Secs. 80, 81.

And with respect to the conveyances of lands, be it enacted as follows:

81. Conveyances of lands to be purchased under the provisions of this or the special Act, or any Act incorporated therewith, may be according to the forms in the schedules (A.) and (B.) respectively to this Act annexed, or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms (4) of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have **Form of conveyances.**

Ry. Act, 12 Beav. 522. There is not a wilful refusal when the owner refuses to receive the amount found due on an award, which the petitioner stated by affidavit he conscientiously believed to be invalid: *Ex parte Bradshaw*, 5 Rail. Cas. 432, 16 Sim. 174, 12 Jur. 888; nor where a vendor is unable to convey a clear title by reason of his not having paid off incumbrances of a larger amount than the land proposed to be taken: *In re Crystal Palace Ry. Co.*, 1 Jur. N. S. 995; nor where the landowner was advised that the notice had not been properly served on him: *Ex parte Railstone*, 15 Jur. 1028; nor where he has been advised that the company could not take his land: *Ex parte Dashwood*, 3 Jur. N. S. 103; nor where the refusal arose in consequence of the owner having brought an unsuccessful, but not frivolous, action to set aside the award: *Ex parte Lawson*, 17 W. R. 186.

(1) Where adverse claims are set up and the money paid into court and one of the claimants withdraws, the company must pay the costs: *Re Duke of Norfolk's Estates*, 22 W. R. 817. See *Haynes* v. *Barton*, 9 W. R. 777, 1 Dr. & S. 483.

(2) Neglect to deliver a statement of title within the time prescribed by the statutory notices published is within these words: *Ex parte Dowling*, 7 L. R. Ir. 173. See *Re Woodburn's Trust*, 13 L. T. N. S. 237.

(3) As to costs under this section generally, see further Daniell's Chancery Practice, 6th ed., pp. 2156—2166; Seton, pp. 1442—1450; Morgan's Chancery Orders, 5th ed., pp. 48—56.

(4) See the Satisfied Terms Act, 8 & 9 Vict. c. 112.

Secs. 81–84. been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

Costs of conveyances.

82. The costs of all such conveyances (1) shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title (2).

Taxation of costs of conveyances.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree (3) as to the amount thereof, such costs shall be taxed (4) by one of the taxing masters of the Court of Chancery or by a master in chancery in Ireland, upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one-sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of price to be

84 (5). The promoters of the undertaking shall not, except by consent of the

(1) The costs incurred in the preparation of a conveyance which was not used are payable by the company: *In re Crystal Palace Ry. Co.*, 1 Jur. N. S. 995.

(2) Where a company required letters of administration to be taken out of the testator's estate for the purpose of conveyance, they are bound to pay the costs of doing so: *In re Liverpool Improvement Act*, L. R. 5 Eq. 282, 37 L. J. Ch. 376, 16 W. R. 667 (overruling *In re South Wales Ry. Co.*, 14 Beav. 418, 15 Jur. 1145, 20 L. J. Ch. 534); but not the costs of apportioning ground rents between houses taken and houses not taken: *Ex parte Buck*, 1 H. & M. 519, 33 L. J. Ch. 79, 9 L. T. N. S. 374, 9 Jur. N. S. 1172; *Ex parte Flower*, L. R. 1 Ch. 599, 12 Jur. N. S. 872, 15 L. T. N. S. 258, 14 W. R. 1016. See also, *In re Spooner's Estate*, 1 K. & J. 220.

Nor the costs incident to an agreement which was collateral to the conveyance and formed no part thereof: *In re Lietch and Kewney*, 16 L. T. N. S. 729, 15 W. R. 1055.

As to neglect on the part of the vendor to make out a good title, see *Re Woodburn's Trust*, 13 L. T. N. S. 237.

Where an owner in fee contracts to sell to a company, the company is not bound to pay the costs of discharging a mortgage on part of the property: *Ex parte Phillips*, 32 L. J. Ch. 102, 7 L. T. N. S. 452, 11 W. R. 54; see also, *Eastern Counties Ry. Co.* v. *Tufnell*, 3 Rail. Cas. 133; *Midland Counties Ry. Co.* v. *Westcomb*, 2 Rail. Cas. 211, 11 Sim. 57, 9 L. J. Ch. 324; *Midland Counties Ry. Co.* v. *Caldecott*, 2 Rail. Cas. 394; *In re Manchester and Southport Ry Co.*, 19 Beav. 365.

(3) As to the effect of a special agreement as to costs, see *Re Rhodes*, 3 Rail. Cas. 516, 8 Beav. 224; *Lake* v. *Eastern Counties Ry. Co.*, 19 L. T. 323.

(4) A railway company cannot, under this section, tax the costs of conveyance after payment by them of the costs: *Ex parte Somerville*, 23 Ch. D. 167, 52 L. J. Ch. 438, 31 W. R. 518.

(5) This section does not apply to the case of damages consequential upon the exercise of the powers of the company upon their own land or upon the land of other persons not complaining; and so where a company in the lawful execution of its powers com-

owners (1) and occupiers, enter (2) upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special Act, until they shall either have paid to every party having any interest in such lands, or deposited in the bank, in the manner herein mentioned, the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein (3): Provided always, that for the

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made previous to entry, except to survey, &c.

menced the construction of works by which the enjoyment of an easement by a neighbouring occupier of land might be interrupted and damage sustained, a bill by such occupier to restrain by injunction the further progress of the works till the damage was ascertained and paid for was dismissed with costs: *Hutton* v. *London and South Western Ry. Co.*, 18 L. J. Ch. 345, 7 Hare, 259; see *Lister* v. *Lobley*, 7 A. & E. 124, 6 L. J. Q. B. 200.

(1) As to where tenants will be considered as owners within this section, see *Rogers* v. *Kingston-upon-Hull Dock Co.*, 34 L. J. Ch. 165, 11 L. T. N. S. 463, 13 W. R. 217, 10 Jur. N. S. 1245, 5 N. R. 26.

A company, under a misapprehension that a tenant for life was owner in fee of certain lands, entered into an agreement with his supposed agent, under this section, and took possession of the lands, on which they constructed their railway. On a bill by the remaindermen and mortgagees, the court granted an injunction to restrain the company from retaining possession of the land: *Perks* v. *Wycombe Ry. Co.*, 3 Giff. 662, 8 Jur. N. S. 1051, 7 L. T. N. S. 150, 10 W. R. 788.

(2) Where a company, acting *bonâ fide*, has made a mistake as to the lands they have valued and taken possession of, and the question between the landowner and the company is merely one of value, an injunction will not be granted to stay the works on the property taken: *Wood* v. *Charing Cross Ry. Co.*, 33 Beav. 290; *Tomlinson* v. *Manchester, &c., Ry. Co.*, 2 Rail. Cas. 104; but where the company unlawfully take possession before paying the compensation money, an action of trespass or ejectment may be maintained against them: *Ramsden* v. *Manchester, &c., Ry. Co.*, 1 Exch. 723, 5 Rail. Cas. 552, 12 Jur. 293; *Stretton* v. *Great Western and Brentford Ry. Co.*, L. R. 5 Ch. 751, 40 L. J. Ch. 50, 23 L. T. N. S. 379, 18 W. R. 1078; *Doe d. Hutchinson* v. *Manchester, &c., Ry. Co.*, 14 M. & W. 687, 3 Rail. Cas. 748, 15 L. J. Ex. 208; and a court of equity will grant an injunction against them: *Armstrong* v. *Waterford, &c., Ry. Co.*, 10 Ir. Eq. R. 60; but if the landowner consent to the entry by the company, he cannot afterwards treat them as trespassers: *Doe d. Hudson* v. *Leeds, &c., Ry. Co.*, 16 Q. B. 796, 20 L. J. Q. B. 486.

(3) An owner of land, of which a company has taken possession, has a lien on the land for the purchase-money and also for compensation for damage to his adjoining land, and he is not deprived of such lien by a deposit and bond under section 85: *Walker* v. *Ware, &c., Ry. Co.*, L. R. 1 Eq. 195, 35 L. J. Ch. 94, 13 L. T. N. S. 517, 12 Jur. N. S. 18; and a court of equity will enforce the lien by sale, though the railway has been made over the land and opened for public use: *ib.*; *Sedgwick* v. *Watford and Rickmansworth Ry. Co.*, 36 L. J. Ch. 379; *Wing* v. *Tottenham and Hampstead Junction Ry. Co*, L. R. 3 Ch. 740, 37 L. J. Ch. 654, 16 W. R. 1098.

So an injunction has been granted restraining the company from using the land, although the railway was made, the injunction to take effect on a certain day if the money were not paid: *Cosens* v. *Bognor Ry. Co.*, L. R. 1 Ch. 594, 36 L. J. Ch. 104; *Winchester (Bishop of)* v. *Mid-Hants, &c., Ry. Co.*, L. R. 5 Eq. 17, 37 L. J. Ch. 64, 17 L. T. N. S. 161; *Raper* v. *Crystal Palace Ry. Co.*, 18 L. T. N. S. 8; *Williams* v. *Great Eastern Ry. Co.*, 18 L. T. N. S. 458; *Griffiths* v. *Crystal Palace, &c., Ry. Co.*, 12 Jur. N. S. 560, 14 L. T. N. S. 753; *Sutton* v. *Hoylake Ry. Co.*, 20 L. T. N. S. 214; *Pell* v. *Northampton and Banbury Ry. Co.*, L. R. 2 Ch. 100. In some cases an injunction has been refused: *Munns* v. *Isle of Wight Ry. Co.*, L. R. 5 Ch. 414; *Latimer* v. *Aylesbury, &c., Ry. Co.*, 9 Ch. D. 385; *Lycett* v. *Stafford, &c., Ry. Co.*, L. R. 13 Eq. 261.

But where by agreement the company were to pay an annual rent-charge, there is no lien for unpaid arrears of this rent-charge: *Earl of Jersey* v. *Briton Ferry Floating Dock Co.*, L. R. 7 Eq. 409 see also *Att.-Gen.* v. *Sittingbourne and Sheerness Ry. Co.*, L. R. 1 Eq. 636.

Secs. 84, 85. purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil and of setting out the line of the works (1), it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

Promoters to be allowed

85 (2). Provided also, that if the promoters of the undertaking shall be desirous

(1) See *Fooks* v. *Wilts, Somerset and Weymouth Ry. Co.*, 5 Hare, 199, 4 Rail. Cas. 210.

(2) The proceedings under this section are not necessarily invalid, because the award was signed on a day subsequent to the day on which the money was paid into court and the bond given: *Stamps* v. *Birmingham, &c., Ry. Co.*, 7 Hare, 256, 6 Rail. Cas. 123, 2 Phill. 673.

Where a railway company enter upon lands under this section within the time limited by their special Act, continuance in possession after that time is not unlawful, even though compensation has not been made within the time: *Worsley* v. *South Devon Ry. Co.*, 20 L. J. Q. B. 254, 16 Q. B. 539; see *Doe d. Armistead* v. *North Staffordshire Ry. Co.*, 16 Q. B. 526, 20 L. J. Q. B. 249; see also *Loosemore* v. *Tiverton and North Devon Ry. Co.*, *infra*.

The summary powers given by this section are not confined to cases of pressure, and are not affected by the fact that the company might have ascertained the price by verdict or award: *Willey* v. *South Eastern Ry. Co.*, 6 Rail. Cas. 100, 1 Mac. & G. 59; but see *Field* v. *Carnarvon and Llanberis Ry. Co.*, L. R. 5 Eq. 190, where it was held that this section only applies where the necessity for the immediate entry is so urgent as to preclude the company from following the slower modes of procedure provided by the Act.

This section does not apply to the case of an interference with an easement: *Clark* v. *London School Board*, L. R. 9 Ch. 120, 43 L. J. Ch. 421, 29 L. T. N. S. 903, 22 W. R. 354.

But where a railway company is entitled by a special Act to acquire an easement of tunneling under land, they can enter on the land, under this section, to make the tunnel on depositing the value of the easement without depositing the value of the whole land: *Hill* v. *Midland Ry. Co.*, 21 Ch. D. 143, 51 L. J. Ch. 774, 47 L. T. N. S. 225, 30 W. R. 774.

Where a railway company entered on land under this section only thirteen days before the expiration of the time limited for the completion of the works, the House of Lords held that the entry was lawful, and that the company could not be restrained by injunction, but were entitled to remain and complete the railway after the expiration of the time limited: *Tiverton and North Devon Ry. Co.* v. *Loosemore*, 9 App. Cas. 480, 53 L. J. Ch. 812, 50 L. T. N. S. 637, 32 W. R. 929.

An entry begun wrongfully does not preclude a company continuing in possession when they have done all that was originally required to render their entry rightful: *Willey* v. *South Eastern Ry. Co.*, *supra*.

It is generally incumbent on a company seeking to avail themselves of the provisions of this section to show satisfactorily and clearly that they have performed all its conditions, and if there be any doubt, the landowner should have the benefit of it: *Barker* v. *North Staffordshire Ry. Co.*, 2 De G. & S. 55, 5 Rail. Cas. 401; but it is not inequitable for a company to enter under this section, although they have given notice to the owner of their intention to summon a jury: *Langham* v. *Great Northern Ry. Co.*, 1 De G. & S. 486, 5 Rail. Cas. 263, 16 L. J. Ch. 437.

Nor is it unlawful for a company to execute works which occasion damage to a party whose lands are not entered upon, but only injuriously affected, before the compensation for the same is ascertained, paid, or deposited: *Hutton* v. *London and South Western Ry. Co.*, 7 Hare, 259, 18 L. J. Ch. 345; see *Lister* v. *Lobley*, 7 A. & E. 124, 6 L. J. Q. B. 200.

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to enter on lands before purchase, on making deposit by way of security and giving bond.

of entering upon (1) and using (2) any such lands (3) before an agreement shall have been come to or an award made, or verdict given for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit (4) in the bank by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices in the manner hereinbefore provided (5) in the case of parties who cannot be found, be determined to be the value (6) of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond (7), under the common seal of the

(1) The interference with ancient lights is not a thing which is capable of being "entered upon." The word "entering" is inapplicable to it, and therefore this section is inapplicable to such a case: *Per* Lord Selborne, L. C., in *Clark* v. *London School Board*, *supra*.

(2) A vendor of land taken and used under this section is in the same position as an ordinary vendor, and has the same lien on the land for unpaid purchase-money and the same remedies for enforcing it: *Wing* v. *Tottenham and Hampstead Junction Ry. Co.*, L. R. 3 Ch. 740, 37 L. J. Ch. 654, 16 W. R. 1098.

But equitable mortgagees have no lien on the sum deposited in court: *Martin* v. *London, Chatham, and Dover Ry. Co.*, L. R. 1 Ch. 501, 35 L. J. Ch. 795, 12 Jur. N. S. 775.

(3) "Such lands" refer to lands mentioned in the next preceding section, namely, any lands required to be purchased or permanently used for the purposes and under the powers of this or the special Act: *Gibson* v. *Hammersmith and City Ry. Co.*, 9 Jur. N. S. at p. 222, 2 Dr. & S. 603.

(4) This deposit must include not only the value of the land, but also compensation for severance, &c.: *Field* v. *Carnarvon and Llanberis Ry. Co.*, L. R. 5 Eq. 190, 37 L. J. Ch. 176, 17 L. T. N. S. 534.

(5) See section 59, *ante*, p. 924. Now by section 36 of the Railways Companies Act, 1867 (30 & 31 Vict. c. 127), where railway companies exercise the powers contained in this section, the surveyor is to be appointed by the Board of Trade instead of by two justices, and the company is to give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor.

(6) A valuation where the surveyor did not enter the house valued is not a proper valuation within this section: *Cotter* v. *Metropolitan Ry. Co.*, 10 L. T. N. S. 777, 4 N. R. 454, 10 Jur. N. S. 1014, 12 W. R. 1021.

(7) If the bond be not executed in conformity with the requirements of the Act, an injunction will be granted till a proper bond be executed: *Poynder* v. *Great Northern Ry. Co.*, 16 Sim. 3, 2 Phill. 330, 5 Rail. Cas. 196. A condition in a bond "on demand to pay to the owner, or on demand to deposit in the bank, the purchase-money when determined," is bad, as giving the party claiming to be owner the option of compelling payment either to himself or into the bank, whatever the title might turn out: *Ib.*; see *Langham* v. *Great Northern Ry. Co.*, 1 De G. & S. 486, 5 Rail. Cas. 263, 16 L. J. Ch. 437; and so is a bond conditioned for payment "at any time hereafter:" *Cotter* v. *Metropolitan Ry. Co.*, *supra*; and so is a bond conditioned to pay the landowner, his heirs, &c., or to deposit in the bank, *or otherwise*. These words, "or otherwise," not being authorised by the Act, render the bond invalid: *Hosking* v. *Phillips*, 5 Rail. Cas. 560, 12 Jur. 1030, 3 Exch. 168, 18 L. J. Ex. 1; and a bond to pay to "the four plaintiffs (owners of the land), *or some or one* of their heirs, &c.," is bad; *Daubney* v. *Manchester, &c., Ry. Co.*, 10 L. T. 283; and so is a bond to pay "*on demand*" jointly to two tenants in common: *Langham* v. *Great Northern Ry. Co., supra*; and a payment into the joint account of the two tenants in common is irregular: *Ib.*

Compensation for minerals under sections 78 and 81 of the Railway Clauses Act, 1845, is not within the condition of the bond to be given under this section: *Ex parte Neath and Brecon Ry. Co.*, 2 Ch. D. 201, 45 L. J. Ch. 196, 24 W. R. 357.

The bond should include all the land contained in the notice: *Barker* v. *North*

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promoters if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties (1) to be approved of by two justices (2) in case the parties differ, in a penal sum equal to the sum so to be deposited (3), conditioned (4) for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation, as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest (5) thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands (5), until such purchase-money or compensation shall be paid to such party, or deposited in the bank for the benefit of the parties interested in such lands, under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act.

Upon deposit being made cashier to give receipt.

86. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the Accountant-General (6) of the Court of Chancery in England or the Court of Exchequer in Ireland, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein for what purpose and to whose credit the same shall have been paid in.

Deposit to remain as a

87. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the

Staffordshire Ry. Co., 5 Rail. Cas. 401, 2 De G. & S. 55. So if a company give notice to take a part of land, and they are required under section 92 to take the whole, the deposit and bond should include the whole: *Dodson* v. *East Kent Ry. Co.*, 7 Jur. N. S. 941; *Giles* v. *London, Chatham and Dover Ry. Co.*, 30 L. J. Ch. 603, 1 Dr. & S. 406.

(1) Two sureties are required as well when the bond is given by a corporation as by an individual: *Barker* v. *North Staffordshire Ry. Co.*, 2 De G. & S. 55, 5 Rail. Cas. 401.

(2) By section 36 of the 30 & 31 Vict. c. 127, the sureties to be given by a railway company are to be approved of by the Board of Trade instead of two justices. The approval of the sureties may be given on an *ex parte* application by the company: *Langham* v. *Great Northern Ry. Co.*, *ante*, p. 951.

(3) Where the sum deposited is less than the sum afterwards assessed as the value, the company must pay the difference: *Ashford* v. *London, Chatham and Dover Ry. Co.*, 14 L. T. N. S. 787.

(4) As to the conditions required in the bond, see note (7), *supra*.

(5) Interest at 4 per cent. is payable by the company upon the purchase or compensation money from the time of their taking possession of the land under their statutory powers, and not merely from the subsequent period of ascertaining the price by the verdict of a jury: *Rhys* v. *Dare Valley Ry. Co.*, L. R. 19 Eq. 93, 23 W. R. 23. Interest at 5 per cent. was allowed from the time of entering under this section till the amount due was settled: *In re Wolff's Settlement*, W. N. (1868), p. 66. See also *Regent's Canal Co.* v. *Ware*, 23 Beav. 575. The company are bound to pay interest at 4 per cent., not from the date of the award, but from the time they might prudently have taken possession, that is, when a good title was shown: *In re Pigott and the Great Western Ry. Co.* 18 Ch. D. 146, 50 L. J. Ch. 679, 44 L. T. N. S. 792, 29 W. R. 727; but see *In re Eccleshill Local Board*, 13 Ch. D. 365, 49 L. J. Ch. 214, 28 W. R.

(6) Now Paymaster-General; see note (6) to section 69, *ante*, p. 934.

performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition (1) of the promoters of the undertaking (2), be ordered to be invested in bank annuities or Government securities, and accumulated; and upon the condition of such bond being fully performed (3), it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, upon a like application (1), to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid (3) or transferred to the promoters of the undertaking (4), or if such condition shall not be fully performed (5), it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

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security, and to be applied under the direction of the court.

88. If at any time the company be unable, by reason of the closing of the office of the Accountant General (6) of the Court of Chancery in England or the Court of

The company may pay the deposit money

(1) Now, by Order LV., r. 2, sub-sec. 7, applications for interim and permanent investment and for payment of dividends of a fund in Court under this Act, are to be made by summons in chambers and not by petition: *Ex parte Mayor of London*, 25 Ch. D. 384, 53 L. J. Ch. 6, 49 L. T. N. S. 437, 32 W. R. 87; and application for payment out of a sum not exceeding £1000 must now, by Order LV. r. 2, sub-sec. 2, be made by summons in chambers and not by petition: *Ex parte Bala and Festiniog Ry. Co.; In re Madgwick; In re Brandram; In re Calton's Will*, *ante*, p. 939.

(2) A petition by the promoters, under this section, for investment, need not be served on the landowner: *Ex parte Carmarthen and Cardigan Ry. Co.*, 2 N. R. 515.

(3) When the company have fulfilled the conditions of the bond, it is entitled to have the money repaid, and the court cannot, under section 80, order payment for costs out of it: *In re Neath and Brecon Ry. Co.*, L. R. 9 Ch. 263, 43 L. J. Ch. 277, 30 L. T. N. S. 3, 22 W. R. 242. "Money deposited under this section (section 85) is deposited for a particular purpose, and when that purpose has been answered, the Legislature says in so many words that it is to be paid out to the company." *Per* James, L. J., (*ib.*)

Nor has the landowner a lien on the deposit for his costs: *Ex parte Stevens*, 5 Rail. Cas. 437, 2 Ph. 772; *In re London and Southampton Railway Extension Act*, 16 Sim. 165; and see *In re Fooks*, 2 Mac. & G. 357; *Ex parte Great Northern Ry. Co.*, 16 Sim. 169, 5 Rail. Cas. 269; but see *Ex parte Flower*, L. R. 1 Ch. 599, 12 Jur. N. S. 872, 15 L. T. N. S. 258, 14 W. R. 1016; *Re Wimbledon and Dorking Railway Act*, 9 L. T. N. S. 703. Nor is an owner appearing to consent to a petition by a company for payment out, entitled to the costs of such appearance, though served with the petition: *In re Holman's Settlement*, W. N. (1877), p. 272; but in *Ex parte Stevens*, (*supra*), such costs were allowed. See also *In re Dyson*, 46 L. T. N. S. 730, and *Ex parte Eastern Counties Ry. Co.*, 5 Rail. Cas. 210, where service of the petition on the owner was dispensed with; but in *Ex parte South Wales Ry. Co.*, 14 Beav. 418, 15 Jur. 1145, the court refused to order payment to the company unless the vendor joined in the petition or was served with a copy of it.

Nor is a landowner entitled, out of the deposit in court, to compensation for minerals under sections 78 and 81 of the Railways Clauses Act, 1845: *Ex parte Neath and Brecon Ry. Co.*, 2 Ch. D. 201, 45 L. J. Ch. 196, 24 W. R. 357.

(4) Payment to the secretary of the company may be ordered upon the petition being stamped with the seal of the company, without the necessity of verifying the seal: *Ex parte London, Chatham and Dover Ry. Co.*, 8 W. R. 636.

(5) If the condition of the bond be not performed, the court can order payment out of the deposit to the owner on a petition presented by him for that purpose, adversely to the company: *In re Mutlow's Estate*, 10 Ch. D. 131, 48 L. J. Ch. 198, 27 W. R. 245. See *Martin v. London, Chatham and Dover Ry. Co.*, cited in note (2) to p. 951; and *Re Birmingham, &c., Ry. Co.*, 3 N. R. 290.

The production of the bond by the company is sufficient evidence that the condition thereof has been duly performed: *In re London and North Western Ry. Co.*, 26 L. T. N. S. 687.

(6) Now Paymaster General; see note (6) to section 69, *ante*, p. 934.

Secs. 88–90.

into the bank by way of security during the time that the office of the Accountant General is closed.

Exchequer in Ireland, to obtain his authority in respect of the payment of any sum of money so authorised to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank, to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise) such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to the governor and company of the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the reopening of the said Accountant General's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the Accountant General, and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said Accountant General accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the report office.

Penalty on the promoters of the undertaking entering upon lands without consent before payment of the purchase money.

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully (1) enter upon and take possession of any lands which shall be required to be purchased or permanently used (2) for the purposes of the special Act, without such consent (3) as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands (4), the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: Provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

Decision of justices not

90. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provisions hereinbefore contained shall not be held conclu-

(1) As to the meaning of the word "wilfully," see *Hutchinson* v. *Manchester, Bury and Rosendale Ry. Co.*, 15 M. & W. 314, 3 Rail. Cas. 748. The word "wilfully" does not override the whole section, and does not apply to that part which imposes a penalty for continuing in unlawful possession after notice (*ib.*)

(2) As to what is an entry with a view to a permanent user of the land, see *Rangeley* v. *Midland Ry. Co.*, L. R. 3 Ch. 306, 37 L. J. Ch. 313, 18 L. T. N. S. 69, 16 W. R. 547; *Ramsden* v. *Manchester South Junction, &c., Ry. Co.*, *ante*, p. 949.

(3) Where the company has entered after a qualified verbal consent by the owner, it seems that the Court will not interfere to stop the works, if perfect justice can be done by compelling the company to pay for the land: *Langford* v. *Brighton, Lewes and Hastings Ry. Co.*, 4 Rail. Cas. 69; see also, as to entering without consent: *Fooks* v. *Wilts, &c., Ry. Co.*, 5 Hare, 199, 4 Rail. Cas. 210; *Tower* v. *Eastern Counties Ry. Co.*, 3 Rail. Cas. 374. If a company enter with the consent of the owner, they cannot be treated as trespassers: *Knapp* v. *London Chatham and Dover Ry. Co.*, 9 Jur. N. S. 671, 32 L. J. Ex. 236, 2 H. & C. 212, 8 L. T. N. S. 541, 11 W. R. 890.

(4) See *Hutchinson* v. *Manchester, Bury and Rosendale Ry. Co.*, *supra*.

sive as to the right of entry on any such land by the promoters of the undertaking.

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conclusive as to the right of the promoters.

91. If in any case in which according to the provisions of this or the special Act, or any Act incorporated therewith, the promoters of the undertaking are authorised to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse (1) to give up the possession thereof, or hinder (1) the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same, and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Proceedings in case of refusal to deliver possession of lands.

92 (2). And be it enacted, that no party shall at any time be required to sell or

Parties not to be required to sell part of a house.

(1) Where a landowner refuses to allow a company to enter on land on which they are entitled to enter under section 85, but does not actually resist their entry, they are justified in entering peaceably without calling on the sheriff under this section to give them possession: *Loosemore* v. *Tiverton and North Devon Ry. Co.*, 22 Ch. D. 25, 52 L. J. Ch. 260, 48 L. T. N. S. 162, 31 W. R. 130.

(2) This section applies, although the landowner has only a leasehold interest in the premises: *Pulling* v. *London, Chatham and Dover Ry. Co.*, 33 L. J. Ch. 505, 10 Jur. N. S. 665, 10 L. T. N. S. 393, 740, 12 W. R. 770, 969. So it applies where a railway bridge is thrown over the yard of a manufactory, although no part of the soil itself is taken: *Pinchin* v. *London and Blackwall Ry. Co.*, 1 K. & J. 34, 2 Eq. R. 1172, 1 Jur. N. S. 241; and on appeal, 1 Jur. N. S. 241, 24 L. J. Ch. 417, 5 De G. M. & G. 851, 3 Eq. Rep. 433, 24 L. J. Ch. 417, 24 L. T. 196; and also, it would seem, to the case of a tunnel under buildings without taking or touching any part of the surface: *Sparrow* v. *Oxford, &c., Ry. Co.*, 2 De G. M. & G. 94, 7 Rail. Cas. 106, 16 Jur. 703, 21 L. J. Ch. 731, 19 L. T. 131.

A company, having given notice to take a part of a property, and being required to take the whole, under this section, may abandon their notice and refuse to take any part: *King* v. *Wycombe Ry. Co.*, 28 Beav. 104, 29 L. J. Ch. 462, 6 Jur. N. S. 239; *Grierson* v. *Cheshire Lines' Committee*, L. R. 19 Eq. 83, 31 L. T. N. S. 428; *R.* v. *London and South Western Ry. Co.*, 5 Rail. Cas., 669, 12 Q. B. 775, 17 L. J. Q. B. 326, 23 W. R. 68; and specific performance against the company to take the whole will be refused, (*ib.*); but the company is not entitled to recede from their notice to take part of the property and give another notice to tunnel under the property: *Sparrow* v. *Oxford, &c., Ry. Co., supra;* and if, after a counter-notice to take the whole, the company go into possession of the part, they are bound to purchase the whole, and the owner can obtain an order to compel them to ascertain the value of the whole: *Marson* v. *London, Chatham and Dover Ry. Co.*, L. R. 7 Eq. 546, 38 L. J. Ch. 371, 20 L. T. N. S. 773; before going into possession of the part, they must pay into court the ascertained value of the whole: *Giles* v. *London, Chatham and Dover Ry. Co.*, 30 L. J. Ch. 603, 1 Dr. & Sm. 406; *Governors of St. Thomas's Hospital* v. *Charing Cross Ry. Co.*, 30 L. J. Ch. 395; and in such a case, the amount to be secured by deposit and bond, under section 85, is the value of the whole: *Underwood* v. *Bedford and Cambridge Ry. Co.*, 7 Jur. N. S. 941.

After a notice to take part and a counter-notice under this section to take the whole, it is not necessary that there should be a second formal notice by the company, under section 18, before summoning a jury under section 23 to assess compensation: *Schwinge* v. *London and Blackwall Ry. Co.*, 3 Sm. & Giff. 30; and in such a case, where a manda-

Section 92 convey to the promoters of the undertaking a part only of any house (1) or other

mus was obtained against a company, commanding them to summon a jury to assess compensation for the whole, it was held that, although this section protects the owners from being obliged to sell a part, it does not compel a company, wanting a part only, to take the whole, and that the mandamus having claimed the whole, could not go for a part only: *R.* v. *London and South Western Ry. Co.*, *ante*, p. 955.

A landlord is not compelled to sell part of his property, if, before the company have begun to put their compulsory powers in motion, he gives them notice to take the whole: *Gardner* v. *Charing Cross Ry. Co.*, 2 Johns. & H. 248, 8 Jur. N. S. 151, 31 L. J. Ch. 181, 5 L. T. N. S. 418, 10 W. R. 120; where the landowner replies to the notice by claiming a given sum for the part, he is not thereby precluded, if that sum is refused, from requiring the company to take the whole: (*ib.*) The words "house or other building or manufactory" refer to three distinct things; and it is sufficient that the owner of premises specify in his counter-notice the premises which he requires the company to take, without stating whether he claims for a house, a building, or a manufactory: *Richards* v. *Swansea Improvement and Tramways Co.*, *infra*.

(1) The word "house" in this section includes everything which would pass by that word in a conveyance; *King* v. *Wycombe Ry. Co.*, cited in note (2), *supra*; *Grosvenor* v. *Hampstead Junction Ry. Co.*, 1 De G. & J. 446, 26 L. J. Ch. 731; *Fergusson* v. *London, Brighton and South Coast Ry. Co.*, 3 De G. J. & S. 653, 33 Beav. 103, 33 L. J. Ch. 29, 9 L. T. N. S. 134, 11 W. R. 1088, 2 N. R. 566; *Hewson* v. *London and South Western Ry. Co.*, 8 W. R. 467; and it includes all that would pass by a devise of the house, but not land which is not necessary for the convenient use and occupation of the house, but only for the personal use and convenience of the owner and occupier: *Steele* v. *Midland Ry. Co.*, L. R. 1 Ch. 275, 12 Jur. N. S. 218, 14 L. T. N. S. 3, 14 W. R. 367; and see the cases therein referred to; and it includes all that would pass by the grant of a messuage, which includes not only the curtilage but also the garden, and all that is necessary to the enjoyment of the house, if within one ambit, whether attached to the main building or not, and though purchased subsequently to the erection of the main building: *Governors of St. Thomas's Hospital* v. *Charing Cross Ry. Co.*, 30 L. J. Ch. 395, 1 J. & H. 400.

Where a property consisted of a house, stables, &c., with a garden, pleasure grounds and orchard, standing on 1¼ acres of ground, a company proposing to take part of the orchard and a corner of the garden were held bound to take the whole: *King* v. *Wycombe Ry. Co.*, *ante*, p. 955.

And so is a company proposing to take a part of the garden attached to a dwelling-house, thereby cutting off the end of the garden and the summer-house: *Cole* v. *West London and Crystal Palace Ry. Co.*, 27 Beav. 242, 5 Jur. N. S. 1114, 28 L. J. Ch. 767.

A vacant piece of ground in front of a public-house, and belonging to the owner thereof, not fenced off from the street, and used by customers of the public-house, being the only means of approach for vehicles to the front door of the house, was held to be part of the house, as coming within the definition of a curtilage: *Marson* v. *London, Chatham and Dover Ry. Co.*, L. R. 6 Eq. 101, 37 L. J. Ch. 483, 18 L. T. N. S. 317.

So where a house and garden were held under two demises, the house and part of the garden being comprised in one, the remainder of the garden in the other, a company taking a part must take the whole: *Macgregor* v. *Metropolitan Ry. Co.*, 14 L. T. N. S. 354.

Where the owner of a dwelling-house standing in a piece of ground 2⅛ acres in extent and surrounded by brick walls, used a part of the land for trade purposes, a company proposing, without taking the house to take the greenhouses, and a part ornamentally planted, was held bound to take the whole: *Salter* v. *Metropolitan District Ry. Co.*, L. R. 9 Eq. 432, 39 L. J. Ch. 567. See also, *Hewson* v. *London and South Western Ry. Co.*, 8 W. R. 467; *Walker* v. *London and Blackwall Ry. Co.*, 3 Rail. Cas. 396, 7 Jur. 323, 12 L. J. Q. B. 88; *R.* v. *London and Greenwich Ry. Co.*, 3 Rail. Cas. 128, 2 G. & D. 444, 3 Q. B. 166, 6 Jur. 892; *Falkner* v. *Somerset and Dorset Ry. Co.*, L. R. 16 Eq. 458, 42 L. J. Ch. 851. A. had erected and covered in three new houses, but while they were in an unfinished state, a railway company required a portion of the land intended to be attached to them as gardens; it was held that the company was bound to purchase the

building (1) or manufactory (2) if such party be willing and able to sell and convey the whole thereof.

Secs. 92, 93.

And with respect to small portions of intersected land, be it enacted as follows:

Owners of intersected lands may insist on sale.

93. If any lands not being situate in a town (3) or built upon shall be so cut through and divided by the works as to leave, either on both sides or on one side

whole of the property, though the houses had never been completed and had become dilapidated: *Alexander* v. *Crystal Palace Ry. Co.*, 30 Beav. 556, 8 Jur. N. S. 833, 31 L. J. Ch. 500.

Meadow land, not being appurtenant to the house at the time of a notice, is not a part of the house and garden: *Chambers* v. *London, Chatham and Dover Ry. Co.*, 8 L. T. N. S. 235, 11 W. R. 479, 1 N. R. 517. Nor meadow land separated from the house by a road: *Fergusson* v. *London, Brighton and South Coast Ry. Co., supra; Pulling* v. *London, Chatham and Dover Ry. Co., supra; Steele* v. *Midland Ry. Co.*, L. R. 1 Ch. 275, 12 Jur. N. S. 218, 14 L. T. N. S. 3, 14 W. R. 367.

Two semi-detached villas, under one continuous roof, held by the same owner and having separate gardens, are not one house within this section, and the company can take one without the other: *Harvie* v. *South Devon Ry. Co.*, 32 L. T. N. S. 1, 23 W. R. 202.

Two adjoining houses with internal communication, used as an undivided whole, and necessary for the purposes of the same business, though held under separate leases of even date from the same lessor, form one entire house: *Siegenberg* v. *Metropolitan District Ry. Co.*, 32 W. R. 333, 49 L. T. N. S. 554.

(1) See preceding note as to taking houses.

(2) Where land is employed for the purpose of a business, not involving manufacture, but parts of it are used for auxiliary manufacturing processes, the whole is not a manufactory within this Act: *Reddin* v. *Metropolitan Board of Works*, 31 L. J. Ch. 660, 4 De G. F. & J. 532.

Throwing a railway bridge across a yard belonging to a manufactory is taking a part of it: *Pinchin* v. *London and Blackwall Ry. Co., ante*, p. 955; and cottages, separated only by a road from a manufactory, and used as warehouses for it, are a part of the manufactory, and a company wishing to take the cottages must take the whole manufactory: *Spackman* v. *Great Western Ry. Co.*, 1 Jur. N. S. 790: and so is land, included in the same wall with tin-plate works, and used for the deposit of ashes from the works, though the two parts were separated by a road: *Sparrow* v. *Oxford Ry. Co., ante*, p. 955.

The trade fixtures in a manufactory form part of it, and a company taking the manufactory must take the fixtures also: *Gibson* v. *Hammersmith and City Ry. Co.*, 9 Jur. N. S. 221, 32 L. J. Ch. 337, 8 L. T. N. S. 43, 11 W. R. 299, 1 N. R. 305.

As to when a whole block of houses form one manufactory or one house within this section, see *Richards* v. *Swansea Improvement and Tramways Co.*, 9 Ch. D. 420, 38 L. T. 833, 26 W. R. 764.

See further, as to what is a part of a manufactory: *Furniss* v. *Midland Ry. Co.*, L. R. 6 Eq. 473; *R.* v. *London and South Western Ry. Co., ante*, p. 955; *Stone* v. *Commercial Ry. Co.*, 9 Sim. 621.

(3) Premises within the municipal boundaries of a town, but not surrounded by houses, are within this section: *Falkner* v. *Somerset and Dorset Ry. Co.*, L. R. 16 Eq. 458, 42 L. J. Ch. 851.

Lands "situate within a town" within section 128, mean lands surrounded by the buildings which constitute the town: *Carington* v. *Wycombe Ry. Co.*, L. R. 2 Eq. 825, 15 L. T. N. S. 49, 14 W. R. 1018; affirmed on appeal, L. R. 3 Ch. 377, 37 L. J. Ch. 213, 18 L. T. N. S. 96, 16 W. R. 494.

See further as to the meaning of the word "town," *Elliot* v. *South Devon Ry. Co.*, 5 Rail. Cas. 500, 2 Exch. 725; *R.* v. *Cottle*, 16 Q. B. 412; *London and South Western Ry. Co.* v. *Blackmore*, L. R. 4 H. L. 610, 39 L. J. Ch. 713, 23 L. T. N. S. 504, 19 W. R. 305; and see also section 128, *post*, and note thereon, and section 11 of the Railways Clauses Consolidation Act, 1845 (8 Vict. c. 20).

Secs. 93–95. thereof, a less quantity of land than half a statute acre, and if the owner of such (1) small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act (2), the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining (3) to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Promoters of the undertaking may insist on purchase where expense of bridges, &c., exceeds the value.

94. If any such (4) land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special Act, or any Act incorporated therewith, compellable to make, and if the owner of such (4) lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute (5) as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication (5).

And with respect to copyhold lands, be it enacted as follows:

Conveyance of copyhold lands to be enrolled.

95 (6). Every conveyance to the promoters of the undertaking of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender (7) of the same lands to the use of a purchaser thereof he shall make

(1) See *Falls* v. *Belfast, &c., Ry. Co.*, 11 Ir. L. R. 184, 12 Ir. L. R. 233.

(2) See *In re North Staffordshire Ry. Co. and Wood*, 6 Rail. Cas. 25, 2 Exch. 244.

(3) Compare *Coventry* v. *London, Brighton, and South Coast Ry. Co.*, L. R. 5 Eq. 104, 37 L. J. Ch. 90, 17 L. T. N. S. 368, 16 W. R. 267; and *London and South Western Ry. Co.* v. *Blackmore*, *ante*, p. 957.

(4) The words "such land" here do not refer to land in a town, or land built upon, in section 93, but to the separated portions: *Falls* v. *Belfast, &c., Ry. Co.*, 11 Ir. L. R. 184, 12 Ir. L. R. 233; but the House of Lords have held that the expression "such land" in this section is not restricted to intersected lands situate in a town, but applies to all intersected lands, whether so situate or not: *Eastern Counties, &c., Ry. Co.* v. *Marriage*, 31 L. J. Ex. 73, 7 Jur. N. S. 53, 8 W. R. 748, reversing the decision of the Ex. Ch., 27 L. J. 185.

(5) Where, in an inquiry that took place pursuant to this action, the jury found the land of less value than the cost of the communication, and the company had made no offer for the land previous to the inquiry, it was held that the landowner was not entitled under section 51 to his costs of the inquiry, as section 57 was not incorporated with section 94: *Cobb* v. *Mid Wales Ry. Co.*, L. R. 1 Q. B. 342, 12 Jur. N. S. 228, 35 L. J. Q. B. 117, 14 W. R. 775.

(6) As to the general effect of sections 95 and 96, see *Ecclesiastical Commissioners for England* v. *London and South Western Ry. Co.*, 14 C. B. 743, 23 L. J. C. P. 177, 2 W. R. 560, 18 Jur. 911.

(7) A steward of a manor, who by custom was entitled to one fee upon the surrender and another on the admittance to copyhold lands, was held entitled under this section to one fee only on a surrender: *Cooper* v. *Norfolk Ry. Co.*, 6 Rail. Cas. 94, 3 Exch. 546, 18 L. J. Ex. 176, 13 Jur. 195.

such enrolment; and every such conveyance, when so enrolled, shall have the like effect (1) in respect of such copyhold or customary lands as if the same had been of freehold tenure, nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

Copyhold lands to be enfranchised.

96. (2) Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised (3), and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation (4) in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost (5) by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Lords of the manor to enfranchise on payment of compensation.

97. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common soccage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided (6) in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to to enfranchised, and shall be for ever thereafter held in free and common soccage.

Apportionment of copyhold rents.

98. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on

(1) As to the effect of a conveyance by a copyholder in fee, where the lord of the manor was no party to it, see *Dimes* v. *Grand Junction Canal Co.*, 5 Rail. Cas. 34, 9 Q. B. 469.

The lord of a manor, entitled by custom to fines on surrender and admittance to copyholds, is not entitled to the payment of any fines upon the execution of a conveyance by a copyholder to a railway company, under this section, or upon the inrolment of such conveyance, nor to any compensation (under section 96) for the loss thereof: *Ecclesiastical Commissioners for England* v. *London and South Western Ry. Co., supra.*

(2) See, as to the effect of this section, *Ecclesiastical Commissioners for England* v. *London and South Western Ry. Co., supra.*

(3) Where copyholds are taken under this Act, the lord is not entitled to the preliminary fine to which he would be entitled on an enfranchisement under the Copyhold Acts: *In re Wilson*, 9 Jur. N. S. 1043, 32 L. J. Ch. 191, 2 J. & H. 619.

(4) Where, besides the sum paid for the inheritance, a further sum is awarded as compensation, the tenant for life will not be entitled to that further sum, but only to the interest on it: *In re Wilson, supra.*

(5) See *Ecclesiastical Commissioners for England*, v. *London and South Western Ry. Co., supra.*

(6) See sections 75 and 77, *ante.*

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the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be settled by two justices (1); and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special Act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

And with respect to any such lands, being common (2) or waste lands, be it enacted as follows:

Compensation for common lands, where held of a manor, &c., how to be paid.

99. The compensation in respect of the right in the soil of any lands subject to any rights of common, shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled, other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Lord of the manor, &c., to convey to the promoters of the undertaking on receiving compensation for his interest.

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

Compensation for common lands where not held of a manor, how to be ascertained.

101. The compensation to be paid with respect to any such lands, being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to

(1) Or one in the metropolis, see 2 & 3 Vict. c. 71, s. 14; and one stipendiary magistrate in other places, 21 & 22 Vict. c. 73, s. 1.

(2) Under sections 99—107 of this Act, if a railway company take possession, by virtue of their Act, of land over which there are rights of common, after payment to the lord of the manor of compensation in respect of his ownership in the soil and a conveyance by him to the company, and they construct their railway on the land without having first paid compensation to the commoners in respect of their rights of common, a commoner may maintain an action against the company for the disturbance of his rights of common, and he is not confined to proceedings for compensation under these sections: *Stoneham* v. *London, Brighton and South Coast Ry. Co.*, L. R. 7 Q. B. 1, 41 L. J. Q. B. 1, 25 L. T. N. S. 788, 20 W. R. 77.

the commoners, other than the compensation to the lord of the manor, or other party entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

A meeting of the parties interested to be convened.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands, for the purpose of their appointing a committee (1) to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county, or in the respective counties, and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen, nor less than seven days, prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

Meeting to appoint a committee.

103. It shall be lawful for the meeting so called to appoint a committee (1), not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Committee to agree with the promoters of the undertaking.

104. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation, shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned (2) by the committee among the several persons interested therein, according to their respective interests (3), but the promoters of the undertaking shall not be bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or nonapplication thereof.

Disputes to be settled as in other cases.

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

If no committee be appointed,

106 (4). If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall

(1) By sections 15—17 of the Inclosure Act, 1854 (17 & 18 Vict. c. 97), if the majority of the committee, referred to in these sections, are of opinion that the provisions of this Act for the apportionment of the compensation paid for common rights under the Act cannot be satisfactorily carried into effect, such majority may apply to the Inclosure Commissioners to have the apportionment carried out under the Inclosure Act, 1845.

(2) See preceding note.

(3) In *Nash* v. *Combs*, L. R. 6 Eq. 51, 37 L. J. Ch. 600, 16 W. R. 663, it was held that resident freemen, entitled to commonable rights, were not entitled to have the *corpus* of the money divided amongst themselves, but that the proper course would be to invest the money in land to be held in trust for the freemen from time to time resident within the borough.

As to division of the compensation among copyhold tenants of a manor and freeholders within the manor, see *Fox* v. *Amhurst*, L. R. 20 Eq. 403, 44 L. J. Ch. 666.

(4) Sections 101—106, with reference to the ascertainment of compensation for common lands, are not imperative, so as to preclude the enforcement of specific performance of an agreement entered into otherwise than as mentioned in these sections: *Bee* v. *Stafford and Uttoxeter Ry. Co.*, 23 W. R. 868.

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take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor, to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found.

the amount to be determined by a surveyor.

Upon payment of compensation payable to commoners the lands to vest.

107. Upon payment or tender to such committee, or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided (1) in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery in England or the Court of Exchequer in Ireland, by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto for the benefit of the parties interested as it shall think fit.

And with respect to lands subject to mortgage, be it enacted as follows:

Power to redeem mortgages.

108 (2). It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special Act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affect such lands solely, or jointly with any other lands not required for the purposes of the special Act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

Deposit of mortgage money on refusal to accept.

109. If, in either of the cases aforesaid upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided (3) by this Act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as

(1) See sections 76 and 77, *ante*.

(2) If an inquiry as to the amount of the compensation to be paid take place without notice to an equitable mortgagee, his interest is not bound by the inquiry, nor is he entitled to have his mortgage discharged out of the money paid into the bank under section 85, but the lands taken will still remain subject to the charge, and in default of payment he will be entitled to an assignment of the land comprised in his security: *Martin* v. *London, Chatham and Dover Ry. Co.*, L. R. 1 Ch. 501, 35 L. J. Ch. 795, 14 L. T. N. S. 814, 14 W. R. 880, 12 Jur. N. S. 775.

(3) See sections 75, 76 and 77, *ante*.

aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided (1) in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Sum to be paid when mortgage exceeds the value of the lands.

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such land and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the premoters of the undertaking, or as they shall direct.

Deposit of money when refused on tender.

111. If upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage, or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided (1) by this Act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided (1) in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be paid where part only of mortgaged lands taken.

112. If a part only of any such mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands, the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage. and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the under-

(1) See sections 75, 76, and 77, *ante*.

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taking, at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

Deposit of money when refused on tender.

113. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided (1) by this Act in the case of moneys required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided (1) in the case of the purchase of lands by them; and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering (2) or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special Act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

114 (3). Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the reinvestment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided (4) with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on reinvesting the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest herein-

(1) See sections 76 and 77, *ante*.

(2) Where the mortgagor is a person of unsound mind, a guardian *ad litem* may be appointed without a new suit being instituted, and without a commission being issued, to appear on a petition by mortgagees to have compensation money paid to them in satisfaction of their mortgage: *Greaves* v. *Great Northern Ry. Co.*, 2 Eq. Rep. 516, 23 L. T. 53.

(3) Property was mortgaged to the plaintiffs, who were not bound to receive their money until a future day. A railway company, with knowledge, treated with the mortgagor alone, and paid the compensation money into court to the credit of the mortgagor, but made no provision for compensation to the mortgagees under this section. The company then took possession, and began pulling down the building. The court restrained the company from proceeding until the value of the mortgagees' interests had been ascertained and paid or secured: *Ranken* v. *East and West India Docks and Birmingham Ry. Co.*, 12 Beav. 298. Compare *Martin* v. *London, Chatham and Dover Ry. Co.*, *ante*, p. 962.

(4) See section 83, *ante*.

before provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

And with respect to lands charged with any rent service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Release of lands from rent-charges.

115. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same shall be determined as in other cases of disputed compensation (1).

Release of part of lands from charge.

116. If part only of the lands charged with any such rent service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of refusal to release.

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided (2) in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided (2) in the case of the purchase of lands by them, and thereupon the rent service, rent-charge, chief or other rent, payment, or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to continue on lands not taken.

118. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge; and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or

(1) Lands, subject to a rent-charge in favour of a lunatic during his life, were taken by a corporation under this Act. The court authorised the committee of the lunatic to release the lands from the rent-charge, upon the corporation purchasing, in the name of the lunatic, a Government annuity of the same yearly amount for his life: *In re Brewer*, 1 Ch. D. 409, 34 L. T. N. S. 466, 24 W. R. 465. Where part of property taken was subject, with other property affording by itself ample security, to two small rent charges, service of the petition for payment upon the parties entitled to the rent-charges was held unnecessary: *Ex parte Mercers' Co.*, 10 Ch. D. 481.

(2) See sections 76 and 77, *ante*.

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instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special Act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

And with respect to lands subject to leases, be it enacted as follows:

Where part only of lands under lease taken, the rent to be apportioned.

119. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required and the residue of such lands; and such apportionment may be settled by agreement between the lessor and the lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices (1); and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special Act (2); and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants (3), conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special Act in the same manner as they would have done in case such part only of the land had been included in the lease.

Tenants to be compensated.

120. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works (4).

(1) See note (5) to p. 968.

Where one entire rent extends over the land taken, an arbitrator has no power to apportion the rent, the apportionment must be done by the justices under this section: *In re Ware and Regent's Canal Co.*, 7 Rail. Cas. 780, 9 Exch. 395, 23 L. J. Ex. 145.

(2) Where a railway company serves a notice on a lessee to take land held under a lease containing a proviso against assignment without the licence of the lessor, the necessity for such licence is taken away by the operation of the Act: *Slipper* v. *Tottenham, &c., Ry. Co.*, L. R. 4 Eq. 112, 36 L. J. Ch. 841, 16 L. T. N. S. 446, 15 W. R. 861; and where a part of the land comprised in the lease is taken, the lessee is not bound, under this section, to procure the lessor's consent to the agreement with the company for the apportionment of the rent (*ib.*). See, also, *Baily* v. *De Crespigny*, L. R. 4 Q. B. 180, 38 L. J. Q. B. 98, 19 L. T. N. S. 681, 17 W. R. 494, 10 B. & S. 1; and so where the company has, with the consent of the lessee, been admitted into possession, they can be compelled at the suit of the lessee, to accept an assignment containing the usual covenants: *Harding* v. *Metropolitan Ry. Co.*, L. R. 7 Ch. 154, 41 L. J. Ch. 371, 26 L. T. N. S. 109, 20 W. R. 321.

(3) A lessor may recover substantial damages for breaches of covenant to repair committed after a notice to treat, but before the assignment by the lessees to the company: *Mills* v. *Guardians for East London Union*, L. R. 8 C. P. 79, 42 L. J. C. P. 46, 27 L. T. N. S. 557, 21 W. R. 142.

(4) To entitle a lessee to compensation, the lease must have been made before service of a notice to treat was served on the lessor: *Ex parte Edwards*, L. R. 12 Eq. 389, 40 L. J. Ch. 697, 25 L. T. N. S. 149, 19 W. R. 1047.

121 ([1]). If any such lands shall be in the possession of any person having no greater interest therein than as tenant for a year or from year to year ([2]), and if

Section 121.

Compensation to be made to tenants at will, &c.

([1]) This section is incorporated in the Artizans' and Labourers' Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36, s. 19 and s. 6, sub-s. (c), of the Schedule: *Wilkins* v. *Mayor of Birmingham*, 25 Ch. D. 78, 53 L. J. Ch. 93, 49 L. T. N. S. 468, 32 W. R. 118.

It applies only to cases where the tenant has been required to give up possession of his land: *R.* v. *Stone*, L. R. 1 Q. B. 529, 35 L. J. M. C. 208, 14 L. T. N. S. 552, 14 W. R. 791. And it applies only where some part of the land of a tenant from year to year is required or taken by a company, and not where the tenants' interest is merely injuriously affected, in which case he can claim compensation under s. 68, before a jury or arbitrators: *R.* v. *Sheriff of Middlesex*, 31 L. J. Q. B. 261, 10 W. R. 717, 6 Jur. N. S. 617; but the effect of this case is sometimes avoided by a clause in the special Act, providing that all claims for compensation by yearly tenants are to be determined as in this section: See Hodges on Railways, 6th ed., p. 244; but if any part of the land be taken the tenant can claim compensation only before two justices under this section: *R.* v. *Manchester, &c., Ry. Co.*, 4 E. & B. 88, 1 Jur. N. S. 419, 23 L. T. 287.

([2]) Where an unexpired residue of a term of two years is less than one year at the time the company take possession, compensation cannot be obtained under section 68, but proceedings must be taken under this section: *R.* v. *Great Northern Ry. Co.*, 2 Q. B. D. 151, 46 L. J. Q. B. 4, 35 L. T. N. S. 551, 25 W. R. 41. The words "having no greater interest therein than as a tenant for a year or from year to year" include every species of interest being for less than a year in duration. *Per* Lush, J., *ib.*

A tenant of premises under an agreement for a lease for the residue of a term of seventeen years, though at law a mere tenant from year to year, has an interest greater than a yearly tenancy, and the value thereof cannot be assessed by justices under this section: *Sweetman* v. *Metropolitan Ry. Co.*, 1 H. & M. 543, 10 L. T. N. S. 156, 12 W. R. 304.

A. (who had only a leasehold interest in premises) agreed in writing to let the premises to B. at a rent payable quarterly, and not to raise the rent or give B. notice to quit, so long as he paid the rent when due. A. also agreed verbally with B. to let him remain in the premises for such term of years (not exceeding A.'s term therein) as he should choose to remain; it was held that B. had a greater interest than a yearly tenancy within this section: *In re King's Leaseholds Estates*, L. R. 16 Eq. 521, 29 L. T. N. S. 288, 21 W. R. 881.

A schoolmaster of a free grammar school, whose interest was determinable upon three months' notice to quit, is within this section: *R.* v. *Manchester, &c., Ry. Co.*, 4 E. & B. 88, 1 Jur. N. S. 419, 23 L. T. 287. See *Knapp* v. *London, Chatham and Dover Ry. Co.*, *ante*, p. 954.

In considering whether a tenant's interest is within this section or not, his interest at the time of giving the notice, and not at its expiration, is to be considered: *Tyson* v. *Mayor of London*, L. R. 7 C. P. 18, 41 L. J. C. P. 6, 25 L. T. N. S. 640, 20 W. R. 112. And so, where a company, as required by their special Act, gave six months' notice to a tenant of their intention to take his lands, and where at the time such notice was given, more than a year, but at the expiration of such notice, less than a year, of the tenancy remained, it was held that the tenant's interest did not come within this section: *Ib.* In such a case the company are bound to proceed with the purchase at the end of the six months, and the plaintiff will be entitled to a mandamus to compel them to do so: *Morgan* v. *Metropolitan Ry. Co.*, L. R. 4 C. P. 97, 38 L. J. C. P. 87, 19 L. T. N. S. 655, 17 W. R. 261.

And so a tenant whose tenancy has been created after notice to treat has been served on the owner is not entitled to compensation: *Ex parte Edwards*, L. R. 12 Eq. 389, 40 L. J. Ch. 697, 25 L. T. N. S. 149, 19 W. R. 1047; and see *Carnochan* v. *Norwich and Spalding Ry. Co.*, 26 Beav. 169.

As to compensation to yearly tenants under special Acts prior to this Act, see *Ex parte Farlow*, 2 B. & Ad. 341; *R.* v. *Hungerford Market Co.*, 4 B. & Ad. 592; *Re Palmer and Hungerford Market Co.*, 9 A. & E. 463; *R.* v. *Hungerford Market Co.*, 4 B. & Ad. 596;

Secs. 121, 122.

such person be required to give up possession (1) of any lands so occupied by him before the expiration of his term or interest therein (2), he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an in-coming tenant, and for any loss or injury he may sustain (3), or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him (4), or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices (5), in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special Act.

Where greater interest claimed than from year to year, lease to be produced.

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce (6) the lease or grant in respect of which such claim shall be made, or the best evidence thereof in his power; and if, after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall

R. v. *Liverpool and Manchester Ry. Co.*, 4 A. & E. 650, 6 N. & M. 186; *R.* v. *London and Southampton Ry. Co.*, 10 A. & E. 3, 1 Rail. Cas. 717.

If money is paid into court as compensation for tenants' interests, the landlord has no lien on it, even though the rent of the lands was in arrear at the time of lodgment, and the company had made no settlement with the landlord: *Ex parte Carey*, 10 L. T. 37.

(1) A notice to treat under section 18 is not equivalent to requiring possession: *R.* v. *Stone*, cited in note (1) to p. 967.

(2) If a tenant from year to year has received from his landlord a legal notice to quit, and his land is not required until the expiration thereof, he has no claim to compensation under this section: *Ex parte Merrett*, 2 L. T. N. S. 471; *Ex parte Nadin*, 17 L. J. Ch. 421, 11 L. T. 429.

But if, in pursuance of the provisions of their special Act, a company give a six months' notice of their intention to take the lands, the tenant would be entitled to compensation, inasmuch as he has not received a notice to quit from his landlord: *Cranwell* v. *Mayor of London*, L. R. 5 Ex. 284, 39 L. J. Ex. 193, 22 L. T. N. S. 760. See also, *R.* v. *Vaughan and Metropolitan and District Ry. Co.*, L. R. 4 Q. B. 190, 17 W. R. 115, 38 L. J. M. C. 49; *Tyson* v. *Mayor of London*, *ante*, p. 967; but see *R.* v. *London and Southampton Ry. Co.*, 10 A. & E. 3, 1 Rail. Cas. 717. But in this case it was held that the tenant, having voluntarily continued in occupation after the expiration of the notice, had placed himself in the same position as if a landlord's notice had been given to him.

(3) Where a company had given a notice to treat and a notice to take the premises at the end of six months, and nothing further was done for three years, the tenant could not claim compensation for depreciation in the value of his interest in the interval, since the expiration of the six months, arising from loss of custom in the public house by reason of the pulling down of neighbouring houses taken by the company: *R.* v. *Vaughan and Metropolitan District Ry. Co.*, *supra*. See *Morgan* v. *Metropolitan Ry. Co.*, *ante*, p. 967; *R.* v. *London Dock Co.*, 5 A. & E. 163; *R.* v. *Liverpool and Manchester Ry. Co.*, *supra*.

(4) See section 49 and notes (3) and (4) thereto, *ante*, p. 917.

(5) Or one in the metropolis, see 2 & 3 Vict. c. 71, s. 14; and one stipendiary magistrate in other places, see 21 & 22 Vict. c. 73, s. 1.

Where a tenant is required to give up lands under this section and have the compensation settled by two justices, if the lands have not been injuriously affected, it is not necessary that the complaint should be made to the justices within six months from the time of the notice under 11 & 12 Vict. c. 43, ss. 1 and 11; *R.* v. *Hannay*, 44 L. J. M. C. 27, 31 L. T. N. S. 702, 23 W. R. 164; but see *In re Edmundson*, 17 Q. B. 67, 17 L. T. 93. See also note (5) to p. 904.

(6) See *Sweetman* v. *Metropolitan Ry. Co.*, 1 H. & M. 543, 10 L. T. N. S. 156, 12 W. R. 304.

be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Secs. 122, 123.

123. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase (1) or taking (2) of lands for the purposes of the special Act shall not be exercised after the expiration of the prescribed period (3),

Limit of time for compulsory purchase.

(1) A notice to treat requiring to take land is (but an entry on land is not) an exercise of the powers for compulsory purchase within this section; and if within the prescribed period such notice be given the steps necessary to complete the purchase may be taken afterwards: *Marquis of Salisbury* v. *Great Northern Ry. Co.*, 7 Rail. Cas. 175, 17 Q. B. 840, 21 L. J. Q. B. 185. See *R.* v. *Birmingham and Oxford Junction Ry. Co.*, 6 Rail. Cas. 628, 15 Q. B. 634 and 647n., 20 L. J. Q. B. 304; *Kinnersley* v. *North Staffordshire Ry. Co.*, 6 Rail. Cas. 662, 13 L. T. 340; *Pinchin* v. *London and Blackwall Ry. Co.*, 1 K. & J. at p. 65, 5 De G. M. & G. 851, 3 Eq. Rep. 433, 24 L. J. Ch. 417, 19 Jur. 241, 24 L. T. 196; *Sparrow* v. *Oxford, &c., Ry. Co.*, 9 Hare, 436, 7 Rail. Cas. 92, 21 L. J. Ch. 731; *Richmond* v. *North London Ry. Co.*, L. R. 3 Ch. 679, 37 L. J. Ch. 886; *Rangeley* v. *Midland Ry. Co.*, L. R. 3 Ch. 306, 37 L. J. Ch. 313, 18 L. T. N. S. 69, 16 W. R. 347; *Kemp* v. *South Eastern Ry. Co.*, L. R. 7 Ch. 364, 41 L. J. Ch. 404, 26 L. T. N. S. 110, 20 W. R. 306; and see the recent case in the House of Lords: *Tiverton and North Devon Ry. Co.* v. *Loosemore, ante*, p. 950, where most of the cases on this subject are referred to and discussed.

(2) See the cases cited in the preceding note, and *Doe d. Armistead* v. *North Staffordshire Ry. Co.*; *Worsley* v. *South Devon Ry. Co., infra; Marquis of Salisbury* v. *Great Northern Ry. Co., supra.*

(3) Where within the prescribed period the company serve a notice to treat, and the landowner serves a notice requiring the company to summon a jury to assess the compensation, and no further steps are taken to complete the purchase till after the expiration of the specified time, the landowner can compel the company by *mandamus* to complete the purchase: *R.* v. *Birmingham and Oxford Junction Ry. Co., supra; R.* v. *Birmingham and Gloucester Ry. Co.*, 2 Q. B. 47.

And, although no notice to treat has been served and no initiatory steps taken, if there be still a period during which these initiatory steps may be taken by the company, the landowner can by *mandamus* compel them to take these steps and complete the purchase: *R.* v. *York, Newcastle and Berwick Ry. Co.*, 6 Rail. Cas. 648, 16 Q. B. 886, 20 L. J. Q. B. 503; *R.* v. *Lancashire and Yorkshire Ry. Co.*, 6 Rail. Cas. 654, 16 Q. B. 906 n., 20 L. J. Q. B. 507.

But where the compulsory powers had expired, and it was shown that the company had not the power to do the act commanded, a *mandamus* against the company to compel them to purchase land and make the railway was refused, although the company had, a month before the expiration of their powers, been required by the landowners to do so: *R.* v. *London and North Western Ry. Co.*, 6 Rail. Cas. 634, 16 Q. B. 864, 20 L. J. Q. B. 399. See also *R.* v. *York and North Midland Ry. Co.*, 1 E. & B. 858; compare *Edinburgh, &c., Ry. Co.* v. *Philip*, 2 Macq. H. L. C. 514.

If a company have entered upon the lands before the expiration of the prescribed period, without paying the purchase-money, an action of ejectment will not lie against them after it has expired, as their possession is still lawful and the owner might, under section 68, have the purchase-money assessed: *Doe d. Armistead* v. *North Staffordshire Ry. Co.*, 16 Q. B. 526, 20 L. J. Q. B. 249, 15 Jur. 944, 17 L. T. 59; *Worsley* v. *South Devon Ry. Co.*, 16 Q. B. 539, 15 Jur. 970, 20 L. J. Q. B. 254, 17 L. T. 60; and if the company have done everything necessary to entitle them to enter (as by giving notice to treat) they can enter after the expiration of the time: *Marquis of Salisbury* v. *Great Northern Ry. Co., supra.*

Where the time limited for making a line has expired, and where consequently the powers of the company under their Act have expired, the company cannot be called upon to enter into an arbitration under a contract which assumes them to be in full possession of their authority: *Scottish North Eastern Ry. Co.* v. *Stewart*, 3 Macq. H. L. C. 382, 5 Jur. N. S. 607.

Secs. 123, 124.

and if no period be prescribed (1) not after the expiration of three years from the passing of the special Act (2).

And with respect to interest in lands which have by mistake been omitted to be purchased, be it enacted as follows:

Promoters of the undertaking empowered to purchase interests in lands the purchase whereof may have been omitted by mistake.

124. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special Act, or any Act incorporated therewith, they were authorised to purchase, and which shall be permanently required for the purposes of the special Act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence (3) have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same (4), the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase money or compensation by the promoters of the undertaking, so far as such mesne profits or interests may be recoverable in law or equity; and such purchase money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this Act the same

(1) Where a special Act contained no clause limiting the time for compulsory purchase, the period of three years specified in this section was held to apply: *Seymour* v. *London and South Western Ry. Co.*, 5 Jur. N. S. 753.

(2) The powers for the compulsory purchase, &c., referred to in this section, are powers given to the several promoters of the several special Acts in which this Act might be incorporated, and not several powers given to the promoters of each special Act: *Sparrow* v. *Oxford, &c., Ry. Co.*, 9 Hare, 436, 7 Rail. Cas. 92, 21 L. J. Ch. 731.

This section refers to the powers given by the Act for the purchase and taking of land, but not to the powers thereby given for carrying into effect a purchase already made (*ib.*).

(3) The non-interference or absence of objection on the part of the owner, when the company took and continued in possession of the land in question, does not amount to such a consent on his part, as to preclude him from re-entering by force of this section: *Marquis of Salisbury* v. *Great Northern Ry. Co.*, 5 C. B. N. S. 174, 5 Jur. N. S. 70, 28 L. J. C. P. 40. The effect of this section is, not to prevent the plaintiff from bringing an action of ejectment to establish his title, but to authorise the court to stay execution on the judgment (*ib.*): *Hyde* v. *Mayor of Manchester*, 12 C. B. 474. But if the plaintiff's title be not in dispute, he cannot maintain an action of ejectment, as this section gives the company a right (when the title is not in dispute) to lawful possession for six months after the plaintiff's claim: *Jolly* v. *Wimbledon and Dorking Ry. Co.*, 1 B. & S. 807, 8 Jur. N. S. 1037, 31 L. J. Q. B. 95, 5 L T. N. S. 615, 10 W. R. 253.

If there be a doubt as to the plaintiff's title, a court of equity will refuse to interfere by injunction against the company, but will leave the plaintiff to his remedy at law: *Webster* v. *South Eastern Ry. Co.*, 6 Rail. Cas. 698, 15 Jur. 73, 20 L. J. Ch. 194. As to what amounts to mistake or inadvertence, see *Hyde* v. *Mayor of Manchester*, 5 De G. & S. 249, 16 Jur. 189; *Stretton* v. *Great Western Ry. Co.*, L. R. 5 Ch. 751, 40 L. J. Ch. 50, 23 L. T. N. S. 379, 18 W. R. 1078: *Martin* v. *London, Chatham and Dover Ry. Co.*, L. R. 1 Ch. 501, 12 Jur. N. S. 775, 35 L. J. Ch. 795, 14 L. T. N. S. 814, 14 W. R. 880.

(4) See *Hyde* v. *Mayor of Manchester*, 5 De G. & S. 249, *supra;* six months after the refusal by the court to grant a new trial in ejectment is within the time (*ib.*).

respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

Secs. 124—126.

125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the underdaking, and as though the works had not been constructed.

How value of such lands to be estimated.

126. In addition to the said purchase money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses (1) of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses (1) shall, in case the same shall be disputed, be settled by the proper officer of the Court in which such litigation took place.

Promoters of the undertaking to pay the costs of litigation as to such lands.

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof (2), be it enacted as follows:

(1) "Full costs and expenses" here means costs "as between attorney and client:" *Hyde* v. *Mayor of Manchester*, 12 C. B. 474.

(2) The word "required" here does not mean *demanded*, but *necessary*, and where land ceases to be necessary it becomes superfluous. The time for determining whether land is or is not superfluous within these sections is, not the time when the lands are acquired, but the expiration of the ten years, or whatever other period is prescribed by the special Act, as provided in section 127: *Great Western Ry. Co.* v. *May*, L. R. 7 H. L. 283, 43 L. J. Q. B. 233, 31 L. T. N. S. 137, 23 W. R. 141. Superfluous land here means land acquired by the promoters of the undertaking, but not required for the purposes of the undertaking (*ib.*). When a company use land for making accommodation works, which they are compellable to make, this is one of the purposes of their Acts, and the land does not thereby become superfluous: *Beauchamp* v. *Great Western Ry. Co.*, L. R. 3 Ch. 745, 38 L. J. Ch. 162, 19 L. T. N. S. 189, 16 W. R. 1155.

But, though the land has been used for the purposes of the undertaking, yet if the use be only of a temporary nature, the land, having satisfied that use, becomes superfluous: *Great Western Ry. Co.* v. *May*, *supra*. But land which is *bonâ fide* retained by the company, with a reasonable expectation of using it for the purposes of their Act, does not at the end of the specified time become superfluous, nor vest as such in an adjoining owner, merely because, from insufficiency of traffic or want of funds, the company cannot apply it to such purposes: *Betts* v. *Great Eastern Ry. Co.*, 3 Ex. D. 182, 47 L. J. Ex. 461, affirmed by H. L., W. N. (1879), p. 163; and this is so although the lands are not in actual use at the end of the period, if there is a reasonable prospect of their being ultimately required and used for the purposes of the company: *Hooper* v. *Bourne*, 3 Q. B. D. 258, 47 L. J. Q. B. 437, 37 L. T. N. S. 594, 26 W. R. 295; affirmed in H. L. 5 App. Cas. 1, 49 L. J. Q. B. 370, 42 L. T. N. S. 97, 28 W. R. 493, 44 J. P. 327.

And in the meantime the company may let the land: *Betts* v. *Great Eastern Ry. Co.*, *supra*.

Land does not become superfluous merely because the undertaking has been abandoned: *Astley* v. *Manchester, Sheffield, and Lincolnshire Ry. Co.*, cited in note (2) to section 127, *infra*.

Land to be superfluous must be separated by a vertical, not by a horizontal boundary from land required by the company: *In re Metropolitan District Ry. Co. and Cosh*, 13 Ch. D. 607, 49 L. J. Ch. 277, 42 L. T. N. S. 73, 28 W. R. 685, 44 J. P. 393, C. A. Where

Section 127.

Lands not wanted to be

127 (1). Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters of the undertaking shall absolutely sell and dispose of (2)

a company has excavated the soil, constructed the line, and then built an arch over it and replaced the surface over the arch, the vacant space over the arch is not superfluous land (*ib.*); nor is the part of the land under the arches on which a railway station is erected: *Mulliner* v. *Midland Ry. Co.*, 11 Ch. D. 611, 48 L. J. Ch. 258, 40 L. T. N. S. 121, 27 W. R. 330. And the company cannot sell a right of way under the arch (*ib.*); but the whole of the land beyond a boundary wall, even though that wall be a retaining wall thicker at the base than at the surface, and part of the land so sold would be within a line drawn on the surface, vertically above the line of the footings of the wall, is superfluous: *Ware* v. *London, Brighton, and South Coast Ry. Co.*, 52 L. J. Ch. 198, 47 L. T. N. S. 541, 31 W. R. 228; and so is an abandoned strip of land between a quickset hedge and a decayed hedge: *Norton* v. *London and North Western Ry. Co.*, 13 Ch. D. 268, 41 L. T. N. S. 429, 28 W. R. 173, 44 J. P. 22.

See further, as to when land becomes superfluous, *Great Western Ry. Co.* v. *May; Beauchamp* v. *Great Western Ry. Co.; Betts* v. *Great Eastern Ry. Co.; Hooper* v. *Bourne*, 971; *London and South Western Ry. Co.* v. *Blackmore*, L. R. 4 H. L. 610, 39 L. J. Ch. 713, 23 L. T. N. S. 504, 19 W. R. 305; *Lord Carington* v. *Wycombe Ry. Co.*, *infra; Horne* v. *Lymington Ry. Co.*, 31 L. T. N. S. 167; *Smith* v. *Smith*, L. R. 3 Ex. 282, 38 L. J. Ex. 37; *Moody* v. *Corbett*, L. R. 1 Q. B. 510, 35 L. J. Q. B. 161, 14 W. R. 737, 14 L. T. N. S. 568; *City of Glasgow Union Ry. Co.* v. *Caledonian Ry. Co.*, L. R. 2 H. L. (Sc.), 160.

As to the different ways in which lands may become superfluous, see *Great Western Ry. Co.* v. *May*, *ante*, p. 971.

Where an adjoining owner claims lands as superfluous, the burden of proving a title to the land as superfluous lies upon him: *Hooper* v. *Bourne*, in H. L., *ante*, p. 971.

And the conversion of it to other purposes than those of the undertaking is evidence of its being superfluous: *Great Western Ry. Co.* v. *May*, *supra;* compare *Hobbs* v. *Midland Ry. Co.*, *infra.*

(1) This section is not incorporated with the Public Health Act, 1875, though the rest of the Lands Clauses Acts is: See section 176 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), *ante*, p. 142.

This section and the following do not apply where the undertaking is abandoned or given up altogether: *Smith* v. *Smith*, L. R. 3 Ex. 282, 38 L. J. Ex. 37.

It would seem that sections 127 and 128 apply to cases where lands are acquired by negotiation or agreement under the compulsory powers of a company, as well as to lands not so acquired: *Hooper* v. *Bourne*, in C. A., *ante*, p. 971; but see *City of Glasgow Union Ry. Co.* v. *Caledonian Ry. Co.*, L. R. 2 H. L. (Sc.), 160; *Horne* v. *Lymington Ry. Co.*, 31 L. T. N. S. 167; *Lord Carington* v. *Wycombe Ry. Co.*, L. R. 3 Ch. 377, 37 L. J. Ch. 213, 18 L. T. N. S. 96, 16 W. R. 494.

(2) "Disposing of" lands here means the transfer of them to other persons, and not the application of them to a different purpose from that for which they were originally obtained: *Astley* v. *Manchester, Sheffield, and Lincolnshire Ry. Co.*, 27 L. J. Ch. 478, 2 De G. & J. 453, 4 Jur. N. S. 567, 6 W. R. 561, 31 L. T. 188.

Land sold by a company under this section as superfluous must be sold absolutely, and without reserving any interest to the company: *London and South Western Ry. Co.* v. *Gomm*, 20 Ch. D. 562, 51 L. J. Ch. 530, 46 L. T. N. S. 449, 30 W. R. 620, C. A.

A sale of land, reserving an interest to the company, would be *ultrà vires* and void (*ib.*).

But otherwise, a company can sell its superfluous land, under such conditions as to user as may be most advantageous to itself: *In re Higgins and Hitchman's Contract*, 21 Ch. D. 95, 51 L. J. Ch. 772, 30 W. R. 700, 46 J. P. 805.

And a subsequent Act, giving a company power to lease and mortgage certain superfluous lands, does not take away the power of selling them: *Tomlin* v. *Budd*, L. R. 18 Eq. 368, 43 L. J. Ch. 627, 22 W. R. 529.

A railway company cannot dispose of, except for the purposes of the Act, any part of its land not being superfluous land, and not being land taken for extraordinary purposes

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all such superfluous lands (1), and apply the purchase money arising from such sales to the purposes of the special Act: and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in (2) and become the property of the owners of the lands adjoining thereto (3), in proportion to the extent of their lands respectively adjoining the same (4).

sold, or in default to vest in owners of adjoining lands.

128. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town (5), or be lands built upon or used for building purposes (6), first offer (7) to sell the same to the person

Lands to be offered to

within section 45 of the Railways Clauses Act, 1845, nor any easement over the same: *Mulliner* v. *Midland Ry. Co.*, *ante*, p. 972.

And a conveyance of lands, not being superfluous, will be set aside as *ultrà vires: Hobbs* v. *Midland Ry. Co.*, 20 Ch. D. 418, 51 L. J. Ch. 320, 46 L. T. N. S. 270, 30 W. R. 516.

(1) See, as to superfluous lands, note (2) to the preamble to this section.

(2) At the end of the prescribed period superfluous land vests in the adjoining owner, and no act is necessary on his part to bring about that legal result: *Great Western Ry. Co.* v. *May*, *ante*, p. 971.

And when the land has once vested in an adjoining owner, a subsequent Act extending the time for the sale of superfluous land will have no effect: *Moody* v. *Corbett*, *ante*, p. 972; a tenant of the company, or his under tenant, cannot refuse to give up possession after notice to quit, because the land has vested in an adjoining owner: *London and North Western Ry. Co.* v. *West*, L. R. 2 C. P. 553, 36 L. J. C. P. 245.

The mere fact that land is required for the undertaking, and is not superfluous, does not prevent an occupier, who has exclusive adverse possession for twelve years, becoming thereby entitled to the land under the Statutes of Limitations: *Bobbett* v. *South Eastern Ry. Co.*, 9 Q. B. D. 424, 51 L. J. Q. B. 161, 46 L. T. N. S. 31. See also *Norton* v. *London and North Western Ry. Co.*, *supra*.

(3) As to "adjoining owners," see note (2), *ante*, p. 974.

(4) Where there are several adjoining properties in contact with the superfluous land, it is to be divided among the owners of the adjoining properties in proportion to the frontage of each, meaning by frontage what would be the length of the line of contact of each property, if the line were made straight from the point of intersection of the boundaries on one side to the point of intersection of the boundaries on the other: *Moody* v. *Corbett*, *ante*, p. 972. But see *Smith* v. *Smith*, *ante*, p. 972.

(5) Land within a town means land surrounded by continuous houses or covered by continuous houses: *Lord Carington* v. *Wycombe Ry. Co.*, *ante*, p. 972.

Land, though situate within the limits of the borough, but at some distance from the mass of houses forming the town, is not within the "town" (*ib.*).

So lands, to be "within a town," must be encompassed by the buildings constituting the town: *London and South Western Ry. Co.* v. *Blackmore*, *ante*, p. 972. See also *Elliott* v. *South Devon Ry. Co.*, 2 Exch. 725; *R.* v. *Cottle*, 16 Q. B. 412.

(6) Lands acquired by a company for the purposes of the undertaking, but not so employed, but merely capable of being used for building purposes, are not, on account of such capacity alone, to be treated as building land, or "lands used for building purposes:" *London and South Western Ry. Co.* v. *Blackmore*, *ante*, p. 972. See also *Lord Carington* v. *Wycombe Ry. Co.*, *ante*, p. 972.

Lands "used for building purposes" here mean land sold as building land, or let on building leases, and actually laid out for building: *Coventry* v. *London, Brighton, and South Coast Ry. Co.*, L. R. 5 Eq. 104, 37 L. J. Ch. 90, 17 L. T. N. S. 368, 16 W. R. 267.

(7) Though a company cannot be compelled to sell land as superfluous within the ten years, yet if within that time the company decide or declare that the land is superfluous, as by attempting to sell it, or by conveying it, the right of pre-emption of an adjoining owner at once arises: *London and South Western Ry. Co.* v. *Blackmore*, and *Lord Carington* v. *Wycombe Ry. Co.*, *ante*, p. 972. So, if the company use the land for a purpose not allowed by their Act, the right of pre-emption at once arises: *Beauchamp* v. *Great Western Ry. Co.*, *ante*, p. 971; but not so if the undertaking has been abandoned, as

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then entitled (1) to the lands (if any) from which the same were originally severed; or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin (2) the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

owner of lands from which they were originally taken or to adjoining owners.

Right of pre-emption to be claimed within six weeks.

129. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

Differences as to price to be settled by arbitration.

130. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration (3), and the costs of such arbitration shall be in the discretion of the arbitrators.

Lands to be conveyed to the purchasers.

131. Upon payment or tender to the promoters of the undertaking of the purchase-money so agreed upon or determined as aforesaid, they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt

the land does not thereby become superfluous: *Astley* v. *Manchester, Sheffield, and Lincolnshire Ry. Co.*, *ante*, p. 972; and the plaintiff cannot in such case get an injunction against the company (*ib.*). Even if an owner have a right of pre-emption, this does not make it unlawful for the company to contract with other persons for the sale of the land: *London and Greenwich Ry. Co.* v. *Goodchild*, 3 Rail. Cas. 507, 8 Jur. 455, 13 L. J. Ch. 224; and if the intending purchaser has agreed to admit a defective title, and if it afterwards appears that the prior owners had not waived their right of pre-emption, the purchaser cannot recover his deposit on that ground: *Best* v. *Hamand*, 12 Ch. D. 1, 48 L. J. Ch. 503, 40 L. T. N. S. 769, 27 W. R. 742, C. A.

Where land is purchased for special purposes, which afterwards fail, the vendor's right of pre-emption is entirely dependent on these sections, and no immediate right of repurchase arises within the ten years limited by the Act: *Astley* v. *Manchester, Sheffield, and Lincolnshire Ry. Co.*, 27 L. J. Ch. 299, 4 Jur. N. S. 129.

(1) Lessees for years are entitled to this right of pre-emption: *Coventry* v. *London, Brighton, and South Coast Ry. Co.*, *ante*, p. 973.

By the special Act the right of pre-emption may be limited to the actual vendor, so that on his death the right ceases: *Highgate Archway Co.* v. *Jeakes*, L. R. 12 Eq. 9, 40 L. J. Ch. 408, 24 L. T. N. S. 567, 19 W. R. 692.

(2) Lessees of lands separated from superfluous land by a private road, of which they have the exclusive user, are "owners of immediately adjoining land:" *Coventry* v. *London, Brighton, and South Coast Ry. Co.*, *supra*.

So where the company and the landowner are joint owners of a piece of land intervening between the superfluous land and the land of the landowner, the latter is an "adjoining owner:" *London and South Western Ry. Co.* v. *Blackmore*, *ante*, p. 972. See also *Smith* v. *Smith*, L. R. 3 Ex. 282, 38 L. J. Ex. 37.

(3) See section 25, *ante*.

under such common seal, or under the hands of two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

Effect of the word "grant" in conveyances.

132. In every conveyance of lands to be made by the promoters of the undertaking under this or the special Act, the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance; (that is to say,)

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors, from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

Land Tax and Poor's Rate to be made good.

133 ([1]). And be it enacted, that if the promoters ([2]) of the undertaking become possessed by virtue of this or the special Act, or any Act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency ([3]) in the several

([1]) This section applies, if it appears that the works, when constructed, may, in part or in whole, be the subject of beneficial occupation: *Wheeler* v. *Metropolitan Board of Works*, L. R. 4 Ex. 303, 38 L. J. Ex. 165, 20 L. T. N. S. 984. The fact that the works contemplated by the special Act were not such as would be assessable to poor's rates when completed would not prevent this section from applying to lands taken for such works: *Stratton* v. *Metropolitan Board of Works*, L. R. 10 C. P. 76, 44 L. J. M. C. 33, 31 L. T. N. S. 689, 23 W. R. 447.

([2]) The Metropolitan Board of Works are "promoters" within this section: *Wheeler* v. *Metropolitan Board of Works*, *supra*. *Semble*, persons intrusted with the construction of public works under Acts incorporating this Act are, in the absence of special circumstances, "promoters" within this section: *Ib.*

([3]) Though the company are liable under this section to make good the deficiency, they are not liable to be rated in respect of such lands: *Mayor of London* v. *Churchwardens of St. Andrew's, Holborn*, L. R. 2 C. P. 574, 36 L. J. M. C. 95, 16 L. T. N. S. 665, 15 W. R. 928. The liability to pay this deficiency rate for lands in any parish ceases on the completion of the works in that parish, though the entire works are not completed, as the rate is properly a parochial rate: *East London Ry. Co.* v. *Whitchurch*, L. R. 7 H. L. 81, 43 L. J. M. C. 159, 30 L. T. N. S. 412, 22 W. R. 665 (reversing the

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assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special Act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the Acts for the redemption of the land tax.

Service of notices upon company.

134 (1). And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal (2) office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary (3), or in case there be no secretary, the solicitor of the said promoters.

Tender of amends.

135. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made, it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court (4).

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

Penalties to be summarily recovered before two justices.

136. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law (5) made in pursuance thereof, the recovery of which is not otherwise provided for (6), may be recovered by summary proceeding before two justices; and on complaint (7) being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall

judgment of the Ex. Ch. L. R. 7 Ex. 424, 27 L. T. N. S. 494, and overruling *R.* v. *Metropolitan District Ry. Co.*, L. R. 6 Q. B. 698, 40 L. J. M. C. 113); *Stratton* v. *Metropolitan Board of Works*, *ante*, p. 975. No deficiency rate is payable on property which, at the time when it was taken, was not rated: *Ib.*

(1) It would seem that this section applies in all cases where a summons or notice is required for any purpose: *In re South Yorkshire, &c., Ry. Co., Ex parte Senior*, 7 D. & L. 36, 14 Jur. 1093, 18 L. J. Q. B. 333.

(2) This means the chief office for the whole line and not an office for a traffic station: *Garton* v. *Great Western Ry. Co.*, E. B. & E. 837, 27 L. J. Q. B. 375.

(3) Service on the secretary need not be at the principal office: *Wilson* v. *Caledonian Ry. Co.*, 5 Exch. 822, 6 Rail. Cas. 772, 20 L. J. Ex. 7; see also *Mackereth* v. *Glasgow & S. W. Ry. Co.*, L. R. 8 Ex. 149, 42 L. J. Ex. 82, 28 L. T. N. S. 167, 21 W. R. 339.

(4) See R. S. C., Ord. XXII., r. 1. As to what is done in execution of this or the special Act, see *Smith* v. *Shaw*, 10 B. & C. at p. 284, and *Kennet and Avon Canal Co.* v. *Great Western Ry. Co.*, 4 Rail. Cas. 90, 7 Q. B. 824.

(5) See *Chilton* v. *London and Croydon Ry. Co.*, 5 Rail. Cas. 4, 16 M. & W. 212.

(6) This does not bar the party entitled from his remedy by action at law: *Collinson* v. *Newcastle and Darlington Ry. Co.*, 1 Car. & K. 546.

(7) As to who is entitled to make the complaint, see *Collinson* v. *Newcastle and Darlington Ry. Co.*, *supra.*

be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit (1).

Penalties to be levied by distress.

137. If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly.

Distress how to be levied.

138. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Application of penalties.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, *or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein in aid of the poor's rate of any adjoining parish or district* (2).

Distress against the treasurer.

140. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form.

141. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Penalties to be sued for within six months.

142. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months (3) next after the commission of such offence.

(1) As to summary proceedings before justices, see Jervis's Act (11 & 12 Vict. c. 43), and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

(2) The words in italics have been repealed by section 1 of the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

(3) Compare section 11 of Jervis's Act (11 & 12 Vict. c. 43) which contains a similar limitation of time; and see *Morant* v. *Taylor*, 1 Ex. D. 188, 45 L. J. M. C. 78, 34 L. T. N. S. 139, 24 W. R. 461. It would seem that in computing the six months, the day on which the offence was committed is to be excluded: *Hardy* v. *Ryle*, 9 B & C. 603.

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Penalty on witnesses making default.

143. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Form of conviction.

144. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C.) to this Act annexed.

Proceedings not to be quashed for want of form.

145 (1). No proceeding (2) in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari (3) or otherwise into any of the superior courts.

Parties allowed to appeal to quarter sessions on giving security.

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognisances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

147. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

(1) This section, taking away the certiorari, applies to all proceedings under the Act, whether on appeal or otherwise: *R.* v. *Justices of Lindsey*, 3 D. & L. 101, 14 L. J. M. C. 151.

(2) An inquisition is a "proceeding" within this section: *R.* v. *Sheffield, &c., Ry. Co.*, 1 Rail. Cas. 537, 11 A. & E. 194; *R.* v. *Bristol and Exeter Ry. Co.*, 11 A. & E 202 n.

(3) The inquisition may be removed by certiorari and quashed, if the jurisdiction has been exceeded: *R.* v. *Metropolitan Ry. Co.*, 32 L. J. Q. B. 367, 8 L. T. N. S. 663, 11 W. R. 910; and also when such excess arises from the jury awarding compensation for one of several claims over which they have no jurisdiction: *In re Penny and South Eastern Ry. Co.*, 26 L. J. Q. B. 225, 7 E. & B. 660, 3 Jur. N. S. 957; and see *R.* v. *Clerk of the Peace of the County of Chester*, 10 Jur. N. S. 614, 10 L. T. N. S. 426, 12 W. R. 762; if there be excess of jurisdiction as to part of the verdict, a certiorari will lie as to the whole: *In re South Wales Ry. Co.*, 6 Rail. Cas. 197, 18 L. J. Q. B. 310; such excess of jurisdiction may be shown by extrinsic evidence by affidavit: *In re Penny and South Eastern Ry. Co.*, *supra;* and an order made by justices without jurisdiction may be brought up by certiorari: *In re Edmordson*, 17 Q. B. 67, 17 L. T. 93; and so if the sheriff be interested in the company as a shareholder, the inquisition may be removed: *R.* v. *London and North Western Ry. Co.*, 9 L. T. N. S. 423, 12 W. R. 208; and see *R.* v. *Aberdare Canal Co.*, 14 Q. B. 854, 19 L. J. Q. B. 251, 14 Jur. 735, 15 L. T. 453.

A writ of certiorari will not be granted after the expiration of the time allowed for setting aside an award made under this Act: *R* v. *Sheward*, 9 Q. B. D. 741, 49 L. J. Q. B. 716, 42 L. T. N. S. 363, 28 W. R. 506; where the applicants for the writ had allowed five months to expire, it was held to be too late (*ib*).

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148. Provided always, and be it enacted, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled An Act for regulating the Police Courts in the Metropolis, and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal aud upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act (1).

Receiver of the metropolitan police district to receive penalties incurred within his district.

2 & 3 Vict. c. 71.

149. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

And with respect to the provision to be made for affording access to the special Act by all parties interested, be it enacted as follows:

150 (2). The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them; and where the undertaking shall be a railway, canal, or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special Act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Order of either House of Parliament."

Copies of special Act to be kept and deposited, and allowed to be inspected.

7 Will. IV., and 1 Vict. c. 83.

151. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Penalty on company failing to keep or deposit.

152. And be it enacted, that this Act shall not extend to Scotland (3).

Act not to extend to Scotland.

153 (4). *And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.*

Act may be amended this session.

(1) See as to recovery and appropriation of penalties under this section, *The Receiver for the Metropolitan Police District* v. *Bell*, L. R. 7 Q. B. 433, 41 L. J. M. C. 153.

(2) Provisions similar to this section are contained in section 161 of the Companies Clauses Act, 1845, and section 162 of the Railways Clauses Act, 1845.

(3) See the Lands Clauses Consolidation (Scotland) Act, 1845 (8 Vict. c. 19), which is very similar in terms to the present Act, most of the sections being the same.

(4) This section is repealed by section 1 of the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

SCHEDULES.

Sched. A.

SCHEDULE (A).

Form of Conveyance.

I, , of , in consideration of the sum of paid to me [*or, as the case may be*, into the Bank of England [*or* Bank of Ireland], in the name and with the privity of the Accountant-General of the Court of Chancery, *ex parte* "the promoters of the undertaking" [*naming them*], *or* to *A.B.* of , and *C.D.* of , two trustees appointed to receive the same, pursuant to the [*here name the special Act*], by the [*here name the company or other promoters of the undertaking*], incorporated [*or* constituted] by the said Act, do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title, and interest in and to the same as I am or shall become seised or possessed of, or am by the said Act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act. In witness whereof I have hereunto set my hand and seal, the day of , in the year of our Lord .

Sched. B.

SCHEDULE (B).

Form of Conveyance on Chief Rent.

I, , of , in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "the promoters of the undertaking" [*naming them*], incorporated [*or* constituted] by virtue of the [*here name the special Act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title, and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said Act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [*or* half-yearly, *as agreed upon*] portions, henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of , in the year of our Lord .

Sched. C.

SCHEDULE (C).

Form of Conviction.

To wit.

Be it remembered, that on the day of , in the year of our Lord *A.B.* is convicted before us, *C.*, *D.*, two of Her Majesty's justices of the peace for the county of [*here describe the offence generally, and the time and place when and where committed*], contrary to the [*here name the special Act*]. Given under our hands and seals, the day and year first above written.

C., *D.*

THE

LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

23 & 24 VICT. c. 106.

An Act to amend the Lands Clauses Consolidation Acts, 1845, *in regard to Sales and Compensation for Land by way of a Rentcharge, Annual Feu Duty or Ground Annual, and to enable Her Majesty's Principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts.* [20*th August*, 1860.]

Secs. 1—3.

8 & 9 Vict. c. 18.

Whereas it is expedient to extend the provisions of the Lands Clauses Consolidation Acts, 1845, in regard to sales of land or compensation for damages, in consideration of an annual rentcharge, annual feu duty or ground annual, and to enable Her Majesty's principal Secretary of State for the War Department to avail himself of the powers and provisions contained in the same Act for the purchase of lands wanted for the service of the War Department or for the defence of the realm: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Part of section 10 of recited Act repealed.

1 (1). *So much of the tenth section of the Lands Clauses Consolidation Act*, 1845, *as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed.*

Sections 10 and 11 of recited Act as to power to sell, &c., lands for an annual rent-charge and to recover, extended to all sales, &c., where parties are under disability.

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said Act, and the power to recover such rentcharge provided by the eleventh section of the said Act, are hereby extended to all cases of sale and purchase or compensation under the said Act where the parties interested in such sale or entitled to such compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act (2).

Similar proviso with regard to lands sold under section 10 of 8 & 9 Vict. c. 19.

3. The power to sell and convey lands in consideration of an annual feu duty or ground annual under the tenth section of the Lands Clauses Consolidation (Scotland) Act, 1845, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said Act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said Act.

(1) This section has been repealed by section 1 of the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

(2) See *In re Brewer*, 1 Ch. D. 409, 34 L. T. N. S. 466, 24 W. R. 465.

Secs. 4—7.

Amount of rent-charge to be settled in manner directed in the 9th section of recited Acts.

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore-mentioned, shall be settled in the manner directed in the ninth section of each of the said Acts respectively: Provided, that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall in all such cases be added to and shall form a part of the said rentcharge, annual feu duty or ground annual; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual, made payable for such lands: Provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special Act.

If lands purchased by way of rent-charge, borrowing powers to be reduced proportionally.

5. In case the promoters of the undertaking shall be empowered, by any Act or Acts relating thereto, to be passed after the passing of this Act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this Act with any person under the powers of this Act and of either of the Acts hereinbefore mentioned, or of either of the said Acts, only for the purchase of any lands in consideration of the payment of a rent charge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rent-charge, annual feu duty or ground annual, so for the time being payable.

Certain clauses in 8 & 9 Vict. c. 18, extended to purchases of land, &c., for public purposes.

6 (1). The clauses contained in the Lands Clauses Consolidation Act, 1845, relating to the purchase of lands by agreement (2), and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability (3), shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the commissioners of Her Majesty's Treasury, under the powers for that purpose contained in the Municipal Corporation Mortgages, &c., Act, 1860 (4).

Power to Secretary for War to use the powers given to promoters of undertakings by 8 & 9 Vict. c. 18.

7. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the Admiralty or of the War Department or for the defence of the realm, it shall be lawful for Her Majesty's Principal Secretary of State for the War Department for the time being to use all or any of the powers and provisions by the Lands Clauses Consolidation Act, 1845, and by the Lands Clauses Consolidation (Scotland) Act, 1845, given to promoters of the undertaking, as therein mentioned, and for such purposes the said principal secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said Act, and all the powers and provisions thereof shall, if used by Her Majesty's Principal Secretary of State for the War Department, be treated as if they were contained in the fifth and sixth Victoria, chapter ninety-four, for the purpose of being used and made available by the principal officers of Her Majesty's ordnance, and had been transferred to the said principal secretary for the time being by the eighteenth and nineteenth Victoria, chapter one hundred and seventeen, for the purposes aforesaid: Provided always, that nothing herein contained shall authorise any purchase otherwise than by agreement

(1) This section has been repealed by section 5 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), as to boroughs within that Act.

(2) See sections 6—15, *ante*.

(3) See sections 69—80, *ante*.

(4) 23 & 24 Vict. c. 16.

of any land, except according to the provisions of the twenty-third section of the said Act of the fifth and sixth Victoria, or prejudice or affect the powers and authorities of the said principal secretary for the time being under the said last-mentioned statutes or either of them.

This Act and 8 & 9 Vict. cc. 18 and 19, to be construed together.

8. This Act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (Scotland) Act, 1845, in all matters in which it relates to the said Acts respectively; and in citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

THE LANDS CLAUSES CONSOLIDATION ACT, 1869.

32 & 33 VICT. c. 18.

An Act to amend the Lands Clauses Consolidation Act. [24*th June*, 1869.]

Section 1.

Whereas it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, should be amended:

Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Costs of arbitrations, where either party so requires, to be settled by a master of superior courts.

1 (1). Where in England, under The Lands Clauses Consolidation Act, 1845, or any Act incorporating the same, any question of disputed compensation is determined by arbitration, the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed (2) and settled as between the parties by any one of the taxing masters of the Superior Courts of Law; and such fees may be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be demanded and taken in the offices of such masters, and all those enactments, including the enactments relating to the taking of fees by means of stamps, shall extend to the fees in respect of the said taxation (3).

(1) This section only applies to arbitrations proceeding simply under the Lands Clauses Act, 1845, and not to arbitrations which embrace matters that could not be the subject of arbitration, under that Act, except by agreement between the parties: *Doulton* v. *Metropolitan Board of Works*, L. R. 5 Q. B. 333, 39 L. J. Q. B. 165, 18 W. R. 790.

(2) The right to costs is entirely independent of the taxation of them, and an action can be maintained for them, though the amount has not been settled by taxation: *Metropolitan District Ry. Co.* v. *Sharpe*, 5 App. Cas. 425, 50 L. J. Q. B. 14, 43 L. T. N. S. 130, 28 W. R. 617, 44 J. P. 716. See also, *Capell* v. *Great Western Ry. Co.*, 11 Q. B. D. 345, 52 L. J. Q. B. 345, 48 L. T. N. S. 505, 31 W. R. 555. When, by consent, matters in dispute were referred to an arbitrator who was also to determine the costs, and the arbitrator sent in his certificate of costs, the company were bound by the certificate and could not then get the costs taxed: *Rowcliffe* v. *Devon and Somerset Ry. Co.*, 21 W. R. 433; and when the parties have made a special agreement as to costs, the company cannot afterwards get them taxed under this section: *Wombwell* v. *Corporation of Barnsley*, 36 L. T. N. S. 708.

The master is not bound under this section, to tax the costs of an arbitration unless the claimant is entitled to costs under section 34 of the Act of 1845: *Fitzhardinge* v. *Gloucester and Berkeley Canal Co.*, L. R. 7 Q. B. 776, 41 L. J. Q. B. 316, 27 L. T. N. S. 196, 20 W. R. 800.

Where costs are taxed under this section, the Court has no jurisdiction over the master's taxation on a motion to review: *Sandback Charity Trustees* v. *North Staffordshire Ry. Co.*, 3 Q. B. D. 1, 47 L. J. Q. B. 10, 37 L. T. N. S. 391, 26 W. R. 229.

(3) As to the fees payable to masters for such taxations of costs, see 31 & 32 Vict. c. 119, s. 45.

Secs. 2—4.

Repeal of 31 & 32 Vict. c. 119, s. 33.

2. *Section thirty-three of the Regulation of Railways Act,* 1868, *is hereby repealed, and any proceedings commenced in pursuance of that section may be continued under this Act as if they had been commenced under it* (1).

Provision respecting lands in Westminster.

3. Where any lands by the special Act authorised to be taken are situate within the city and liberty of Westminster, then, with respect to those lands, in every case in which any question of disputed compensation is required by the Lands Clauses Consolidation Act, 1845, or any Act amending the same, to be determined by the verdict of a jury, the high bailiff of the city and liberty of Westminster, or his deputy shall be deemed to be substituted for the sheriff throughout such of the enactments of the Lands Clauses Consolidation Act, 1845, and any Act amending the same as relate to the reference to a jury.

Short title. Construction of Acts.

4. This Act may be cited as "The Lands Clauses Consolidation Act, 1869," and shall be construed as one with the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and these Acts and this Act may be cited together as the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

(1) This section has been repealed by section 1 of the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

THE LANDS CLAUSES (UMPIRE) ACT, 1883.

46 & 47 Vict. c. 15.

An Act to amend the Lands Clauses Consolidation Act, 1845. [18*th June*, 1883.]

Secs. 1—2.

8 & 9 Vict. c. 18.

Whereas it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, in relation to the appointment of umpires should be amended:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of section 28 of 8 Vict. c. 18, extending the power of appointment of umpire by Board of Trade.

1. The following words in section twenty-eight of the Lands Clauses Consolidation Act, 1845, are hereby repealed, that is to say, "in any case in which a railway company shall be one party to the arbitration, and two justices in any other case," and that section shall, in relation to the appointment of any umpire under the provisions thereof after the passing of this Act, apply as if such words were omitted, and the same section shall accordingly be read and have effect as follows:

28. If in either of the cases aforesaid the said arbitrators shall refuse or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final.

Short title.

2. This Act may be cited as the Lands Clauses (Umpire) Act, 1883.

THE TOWNS IMPROVEMENT CLAUSES ACT, 1847.

10 & 11 VICT. c. 34.

An Act for consolidating in One Act certain Provisions usually contained in Acts for paving, draining, cleansing, lighting, and improving Towns (1). [21*st June*, 1847.]

Section 1.

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament for paving, draining, cleansing, lighting, and improving towns and populous districts, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such towns or districts as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such towns or districts in England or Ireland as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act (2), shall apply to the town or district which shall be comprised in such Act, and to the Commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act

Extent of Act.

And with respect to the construction of this Act, whether incorporated in whole or

Interpretations in this Act.

(1) As to the meaning of the word "town," see note (5), *ante*, p. 973.

It would seem that the word "town" would include the collection of buildings from time to time added to and called the town: *Collier* v. *Worth*, 1 Ex. D. 464, 35 L. T. N. S. 345. See also *Commissioners of Milton* v. *Faversham District Highway Board*, 10 B. & S. 548 n.

Section 160 of the Public Health Act, 1875, *ante*, p. 131, incorporates, in regard to urban districts, the following provisions of this Act:—

(1) With respect to naming the streets and numbering the houses, *i.e.*, sections 64, 65.
(2) With respect to improving the line of the streets and removing obstructions, *i.e.*, sections 66—74.
(3) With respect to ruinous or dangerous buildings, *i.e.*, sections 75—78.
(4) With respect to precautions during the construction and repair of the sewers, streets, and houses, *i.e.*, sections 79—83.

And section 169 of the same Act, *ante*, p. 139, incorporates, in regard to urban districts, the provisions of this Act with respect to slaughter-houses, *i.e.*, sections 125—131.

As to the construction of the provisions so incorporated, and as to the recovery and application of penalties, see section 316 of the same Act, *ante*, p. 215. By the same section, "the commissioners," in the incorporated provisions, means the urban or sanitary authority.

The above provisions and some others were also incorporated in the Local Government Act, 1858, by section 45 of that Act; but that Act has been repealed by section 343 of the Public Health Act, 1875, *ante*, p. 224.

(2) See *Mayor of Blackburn* v. *Parkinson*, 1 E. & E. 71, 28 L. J. M. C. 7; *Att.-Gen.* v. *Corporation of Leeds*, L. R. 5 Ch. 583, 39 L J. Ch. 711, 19 W. R. 19.

Secs. 1—3. in part with any other Act, and of any Act incorporated therewith, be it enacted as follows:

"The special Act."

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district, or of any class of towns or districts defined or comprised therein, and with which this Act shall be incorporated; and the word "prescribed" used in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the commissioners" (1) shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof.

"Prescribed."

"The commissioners."

Interpretations in this and the special Act.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Gender. Words importing the masculine gender shall include females:

"Person." The word "person" shall include a corporation, whether aggregate or sole:

"Lands." The word "land" shall include messuages, lands, tenements, and hereditaments of any tenure:

"Street." The word "street" (2) shall extend to and include any road, square, court, alley, and thoroughfare within the limits of the special Act:

"Month." The word "month" shall mean calendar month:

"Superior courts." The expresssion "Superior Courts" shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster and the Court of Pleas of the county of Durham:

"Oath." The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County." The word "county" shall include riding or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town:

"Justice." The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter is authorised or required to be done by two justices (3), the expression "two justices" shall be understood to mean two or more justices met and acting together:

"Two justices."

"Quarter sessions." The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined shall mean the court of general or quarter sessions of the peace which shall be held in or at the place nearest to the district in which the matter arises requiring the cognisance of any such court, and having jurisdiction over such district:

"Owner." The word "owner," used with reference to any lands or buildings in respect of which any work is required to be done, or any rate to be paid, under this or the special Act, shall mean the person for the time being entitled to receive, or who, if such lands or buildings were let to a tenant at rack-rent, would be entitled to receive the rack-rent from the occupier thereof:

"Cattle." The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

(1) See note (1) to p. 987.

(2) As to the meaning of the word "street," see *Curtis* v. *Embery*, cited in the note to section 3 of the Town Police Clauses Act, 1847, *post*, p. 1033; and see also *R.* v. *Platts*, cited in note to section 66, *post*, p. 1000.

(3) In the Metropolitan Police Courts any one police magistrate can do alone any act which by law is directed to be done by more than one justice, by section 14 of 2 & 3 Vict. c. 71.

And by section 1 of 21 & 22 Vict. c. 73, the same power is extended to every stipendiary magistrate.

And with respect to citing this Act, or any part thereof, be it enacted as follows :—

Short title of this Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Towns Improvement Clauses Act, 1847."

Form in which portions of this Act may be incorporated with other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act ; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

And with respect to the officers to be appointed by the commissioners or under any General Town Improvement Act, be it enacted as follows :—

Until an inspector is appointed under some general Act, execution of works may be proceeded with without his approval.

6. When by this or the special Act any matter is required to be submitted to, or to be done with the approval of, the inspector, such inspector shall be understood to mean an inspector appointed under any general Act passed in this or any future session of Parliament authorising the appointment of inspectors for inspecting or superintending works connected with paving, draining, or improving towns or populous districts ; and until such an officer is appointed under any such general Act, the commissioners, unless it be otherwise provided by the special Act, may proceed in the execution of this and the special Act without the approval of such officer, and as if no such officer had been mentioned in this or the special Act.

Commissioners to appoint, subject to approval, a surveyor.

7. The commissioners shall appoint, subject to the prescribed approval, or where no approval is prescribed, subject to approval by one of Her Majesty's Principal Secretaries of State, a person duly qualified, to act as a local surveyor of the paving, drainage, and other works authorised under the provisions of this and the special Act, and of any Act to be incorporated therewith, and, with the like approval, shall fix the salary to be paid to such surveyor, and shall pay such salary out of the rates levied under this or the special Act ; and if any such surveyor die, resign, or be removed, the commissioners shall, with the like approval, appoint another person, so duly qualified, in the room of the surveyor so dying, resigning, or removed ; and the commissioners, with the like approval, may remove any such surveyor. .

Surveyor, before entering upon office, to make the following declaration.

8. Every such surveyor upon his appointment, and before he enters upon the duties of his office, shall make and subscribe before the chairman of the commissioners a declaration to the effect following ; (that is to say,)

"I, *A. B.*, the surveyor of the town [*or* district] of [*here name the town or district*] under the [*here name the special Act*], do declare, that I will diligently, faithfully, and impartially perform the duties of my office, and to the utmost of my power, skill, and ability endeavour to cause the several provisions of the said Act, and of the Towns Improvement Clauses Act, 1847, to be strictly observed, and that without favour or affection, prejudice or malice, to any person whomsoever."

Commissioners shall appoint an inspector of nuisances.

9. The commissioners shall appoint some person, by the title of "inspector of nuisances" (1), to superintend and enforce the due execution of all duties to be performed by the scavengers appointed under this or the special Act, and to report to the commissioners any breach of the provisions of this or the special Act, or of any Act incorporated therewith, or of the bye-laws, rules, and regulations of the commissioners, and the existence of any nuisances within the limits of the special Act ; and the commissioners shall duly publish the name of any inspector of nuisances appointed by them, and shall require him to provide and keep a book in which shall be entered all reasonable complaints made by any householder of the district within the limits of the special Act of any breach of the provisions of this or the special Act, or of any Act incorporated therewith, or of the bye-laws, rules, and regulations made by the commissioners for the preservation of due order and cleanliness or for the suppression of nuisances ; and the inspector of nuisances shall forthwith inquire into the truth of such complaints, and

(1) Inspectors of nuisances may be appointed under the Public Health Act, 1875, by urban authorities under section 189 of that Act, *ante*, p. 150, and by rural authorities under section 190, *ante*, p. 151.

Secs. 9—14.

report upon the same to the commissioners at their next meeting; and such report, and the order of the commissioners thereon, shall be entered in the said book, which shall be kept at the office of the commissioners, and shall be open at all reasonable times to the inspection of any inhabitant of the said district or other person interested; and it shall be the duty of such inspector of nuisances, subject to the direction of the commissioners, to make complaints before justices, and take legal proceedings for the punishment of any person who has committed any offence under this or the special Act, or under any bye-laws made by virtue thereof.

Surveyor and inspector of nuisances.

10. The commissioners may, if they think fit, appoint the same person to be both surveyor and inspector of nuisances.

Commissioners to provide offices for surveyor and inspector.

11. The commissioners shall provide offices for the use of the said surveyor and inspector in some convenient place within the limits of the special Act, either in connection with their own office or otherwise, as may be most convenient, and shall cause due notice thereof to be given twice at the least in some newspaper circulating within the said limits.

Power to appoint, subject to approval, an officer of health.

12 (1). The commissioners may, if they think fit, appoint, subject to the prescribed approval, or, where no approval is prescribed, subject to the approval of one of Her Majesty's Principal Secretaries of State, a person of competent skill and experience, who shall be styled "The Officer of Health," whose duty it shall be to ascertain the existence of diseases within the limits of the special Act, especially epidemics and contagious diseases, and to point out any nuisance or other local causes likely to cause and continue such diseases, or otherwise injure the health of the inhabitants, and to point out the best means for checking or preventing the spread of such diseases, within the limits aforesaid, and also the best means for the ventilation of churches, chapels, schools, registered lodging houses, and other public buildings within the limits aforesaid, and from time to time as required by the commissioners to report to them upon the matters aforesaid, and to perform any other duties of a like nature which may be required of him; and the commissioners, with the same approval which is necessary for the appointment of the officer of health, shall fix the salary to be paid to such officer, and shall pay such salary out of the rates to be levied under this or the special Act; and the commissioners, with the like approval, may discontinue such office, or remove any such officer of health.

And with respect to plans of the district within the limits of the special Act, and of the works to be executed under the powers of this and the special Act, be it enacted as follows:

Commissioners to cause a map of the district within the limits of the special Act to be made, and to be open to inspection.

13. The commissioners shall, as soon as conveniently may be after the passing of the special Act, procure or cause to be made a survey and map of the district within the limits of the special Act on a scale of not less than sixty inches to a mile, and shall cause to be marked thereon the course of all the existing sewers and drains belonging to them or under their care or management, and, as far as can be ascertained, the lines of pipes or conduits for the collection or distribution of water, the course of the pipes for the distribution of gas, and such other works, with such other particulars as may be necessary in order to show the underground works within the said district, and shall cause the said map to be from time to time corrected, and such additions to be made thereto as may show the sewers and drains for the time being belonging to the commissioners, and such other pipes and underground works as aforesaid; and such map and plan, or a copy thereof, with the date expressed thereon of the last time when it was so corrected, shall be kept in the office of the commissioners, and shall be open at all seasonable hours to the inspection of the owners or occupiers of any lands within such district.

Ordnance may furnish commissioners with maps, or cause surveys to be made.

14. The principal officers of Her Majesty's ordnance may, if they think fit, on the application of the commissioners, and at their expense, furnish for the use of the said commissioners one or more copies of any map of such district, or any part thereof, which shall have been made under the direction of the said ordnance officers, or may cause a survey to be made of the said district on a scale of not less than sixty inches to

(1) See sections 189 and 190 of the Public Health Act, 1875, *ante*, pp. 150, 151, by which medical officers of health may be appointed, under that Act, in urban and rural districts respectively.

the mile by surveying officers appointed by them, for such remuneration as shall previously be agreed upon between the said principal officers and the commissioners.

Level lines to be marked on map, and bench marks to be made for denoting the same.

15. The commissioners shall cause to be marked on the map so procured or caused to be made by them a series of marks and figures at convenient distances on the said map, denoting the height of the ground at every such mark above or below the level of a particular spot within the limits of the special Act, which may be easily found and identified, the position of which spot shall be described on the map, and shall also cause to be drawn, wherever practicable, lines of equal altitude at every four feet of elevation, or at such other intervals as may appear, upon due inquiry, to be the best adapted for the guidance of works of sewerage and drainage, for the collection and distribution of water, and for other purposes within such district for which a knowledge of the levels of the district may be necessary, and shall also cause proper bench marks for denoting the levels to be inscribed and marked at convenient distances and places, at the corners of streets, on posts, houses, or other prominent objects within such district.

Commissioners may cause maps to be engraved, &c., and pay expenses out of rates.

16. The commissioners may cause every such plan to be copied, engraved, or printed, and coloured, in such manner as appears to them most convenient, and may defray the costs of any surveys and maps made under their direction, and any costs incurred by them in regard to any such ordnance map, out of the rates authorised to be levied under this and the special Act.

Commissioners to cause plans to be prepared of alterations of new works or alterations of existing works.

17. The commissioners shall cause their surveyor to prepare plans of any new works, and additions to or alterations of existing works, that may be required for the effectual drainage of the houses and streets within such district, including provision for properly trapped drains or channels for the removal of all waste water and refuse from the houses and from the surface of the streets, and also to draw on such plans the lines that appear to him most advantageous for main sewers, and the best outfall for clearing the whole district of surface moisture, and effecting the drainage of the subsoil, and to point out the most appropriate means and sites for the collection and sale of filth and refuse for agricultural or other purposes, and also to set forth any other matters which may assist the commissioners in carrying into execution, in an economical and effective manner, the several works required to be carried into execution under the provisions of this and the special Act, or which appear to be necessary for the health and convenience of the inhabitants of such district.

Before giving notice of construction of works, plans to be prepared and deposited in the office of the commissioners.

18. Before giving notice of their intention to construct any work of which by this or the special Act they are required to give notice [1], the commissioners shall cause plans of the intended work to be made, under the direction of their surveyor, on a scale not less for a horizontal plan than one inch to eighty-eight feet, and for a vertical section not less than one inch to two feet, and in the case of a sewer, showing the depth of such sewer below the surface of the ground; and such plans shall be deposited in the office of the commissioners, or some other convenient place appointed for that purpose, and shall be open at all reasonable hours for the inspection of all persons interested therein during the time for which such notice is required to be given.

And with respect to taking lands, and the compensation to be made by the commissioners for damage done by them in execution of the powers of this and the special Act, be it enacted as follows:

The taking of lands to be subject to the provisions of this Act and the Lands Clauses Consolidation Act, 1845.

19. Where by this or the special Act the commissioners shall be empowered to take or use for the purposes thereof any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the powers so given, be subject to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845 [2]; and the commissioners shall make to the owners and occupiers of and all other parties interested in any such lands taken or used for the purposes of this or the special Act full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties by reason of the exercise, as regards such lands, of the powers vested in the commissioners by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided

[1] See section 84, *post*, p. 1005.

[2] As to the provisions in the Lands Clauses Act for taking lands otherwise than by agreement, see sections 16—21, and sections 84 and 85 of that Act.

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by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining questions of compensation with regard to lands purchased or taken under the provisions thereof (1); and all the provisions of the last-mentioned Act shall be applicable to determine the amount of any such compensation, and to enforce the payment or other satisfaction thereof.

Errors and omissions in plans, &c., may be corrected by justices, who shall certify the same. Certificate to be deposited.

20 (2). If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands, mentioned in any schedule to the special Act, the commissioners, after giving ten days' notice to the owners, lessees, and occupiers of the lands affected by such proposed correction, may apply to two justices for the correction thereof; and if it appear to such justices that such omission, mis-statement, or wrong description arose from mistake, they shall certify the same accordingly, and they shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate, with the other documents to which it relates, shall be deposited with the clerk of the peace of the county in which the lands affected thereby are situated, and such certificate shall be kept by such clerk of the peace with the other documents to which it relates, and thereupon such schedule shall be deemed to be corrected according to such certificate; and the commissioners may take any lands in accordance with such certificate as if such omission, mis-statement, or wrong description had not been made.

Commissioners to make compensation for damage done.

21. The commissioners shall make good all damage to any buildings or land by reason of altering the level of any street, or otherwise carrying into execution any of the powers of this or the special Act, or of any Act incorporated therewith, and shall pay to the owners, lessees, and occupiers of any such buildings or lands respectively such amount of compensation for such injury as shall be agreed upon between such owners, lessees, and occupiers and the commissioners; and if such owners, lessees, and occupiers and the commissioners cannot agree as to the amount of such compensation, and the proportions thereof to be paid to such owners, lessees, and occupiers respectively, then the amount of such compensation, and also the proportions which the persons claiming the same are entitled to, shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof (3); and all the provisions of the last-mentioned Act shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

If parties cannot agree as to compensation, the same to be determined in manner provided by 7 & 8 Vict. c. 18.

And with respect to making and maintaining the public sewers (4), be it enacted as follows:

Management of sewers and other works vested in the commissioners.

22. All public sewers and drains within the limits of the special Act, and all sewers and drains in and under the streets, with all the works and materials thereunto belonging, whether made at the time of the passing of the special Act, or at any time thereafter, and whether made at the cost of the commissioners or otherwise, and the entire management of the same, shall vest in and belong to the commissioners.

Drainage districts to be formed subject to approval of inspector.

23. The commissioners shall from time to time, subject to the approval of the inspector, divide the whole town or district within the limits of the special Act, if and as occasion shall require, into separate drainage districts, having regard in such division to the nature of the ground, to the main lines of sewers by which such separate drainage districts are or shall be drained, and to the equal benefit as far as may be of all the lands and buildings to be comprised in any such drainage district, and shall cause their surveyor to define and describe the several drainage districts on a plan of the town or district within the limits of the special Act to be made as aforesaid.

Power to commissioners to

24 (5). The commissioners shall from time to time, subject to the restrictions herein

(1) As to the provisions for determining questions of compensation under the Lands Clauses Act, see sections 22—68, and sections 125 and 126 of that Act

(2) Similar provisions are contained in section 7 of the Railways Clauses Act, 1845, and in section 7 of the Market Clauses Act.

(3) See sections 22—68, and sections 125 and 126 of the Lands Clauses Act.

(4) As to the regulations as to sewers and drains under the Public Health Act, 1875, see section 13 *et seq.* of that Act, *ante*, p. 52.

(5) Compare section 16 of the Public Health Act, 1875, *ante*, p. 54.

contained as to the notice to be given, and the plans and estimates to be prepared, cause to be made under the streets such main and other sewers as shall be necessary for the effectual draining of the town or district within the limits of the special Act, and also all such reservoirs, sluices, engines, and other works as shall be necessary for cleansing such sewers, and, if needful, they may carry such sewers through and across all underground cellars and vaults under any of the streets, doing as little damage as may be, and making full compensation for any damage done; and if for completing any of the aforesaid works it be found necessary to carry them into or through any inclosed or other lands, the commissioners may carry the same into or through (1) such lands accordingly, making full compensation to the owners and occupiers thereof, and they may also cause such sewers to communicate with and empty themselves into the sea or any public river (2), or they may cause the refuse from such sewers to be conveyed by a proper channel to the most convenient site for its collection and sale for agricultural or other purposes, as may be deemed most expedient, but so that the same shall in no case become a nuisance (2).

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construct sewers where none exist, making compensation to owners of property.

25 (3). The commissioners may from time to time, as they see fit, enlarge, alter, arch over, and otherwise improve all or any of the sewers vested in them, and if any of such sewers at any time appear to them to have become useless, the commissioners, if they think fit to do so, may demolish and discontinue such sewer, provided that it be so done as not to create a nuisance (4).

Commissioners may alter sewers from time to time.

26. If any person by means of any enlargement, alteration, or discontinuance of any sewer or other proceeding of the commissioners, be deprived of the use of any sewer or drain which such person was theretofore lawfully entitled to use, the commissioners shall provide some other sewer or drain equally effectual for such purpose; and if the commissioners refuse or do not within seven days next after notice in writing served upon them begin and thereupon diligently proceed to restore to its former effective state such drain or sewer, the use whereof has been affected by the acts of the commissioners, or to provide such other sewer or drain as aforesaid, they shall forfeit to the person aggrieved any sum not exceeding forty shillings for every day after the expiration of such seven days during which he is deprived of the use of the drain or sewer to which he was so entitled, and is not provided with such other drain or sewer as aforesaid.

Commissioners not to destroy existing sewers, &c., without providing others.

Penalty for neglect.

27. Before entering into any contract for executing any such work as aforesaid, the commissioners shall procure from their surveyor an estimate of the probable expense of constructing the same in a substantial manner, and of the yearly expense of maintaining the same in repair, and each surveyor shall accompany such estimate with a report as to the most advantageous mode of constructing such work, whether under a contract for constructing the same merely, or a contract for constructing the same and maintaining it in repair during a given term of years; and the commissioners shall submit the

Commissioners to cause estimates to be prepared, and submitted to the inspector.

(1) Compare *Roderick* v. *Aston Local Board*, 5 Ch. D. 328, 46 L. J. Ch. 802, 36 L. T. N. S. 328, 25 W. R. 403.

(2) Where an information was instituted, at the relation of the conservators of the river Thames, to restrain the corporation of Kingston-on-Thames from altering their drains so as to discharge a greatly-increased quantity of sewage into the river, the court, considering upon the evidence, that neither present nuisance, nor probability of immediate prospective nuisance, had been proved, dismissed the information without prejudice to future proceedings in the event of nuisance being subsequently caused: *Att.-Gen.* v. *Mayor, &c., of Kingston-on-Thames*, 34 L. J. Ch. 481, 11 Jur. N. S. 596, 12 L. T. N. S. 665, 13 W. R. 888.

The council of the borough of Birmingham were bound by a local Act, incorporating this Act, effectually to drain the town; it was held that they were not justified in so carrying on their operations for this purpose as to drive away fish, and prevent cattle from drinking of the water of a river at a part seven miles below the town and where it belonged to the plaintiff: *Att.-Gen.* v. *Council of Borough of Birmingham*, 4 K. & J. 528, 6 W. R. 811. See also *Att.-Gen.* v. *Luton Board of Health*, 27 L. T. 212, 2 Jur. N. S. 181; *Att.-Gen.* v. *Leeds Corporation*, L. R. 5 Ch. 583, 39 L. J. Ch. 711, 19 W. R. 19.

(3) See section 18 of the Public Health Act, 1875, *ante*, p. 56.

(4) See *Holt* v. *Corporation of Rochdale*, L. R. 10 Eq. 354, 39 L. J. Ch. 761, 23 L. T. N. S. 43, 18 W. R. 885.

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plan and estimate of every such work, together with the report of their surveyor, to the inspector, who shall make in writing such observations or suggestions thereupon as may seem to him to be expedient; and if the commissioners do not regard or do not act in conformity with such observations or suggestions, they shall enter upon the minutes of their proceedings their reasons for not so doing.

As to the expense of making new sewers. Where lands, &c., were sufficiently drained before making new sewer, occupier to have a reduction made in his rates.

28. The expense of making any new sewer shall be defrayed as hereinafter provided (1) by special sewer rates to be levied on the occupiers of all lands and buildings within the drainage district in which such sewer is situated: Provided always, that where in the judgment of the commissioners, and by allowance of the inspector, any lands or buildings were sufficiently drained before the making of such new sewer, the occupiers thereof shall be entitled to have such deduction made from the special sewer rates to which they would otherwise be liable in respect of the making of such new sewer, and for such time as the commissioners, with the approval of the inspector, shall deem to be just, having regard to the cost of making such new sewer, and to the value and efficiency of such old sewer; and whenever any old sewer is enlarged, or open sewer closed, the expense of such enlargement, or of closing such open sewer, shall be defrayed in like manner as if it had been incurred in making a new sewer.

As to the expense of maintaining sewers, &c.

29. The expense of maintaining and cleaning all sewers vested in the commissioners, and all other expenses connected with such sewers not hereinbefore provided for, or which may not be fully defrayed by the special sewer rates, shall be defrayed by general sewer rates to be levied as hereinafter provided (2) on the occupiers of all lands and buildings within the drainage district in which such sewers are severally situated.

Penalty for making unauthorised drains.

30 (3). Every person, not being employed for that purpose by the commissioners, who shall make any drain into any of the sewers or drains so vested in the commissioners, shall forfeit to the commissioners a sum not exceeding five pounds, and the commissioners may cause such branch drain to be re-made as they think fit, and all the expense incurred thereby shall be paid by the person making such branch drain, and shall be recoverable by the commissioners as damages.

Vaults and cellars under streets not to be made without the consent of the commissioners.

31 (4). No building shall be erected over any sewer belonging to the commissioners, and no vault, arch, or cellar shall be made under the carriageway of any street, without the consent of the commissioners first obtained in writing, and all such vaults, arches, and cellars shall be substantially made, and so as not to interfere or communicate with any sewers belonging to the commissioners; and if after the passing of the special Act any building be erected, or any vault, arch, or cellar be made, contrary to the provisions herein contained, the commissioners may demolish or fill up the same, and the expenses incurred thereby shall be paid by the person erecting such building, or making such vault, arch, or cellar, and shall be recoverable as damages.

Streets may be stopped for repairs.

32. The commissioners may stop any street, and prevent all persons from passing along and using the same, for a reasonable time during the construction, alteration, repair, or demolition of any sewer or drain in or under such street.

All sewers, &c., to be covered with traps.

33 (5). All sewers and drains within the limits of the special Act, whether public or private, shall be provided by the commissioners or other persons to whom they severally belong with proper traps or other coverings or means of ventilation so as to prevent stench.

Sewers may be used by owners and occupiers of land beyond limits of town or district.

34 (6). Any person, being the owner or occupier of any lands beyond the limits of the special Act, and in respect of which he would not be liable to the payment of the rates authorised to be levied under this and the special Act, may with the consent of the commissioners first obtained in writing, upon payment to them of a reasonable sum of money to be agreed upon between them, at his own expense, and under the superintendence of the surveyor of the commissioners, cause to branch into and to communicate

(1) As to the making of special sewer rates, see section 157, *post*, p. 1020.
(2) As to the making of general sewer rates, see section 158, *post*, p. 1020.
(3) Compare section 21 of the Public Health Act, 1875, *ante*, p. 57.
(4) As to the penalty for unauthorised building over sewers in urban districts, see section 26 of the Public Health Act, 1875, *ante*, p. 59.
(5) Similar provisions for the covering and ventilation of sewers under the Public Health Act, 1875, are contained in section 19 of that Act, *ante*, p. 57.
(6) Compare section 22 of the Public Health Act, 1875, *ante*, p. 57.

with any of the sewers belonging to the commissioners any sewer or drain in respect of the said property which may be lawfully made therefrom of such size and in such manner and form of communication as the commissioners approve of: Provided always, that nothing in this or the special Act contained shall affect any right theretofore acquired by such owner or occupier to use any of the sewers or drains belonging to the commissioners under the provisions of this or the special Act.

And with respect to the drainage of houses (1), be it enacted as follows:

Commissioners empowered to construct drains from house, charging owner, &c., with the expense.

35. If any house or building within the limits of the special Act be at any time not drained by a sufficient drain or pipe communicating with some sewer, or with the sea or some public river, to the satisfaction of the commissioners, and if there shall be such means of drainage within one hundred feet of any part of such house or building, the commissioners shall construct or lay from such house or building, a covered drain or pipe of such materials, of such size, at such level, and with such fall, as they think necessary for the drainage of such house or buildings, its areas, waterclosets, privies, and offices; provided that the cost of executing such work shall not, without the written consent of the owner, exceed one year's rackrent of such house or building; and the expenses incurred by the commissioners in respect thereof, if not forthwith paid by the owner or occupier, shall be defrayed by the drainage rates hereinafter mentioned (2).

No house to be hereafter built without drains being constructed.

36. No house or building within the limits of the special Act shall be built upon a lower level than will allow of the drainage of the wash and refuse of such house or building into some sewer belonging to the commissioners either then existing or marked out upon the map hereinbefore directed to be made by them, or into the sea, or some public river into which the commissioners are empowered to empty their sewers; and if there be such means of drainage existing within one hundred feet of such intended house or building, the commissioners shall cause a drain leading thereunto from the intended site of such house to be made of such materials, of such size, at such level, and with such fall, as they think fit, or if there be no such means of drainage within one hundred feet of any part of the said intended site of such house or building, then such drain shall be made so as to lead into such covered cesspool or other place as the commissioners direct, not being under any dwelling house, and constructed to the satisfaction of the commissioners, so as effectually to prevent the escape of the contents thereof, until such sewer as aforesaid is made by the commissioners, when they shall make a drain to communicate with such new made sewer and shall demolish and fill up any such cesspool.

Where houses are rebuilt, the level shall be sufficient to allow a drain to be constructed.

37. Whenever any house is rebuilt within the limits of the special Act, the level of the cellar or other lowest floor of such house shall be raised sufficiently to allow of the construction of such a drain as is hereinbefore provided in the case of houses to be built after the passing of the special Act; and whenever any house is taken down as low as the floor of the first story for the purpose of being built up again, such building shall be deemed a rebuilding within the meaning of this Act.

Notice of buildings and re-buildings to be given to the commissioners.

38 (3). Before beginning to build any new house, or to rebuild any existing house, within the limits of the special Act, the person intending to build or rebuild such house shall give to the commissioners notice thereof in writing, and shall accompany such notice with a plan showing the level at which the foundation of such house is proposed to be laid by reference to some level ascertained under the direction of the commissioners.

Commissioners may signify disapproval within fourteen days.

39. Within fourteen days after receiving such notice the commissioners may signify their disapproval of the level at which it is proposed to lay the foundation of any such house, and in case of any such disapproval may within the said fourteen days fix the level at which the same is to be laid, subject to such right of appeal as is hereinafter mentioned.

Houses built without notice, or

40. In default of sending such notice and plan, or if such building be begun or made at any level different from that fixed by the commissioners within the said fourteen days, or determined on appeal as after mentioned, or in any other respect contrary to the provisions

(1) See the provisions as to sewerage and drainage under the Public Health Act, 1875, in section 13 *et seq.*, of that Act, *ante*, p. 52.

(2) As to such drainage rates, see sections 163—166, *post*.

(3) As to this and the three following sections, compare sections 157 and 158 of the Public Health Act, 1875, and the notes thereto, *ante*, pp. 128—131.

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contrary to provisions of this or the special Act, may be altered.

of this or the special Act, the commissioners may, if necessary, cause such building to be altered or demolished (1), as the case requires, and the expense incurred by the commissioners in respect thereof shall be repaid to them by the person failing to comply with the provision aforesaid, and shall be recoverable as damages.

If commissioners fail to signify their approval, &c., within fourteen days, parties may proceed without

41. Provided always, that if the commissioners fail to signify in writing their approval or disapproval of the level shown on such plan as aforesaid within fourteen days after receiving such notice and plan as aforesaid, the person giving such notice may, notwithstanding anything hereinbefore contained, proceed to build or rebuild the house therein referred to according to the level shown on such plan, provided that such building or rebuilding be otherwise in accordance with the provisions of this and the special Act.

Commissioners may require owners of houses to provide privies and ashpits for the same.

42 (2). The commissioners shall require the owner of every house within the said limits to which no sufficient privy and ashpit, with proper door and coverings, is attached, to provide, where it appears to them that there is room enough for the purpose, such privy and ashpit in such situation, not disturbing any building then already erected, as the commissioners deem necessary for the use of the inmates and occupiers thereof; and every such privy and ashpit shall be constructed to the satisfaction of the commissioners, so as effectually to prevent the escape of the contents thereof: Provided always, that where a privy and ashpit is used in common by the inmates and occupiers of two or more such houses, the commissioners may, if they think fit, dispense with the provision of a privy and ashpit for each such house.

Penalty for neglecting to provide privy, &c.

43 (2). The owner of any such house shall provide the same with a privy, with such door and covering to the same, and with such ashpit as aforesaid, to the satisfaction of the commissioners, within one month next after notice in writing for that purpose given by the commissioners to him or to the occupier of such house, and in default thereof the commissioners shall cause such privy and ashpit to be provided, so nevertheless that the cost of executing such work shall not, without the written consent of the owner, exceed one year's rackrent of such house or building; and the expense incurred thereby shall be defrayed by the drainage rates hereinafter mentioned.

Drains, privies, and cesspools to be kept in good order by owners.

44 (2). All branch drains, as well within as without the lands or buildings to which they belong, and all privies, ashpits, and cesspools within the limits of the special Act, shall be under the survey and control of the commissioners, and shall be altered, repaired, and kept in proper order at the costs and charges of the owners of the lands and buildings to which the same belong, or for the use of which they are constructed or continued; and if the owner and occupier of any land or buildings to which any such drain, privy, ashpit, or cesspool belongs neglect, during fourteen days after notice in writing for that purpose, to alter, repair, and to put the same into good order in the manner required by the commissioners, the commissioners may cause such drain, privy, ashpit, or cesspool to be altered, repaired, covered, and put in good order; and the expense incurred by the commissioners in respect thereof shall be repaid to them by the owners by whom the same ought to have been done, and shall be recoverable as damages.

If owners neglect, commissioners may cause the same to be done, and charge the owners with the expense.

As to the inspection of drains, privies, and cesspools.

45 (2). The surveyor of the commissioners may inspect any drain, privy, ashpit, or cesspool within the limits of the special Act, and for that purpose, at all reasonable times in the daytime, after twenty-four hours' notice in writing to the occupier of the premises to which such drain, privy, ashpit, or cesspool is attached, may enter upon any lands and buildings, with such assistants and workmen as are necessary, and cause the ground to be opened where he thinks fit, doing as little damage as may be; and if such drain, privy, ashpit, or cesspool be found to be in proper order and condition, he shall cause the ground to be closed and made good as soon as may be; and the expenses of opening, closing, and making good such drain, privy, ashpit, or cesspool shall in that case be defrayed by the commissioners.

(1) Upon similar words in the 76th section of the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), it was held that the district board could not legally demolish a house without giving to the owner an opportunity of showing cause why it should not be abolished: *Cooper* v. *Wandsworth District Board*, 32 L. J. C. P. 185, 14 C. B. N. S. 180, 9 Jur. N. S. 1155, 8 L. T. N. S. 278, 11 W. R. 646. Compare *Masters* v. *Pontypool Local Government Board*, 9 Ch. D. 677, 47 L. J. Ch. 797.

(2) For the provisions as to privies in the Public Health Act, 1875, see sections 35—41 of that Act, *ante*, pp. 62—64.

Secs. 46–52.

Penalty on persons making or altering drains, &c., contrary to the orders of the commissioners.

46. If any such drain, privy, or cesspool be on inspection found to have been constructed, after the passing of the special Act, contrary to the directions and regulations of the commissioners, or contrary to the provisions of this or the special Act, or if any person, without the consent of the commissioners, construct, rebuild, or unstop any drain, privy, or cesspool which has been ordered by them to be demolished or stopped up or not to be made, every person so doing shall be liable to a penalty not exceeding five pounds; and the commissioners may cause such amendment or alteration to be made in any such drain, privy, or cesspool as they think fit; and the expense attending any such amendment or alteration shall be paid by the person by whom such sewer was improperly constructed, rebuilt, or altered, and shall be recoverable from him as damages.

And with respect to paving and maintaining the streets (1), be it enacted as follows:

Management of streets vested in the commissioners.

47. The management of all the streets which at the passing of the special Act are or which thereafter become public highways, and the pavements and other materials, as well in the footways as carriageways of such streets, and all buildings, materials, implements, and other things provided for the purposes of the said highways, by the surveyors of highways or by the commissioners, shall belong to the commissioners.

Commissioners to be surveyors of highways.

48 (2). The commissioners, and none other, shall be the surveyors of all highways within the limits of the special Act, and within those limits shall have all such powers and authorities, and be subject to all such liabilities (3), as any surveyors of highways are invested with or subject to by virtue of the laws for the time being in force; and the inhabitants of the district within the said limits shall not, in respect of any lands situate within the said district, be liable to the payment of any highway rate, grand jury cess, or other payment in respect of making and repairing roads within the other parts of the parish, township, barony, or place in which the said district or any part thereof is situate.

Commissioners liable to indictment for want of repairs.

49. The commissioners shall be deemed guilty of a misdemeanour for refusing or neglecting to repair any public highway within the limits of the special Act, and shall be liable to be indicted for such misdemeanour in the same manner as the inhabitants thereof, or of any parish, township, or other district therein, were liable before the passing of the special Act.

Road trustees not to collect tolls within limits of Act.

50. The trustees of any turnpike road (4) shall not collect any toll on any road within the limits of the special Act, or lay out any money thereon (5).

Power for the commissioners to pave public streets.

51. The commissioners may from time to time cause all or any of the streets under their management (6), or any part thereof respectively to be paved, flagged, or otherwise made good, and the ground or soil thereof to be raised, lowered, or altered, in such manner and with such materials as they think fit; and they may also pave or make, with such materials as they think fit, any footways for the use of passengers in any such street, and cause such streets and footways to be repaired from time to time.

Commissioners may place fences to footways.

52. The commisioners shall from time to time place such fences and posts on the side of the footways of the streets under their management as may be needed for the protection of passengers on such footways, and they may place posts in the carriageways of

(1) As to the meaning of "street," see the interpretation clause, *ante*, p. 988. See also, as to these provisions with respect to paving and maintaining the streets, the provisions contained in sections 149—152 of the Public Health Act, 1875, *ante*, pp. 117—125.

(2) See *R.* v. *Slater*, 16 Jur. 992, 18 Q. B. 398, 21 L. J. M. C. 185.

(3) Where the defendants (commissioners under this Act), had obtained a special Act incorporating this Act, it was held that an action lay against them in their corporate capacity, at the suit of a person who met with an injury in consequence of the non-repairs of a highway, within the limits of the special Act: *Hartnall* v. *Ryde Commissioners*, 10 Jur. N. S. 257, 4 B. & S. 361, 33 L. J. Q. B. 39.

(4) See *Justices of Lancashire* v. *Mayor of Rochdale*, 8 App. Cas. 494, 53 L. J. M. C. 5, 49 L. T. N. S. 368, 32 W. R. 65, 48 J. P. 20.

(5) See *Clayton* v. *Fenwick*, 6 E. & B. 114, 25 L. J. Q. B. 226, 2 Jur. N. S. 635.

(6) In an action of trespass against commissioners executing an act which contained a section, substantially the same as this section, it appeared that the defendants had caused a new street to be paved and lowered in a way that would have been justified if it had been an old street, or had been previously brought under their management, it was held, that the powers given to the commissioners, were not applicable to a new street, and that the plaintiffs were entitled to recover: *Brown* v. *Clegg*, 16 Q. B. 681.

Secs. 52–55.

such streets, so as to make the crossing thereof less dangerous for foot passengers; and they shall from time to time repair any such fences or posts, or remove the same, or any obstructions to any such carriageway or footway, as they think fit (1).

Where public streets have not heretofore been paved commissioners may cause them to be paved at the expense of the occupiers of adjoining lands.

53. If any street, although a public highway at the passing of the special Act, have not theretofore (2) been well and sufficiently paved and flagged or otherwise made good, the commissioners may cause such street, or the parts thereof not so paved and flagged or otherwise made good, to be paved and flagged or otherwise made good, in such manner as they think fit, and the expenses incurred by the commissioners in respect thereof shall be repaid to them by the occupiers of the lands abutting on such street, or such parts thereof as have not been theretofore well and sufficiently paved and flagged or otherwise made good, and such expenses shall be recoverable from such occupiers respectively as hereinafter provided with respect to private improvement expenses (3), and thereafter such street shall be repaired by the commissioners out of the rates levied under this or the special Act (4).

Future streets may be declared highways.

54. If any street, not being a public highway at the passing of the special Act, be then or thereafter paved, flagged, or otherwise made good, to the satisfaction of the commissioners, then, on the application of the greater part in value of the occupiers of the houses and lands in such street, the commissioners shall, by writing under their common seal if they be incorporated, or if they be not incorporated, then under the hands of five of the commissioners, declare the same to be a public highway, and thereupon the said street shall become a public highway, and shall be thereafter repaired by the commissioners, out of the rates levied under this and the special Act; and such declaration shall be entered among the proceedings of the commissioners, and notice of such declaration shall be put up in some conspicuous place in or near such street.

Commissioners, upon completion of two-thirds of any street may, upon application, require remaining one-third to be completed by owners of houses.

55. If any street, not being a public highway at the passing of the special Act, be thereafter to the extent of two-third parts thereof paved and flagged or otherwise made good to the satisfaction of the commissioners, then, on the application of the owners of the lands abutting on such parts of the said street as have been so made good, the commissioners may require the owners of the buildings or lands abutting on the remainder of the said street to pave and flag or otherwise make good to the satisfaction of the commissioners such remainder of the said street, or such parts thereof as front such last-mentioned buildings and lands, within a reasonable time, to be fixed by the commissioners; and if such remainder of the said street, or any such part thereof as aforesaid, be not made good as aforesaid within the time so fixed, the commissioners may cause the part not so made good to be made good, and the expenses which shall be incurred by the commissioners in respect thereof shall be repaid to them by the owners by whom such paving ought to have been done respectively; and such expenses, if not forthwith repaid by such owners, shall be recoverable from the occupiers of such buildings and lands as hereinafter provided with respect to private improvement expenses (3); and when the whole of the said street is paved and made good to the satisfaction of the commissioners, they shall, by writing, under their common seal if they be incorporated,

(1) The commissioners are liable, in their corporate capacity, to an action at the suit of a person injured by their negligent omission to fence a foot-path: *Ohrby* v. *Ryde Commissioners*, 33 L. J. Q. B. 296, 10 Jur. N. S. 1048, 12 W. R. 1079.

(2) The word "theretofore" in this section is to be construed in its ordinary grammatical sense, and refers to streets which have at any time been well and sufficiently paved and flagged or otherwise made good to the satisfaction of the commissioners, and not to the state of such streets at the time of the passing of the special Act, incorporated with the general Act: *R.* v. *Great Western Ry. Co.*, 28 L. J. M. C. 246. Where a street, which was a public highway, had once been put in good repair, but which at the time of the passing of the special Act, was out of repair, it was held that the commissioners had no power, under this section, to do the necessary repairs, and charge the expenses on the adjoining occupiers. *Ib.*

(3) See section 156 *et seq.*, *post.*

(4) Where a local Act had incorporated this section without the private improvement expenses clauses, it was held that the last words of this section were in effect repealed and, consequently, no special remedy being provided for the recovery of expenses under this section, an action would lie to recover them, independently of section 149: *Mayor, &c., of Portsmouth* v. *Smith*, 46 L. T. N. S. 552.

or, if they be not incorporated, then under the hands of five of the commissioners, declare the same to be a public highway; and thereupon the said street shall become a public highway, and shall for ever afterwards be repaired by the commissioners, and such declaration shall be entered among the proceedings of the commissioners.

Penalty on persons altering pavements without the consent of the commissioners.

56. Every person who wilfully displaces, takes up, or makes any alteration in the pavement, flags, or other materials of any street under the management of the commissioners, without their consent in writing, or without other lawful authority, shall be liable to a penalty not exceeding five pounds, and also a further sum not exceeding five shillings for every square foot of the pavement, flags, or other materials of the street exceeding one square foot so displaced, taken up, or altered.

And with respect to laying out new streets (1), be it enacted as follows:

Notice of intention to lay out new streets to be given to commissioners.

57 (2). Every person who intends to make or lay out any new street shall give notice thereof to the commissioners, in order that the level of such street may be fixed by the commissioners.

Levels to be fixed by the surveyor to the commissioners.

58 (2). The level of every new street shall be fixed under the direction of the surveyor of the commissioners, subject to such right of appeal as hereafter mentioned; and the level so fixed, if not altered on appeal, shall be kept thereafter by every person raising any house or other building in such street.

If the commissioners fail to fix the level, the party may proceed without.

59. If the commissioners do not fix such level within six weeks from the time of the delivery of such notice as aforesaid, unless the fixing of such level be delayed by the appeal hereinafter provided, the person giving such notice may proceed to lay out the street at any level which will allow of compliance with the other provisions of this and the special Act, as if such level had been fixed by the commissioners; and in such case every change of the level which the commissioners afterwards deem requisite, and the works consequent thereon, shall be made by the commissioners, and the expense thereof, and any damage which any person sustains in consequence of such alteration, shall be defrayed by them.

Persons laying out streets without notice to be liable to the expenses of subsequent alterations of levels.

60. Every person who makes or lays out any such new street as aforesaid, without causing such notice to be given to the commissioners as aforesaid, shall be liable to defray all the expenses consequent upon any change of the level of the said street deemed requisite by the commissioners; and every person who in building any house or other building in such street does not keep the level fixed by the commissioners shall be liable to defray all the expenses consequent upon any change of the level of that part of the street on which such house or building abuts which the commissioners deem requisite.

Situation of gas and water pipes to be altered at the expense of the commissioners.

61. For the purposes of this or the special Act, if the commissioners deem it necessary to raise, sink, or otherwise alter the situation of any water pipe or gas pipe, or other waterworks or gasworks laid in any of the streets, they may from time to time, by notice in writing, require the person to whom any such pipes or works belong, to cause forthwith, as soon as conveniently may be, any such pipes or works to be raised, sunk, or otherwise altered in position in such manner as the commissioners direct; provided that such alteration be not such as permanently to injure such works, or to prevent the water or gas from flowing as freely and conveniently as before; and the expenses attending such raising, sinking, or altering, and full compensation for every damage done thereby, shall be paid by the commissioners, as well to the persons to whom such pipes or works belong as to all other persons.

If gas or water company neglect to make the alteration, the commissioners may cause the same to be done.

62. If the person to whom any such pipes or works belong do not proceed forthwith, or as soon as conveniently may be after the receipt of such notice, to cause the same to be raised, sunk, or altered, in such manner as the commissioners require, the commissioners may themselves cause such pipes or works to be raised, sunk, or altered as they think fit; provided that such works be not permanently injured thereby, or the water or gas prevented from flowing as freely and conveniently as before.

(1) As to the meaning of "street," see the interpretation clause, *ante*, p. 988.

(2) See section 157 of the Public Health Act, 1875, *ante*, p. 128, by which urban authorities can make bye-laws with respect to the level, construction, and width of new streets.

Secs. 63–67.

As to the width of new streets.

63. It shall not be lawful to make or lay out any new street unless the same be of the prescribed width, or, where no width is prescribed, unless the same, being a carriage road, be at least thirty feet wide, or, not being a carriage road, be at least twenty feet wide.

And with respect to naming the streets and numbering the houses (1), be it enacted as follows:

Houses to be numbered and streets named.

64. The commissioners shall from time to time cause the houses and buildings in all or any of the streets to be marked with numbers as they think fit, and shall cause to be put up or painted on a conspicuous part of some house, building, or place at or near each end, corner, or entrance of every such street the name by which such street is to be known; and every person who destroys, pulls down, or defaces any such number or name, or puts up any number or name different from the number or name put up by the commissioners, shall be liable to a penalty (2) not exceeding forty shillings for every such offence.

Numbers of houses to be renewed by occupiers.

65. The occupiers of houses and other buildings in the streets shall mark their houses with such numbers as the commissioners approve of, and shall renew such numbers as often as they become obliterated or defaced; and every such occupier who fails, within one week after notice for that purpose from the commissioners, to mark his house with a number approved of by the commissioners, or to renew such number when obliterated, shall be liable to a penalty (2) not exceeding forty shillings; and the commissioners shall cause such numbers to be marked or to be renewed, as the case may require, and the expense thereof shall be repaid to them by such occupier, and shall be recoverable as damages.

And with respect to improving the line of the streets (3), and removing obstruction (4), be it enacted as follows:

Houses may be set forward for improving line of street.

66 (5). The commissioners may allow, upon such terms as they think fit, any building within the limits of the special Act to be set forward, for improving the line of the street (6) in which such building, or any building adjacent thereto, is situated.

Commissioners may purchase houses or ground for effecting additional improvements.

67. The commissioners may agree with the owners of any lands within the limits of the special Act for the absolute purchase thereof, for the purpose of widening, enlarging, or otherwise improving any of the streets, and they shall re-sell any parts of the land so purchased which shall not be wanted for the enlargement of the street (7).

(1) These provisions with respect to naming the streets and numbering the houses are incorporated with the Public Health Act, 1875, by section 160 of that Act, *ante*, p. 131; and by section 316, *ante*, p. 215, in all the provisions of this Act so incorporated, "The Commissioners" means the urban sanitary authority; and by the same section all penalties incurred under the provisions so incorporated are recoverable, as under the Public Health Act, 1875; as to which, see sections 251—254 of that Act, *ante*, pp. 181—184.

(2) As to the recovery of such penalties, see preceding note.

(3) As to the meaning of the word "street," see note to section 66, *post*.

(4) These provisions with respect to improving the line of the streets, and removing obstructions, are incorporated with the Public Health Act, 1875, by section 160 of that Act, *ante*, p. 131, and by section 316, *ante*, p. 215, "the Commissioners" means the urban sanitary authority.

(5) Compare section 156 of the Public Health Act, 1875, *ante*, p. 127.

(6) The word "street," as used in this section, does not include a road without a line of buildings, and the commissioners have no power, under this section, to divert any portion of a highway by widening it and obliterate a portion of the old highway which had thereby become necessary: *R.* v. *Platts*, 49 L. J. Q. B. 848, 43 L. T. N. S. 159, 28 W. R. 915.

"The word 'street' here means a road lined with buildings; that is to say, a street in the ordinary acceptation of the word:" Per Lush, J. (*ib.*). Before a highroad which is not a street within this Act and the Public Health Act, 1875, can be obliterated and dealt with as no longer a highway, it is necessary to obtain a decision and order of a court of quarter sessions to that effect (*ib.*).

(7) Compare section 154 of the Public Health Act, 1875, *ante*, p. 126.

Secs. 68–70.

Houses projecting beyond line of street, when taken down to be set back.

68. When any house or building, any part of which projects beyond the regular line of the street, or beyond the front of the house or building on either side thereof, has been taken down in order to be rebuilt or altered, the commissioners may require the same to be set backwards to or towards the line of the street, or the line of the adjoining houses or buildings, in such manner as the commissioners direct, for the improvement of such street: Provided always, that the commissioners shall make full compensation to the owner of any such house or building for any damage he thereby sustains (1).

Future projections of houses, &c., to be removed on notice.

69. The commissioners may give notice (2) to the occupier of any house or building to remove or alter any porch, shed, projecting window, step, cellar, cellar door or window, sign, sign post, sign iron, showboard, window shutter, wall, gate, or fence, or any other obstruction or projection erected or placed, after the passing of the special Act, against or in front of any house or building within the limits of the special Act, and which is an obstruction (3) to the safe and convenient passage (4) along any street; and such occupier shall, within fourteen days after the service of such notice upon him, remove such obstruction, or alter the same in such manner as shall have been directed by the commissioners, and in default thereof shall be liable to a penalty (5) not exceeding forty shillings; and the commissioners in such case may remove such obstruction or projection, and the expense of such removal shall be paid by the occupier so making default, and shall be recoverable as damages: Provided always, that, except in the case in which such obstructions or projections were made or put up by the occupier, such occupier shall be entitled to deduct the expense of removing the same from the rent payable by him to the owner (6) of the house or building.

Commissioners may cause existing projections to be removed, and compensation to be made.

70 (7). If any such obstructions or projections were erected or placed against or in front (8) of any house or building in any such street before the passing of the special Act, the commissioners may cause the same to be removed (9) or altered as they think fit; provided that they give notice (0) of such intended removal or alteration to the occupier of the house or building against or in front of which such obstruction or projection shall

(1) Compare section 155 of the Public Health Act, 1875, *ante*, p. 126.

(2) By section 160 of the Public Health Act, 1875, *ante*, p. 131, notices for alterations under the 69th, 70th, and 71st sections, directions under the 73rd section, and orders under the 74th section of this Act, may, at the option of the urban authority, be served on owners instead of occupiers, or on owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served on owners, be recovered from owners instead of occupiers; and when such cost is recovered from occupiers, so much thereof may be deducted from the rent of the premises where the work is done as is allowed in the case of private improvement rates under that Act. As to such private improvement rates under the Public Health Act, 1875, see sections 213—215 of that Act, *ante*, pp. 163, 164; and as to such deductions, see section 214 of that Act.

(3) It would seem that if any of these things do project into the street, evidence to show that people were not incommoded by the projections is irrelevant: *Read* v. *Perrett*, 1 Ex. D. 349.

(4) It would seem that a wall enclosing part of a street is an obstruction to the "safe and convenient passage along" the street within the meaning of this section, whatever may be the width of the uninclosed portion of the street: *Bagshaw* v. *Buxton Local Board of Health*, 1 Ch. D. 220, 45 L. J. Ch. 260, 34 L. T. N. S. 112, 24 W. R. 231, 40 J. P. 197. Compare *Le Neve* v. *Vestry of Mile End Old Town*, 8 E. & B. 1054, 27 L. J. Q. B. 208, 4 Jur. N. S. 660.

(5) As to the recovery and application of such penalties, see note (1) to section 64, *ante*.

(6) As to the meaning of the word "owner," compare *Woodard* v. *Billericay Highway Board*, 11 Ch. D. 214, 48 L. J. Ch. 535, 27 W. R. 593.

(7) As to the amendment of this section, see note (2) to section 69, *ante*.

(8) Compare *Goldstraw* v. *Duckworth*, L. R. 5 Q. B. D. 275, 49 L. J. M. C. 73, 28 W. R. 504, 42 L. T. N. S. 440, 44 J. P. 410, decided upon similar words in a local Act. As to the liability of an occupier for an injury caused by the falling of a lamp projecting over the street, see *Tarry* v. *Ashton*, 1 Q. B. D. 314, 45 L. J. Q. B. 260, 34 L. T. N. S. 97, 24 W. R. 581, 40 J. P. 439.

(9) In a suit to restrain surveyors of highways from removing a wall inclosing a piece of ground alleged to form part of a highway, the court has jurisdiction to decide whether the land does or does not form part of the highway; and if the court comes to the conclusion that it does form part of the highway, an injunction to prevent the removal of the inclosure cannot be granted: *Bagshaw* v. *Buxton Local Board of Health*, *supra*.

(0) See note (2) to section 69.

Secs. 70–75.

be thirty days before such alteration or removal is begun, and, if such obstructions or projections shall have been lawfully made, they shall make reasonable compensation to every person who suffers damage by such removal or alteration.

Doors in future to be made to open inwards.

71. All doors, gates (1), and bars put up after the passing of the special Act within the limits thereof, and which open upon any street, shall be hung or placed so as not to open outwards, except when, in the case of public buildings, the commissioners allow such doors, gates, or bars to be otherwise hung or placed; and if, except as aforesaid, any such door, gate, or bar be hung or placed so as to open outwards on any street, the occupier of of such house, building, yard, or land shall, within eight days after notice (2) from the commissioners to that effect, cause the same to be altered so as not to open outwards; and in case he neglect so to do, the commissioners may make such alteration, and the expenses of such alteration shall be paid to the commissioners by such occupier, and shall be recoverable from him as damages, and he shall, in addition, be liable to a penalty (3) not exceeding forty shillings.

Doors opening outwards may be altered.

72. If any such door, gate, or bar was before the passing of the special Act hung so as to open outwards upon any street, the commissioners may alter the same, so that no part thereof when open shall project over any public way.

Coverings for cellar doors to be made by occupier.

73. When any opening is made in any pavement or footpath within the limits of the special Act, as an entrance into any vault or cellar, a door or covering shall be made by the occupier of such vault or cellar, of iron or such other materials, and in such manner as the commissioners direct, and such door or covering shall from time to time be kept in good repair by the occupier of such vault or cellar; and if such occupier do not within a reasonable time make such door or covering, or if he make any such door or covering contrary to the directions (4) of the commissioners, or if he do not keep the same when properly made in good repair, he shall for every such offence be liable to a penalty (3) not exceeding five pounds.

Penalty for neglect.

Waterspouts to be affixed to houses or buildings.

74. The occupier of every house or building in, adjoining, or near to any street shall, within seven days next after service of an order (5) of the commissioners for that purpose, put up and keep in good condition a shoot or trough of the whole length of such house or building, and shall connect the same either with a similar shoot on the adjoining house or with a pipe or trunk to be fixed to the front or side of such building from the roof to the ground, to carry the water from the roof thereof, in such manner that the water from such house, or any portico or projection therefrom, shall not fall upon the persons passing along the street, or flow over the footpath (6); and in default of compliance with any such order within the period aforesaid, such occupier shall be liable to a penalty (3) not exceeding forty shillings for every day that he shall so make default.

And with respect to ruinous or dangerous buildings (7), be it enacted as follows:

Ruinous or dangerous buildings to

75. If any building or wall, or anything affixed thereon, within the limits of the special Act, be deemed by the surveyor of the commissioners to be in a ruinous state (8), and dangerous to passengers or to the occupiers of the neighbouring buildings, such sur-

(1) As to the erection of gates across a highway, see the Highways Acts, 1835, s. 81, *ante*, p. 809; and as to the making of bye-laws regulating such gates, see the Highways and Locomotives (Amendment) Act, 1878 (41 & 42 Vict. c. 77), s. 26, *ante*, p. 888.

(2) As to the service of such notices, see note (2) to section 69, *ante*.

(3) As to the recovery and application of such penalties, see note (1) to section 64, *ante*.

(4) As to the service of these directions upon owners instead of occupiers, see note (2) to section 69, *ante*.

(5) As to the service of these orders, see note (2) to section 69, *ante*.

(6) Allowing rain water to flow on to a highway from the eaves of houses, does not constitute a "wilfully obstructing the free passage of the highway," nor is it permitting filth, &c., to run on to the highway, within the meaning of section 72 of the Highways Act, 1835, *ante*, p. 802; *Croasdill* v. *Ratcliffe*, 5 L. T. N. S. 834, 26 J. P. 165.

(7) These provisions with respect to ruinous or dangerous buildings are incorporated with the Public Health Act, 1875, by section 160 of that Act, *ante*, p. 131, and by section 316 of the same Act, *ante*, p. 215, "The commissioners" means the urban sanitary authority.

(8) Compare *Cheetham* v. *Mayor, &c., of Manchester*, L. R. 10 C. P. 249, 44 L. J. C. P. 139, 32 L. T. N. S. 28, 39 J. P. 343, where it was held, upon similar provisions in a special Act, that the certificate of the surveyor, as to the dangerous condition of the premises, was conclusive and could not be questioned.

veyor shall immediately cause a proper hoard or fence to be put up for the protection of passengers, and shall cause notice in writing to be given to the owner of such building or wall, if he be known and resident within the said limits, and shall also cause such notice to be put on the door or other conspicuous part of the said premises, or otherwise to be given to the occupier thereof, if any, requiring such owner or occupier forthwith to take down, secure, or repair such building, wall, or other thing as the case shall require; and if such owner or occupier do not begin to repair, take down, or secure such building, wall, or other thing within the space of three days after any such notice has been so given or put up as aforesaid, and complete such repairs, or taking down or securing, as speedily as the nature of the case will admit, the said surveyor may make complaint thereof before two justices, and it shall be lawful for such justices to order the owner, or in his default the occupier (if any), of such building, wall, or other thing, to take down, rebuild, repair, or otherwise secure, to the satisfaction of such surveyor, the same, or such part thereof as appears to them to be in a dangerous state, within a time to be fixed by such justices; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so limited, or if no owner or occupier can be found on whom to serve such order, the commissioners shall with all convenient speed cause all or so much of such building, wall, or other thing as shall be in a ruinous condition, and dangerous as aforesaid, to be taken down, repaired, rebuilt, or otherwise secured in such manner as shall be requisite; and all the expenses of putting up every such fence, and of taking down, repairing, rebuilding, or securing such building, wall, or other thing, shall be paid by the owner thereof.

be taken down or secured by owners, &c.

If owner, &c., neglect to repair, commissioners may cause the same to be done, charging owner, &c., with the expenses.

76. If such owner can be found within the limits of the special Act, and if, on demand of the expenses aforesaid, he neglect or refuse to pay the same, then such expenses may be levied by distress, and any justice may issue his warrant accordingly.

The expenses to be levied by distress on the owner.

77. If such owner cannot be found within the said limits, or sufficient distress of his goods and chattels within the said limits cannot be made, the commissioners, after giving twenty-eight days notice of their intention to do so, by posting a printed or written notice in a conspicuous place on such building, or on the land whereon such building stood, may take such building or land, provided that such expenses be not paid or tendered to them within the said twenty-eight days, making compensation to the owner of such building or land in the manner provided by the Lands Clauses Consolidation Act, 1845 (1), in the case of lands taken otherwise than with the consent of the owners and occupiers thereof, and the commissioners shall be entitled to deduct out of such compensation the amount of the expenses aforesaid, and may thereupon sell or otherwise dispose of the said building or land for the purposes of this Act.

If owner cannot be found, commissioners may take the house or ground, making compensation provided by 7 & 8 Vict. c. 18.

78. If any such house or building as aforesaid, or any part of the same, be pulled down by virtue of the powers aforesaid, the commissioners may sell the materials thereof, or so much of the same as shall be pulled down, and apply the proceeds of such sale in payment of the expenses incurred in respect of such house or building; and the commissioners shall restore any overplus arising from such sale to the owner of such house or building, on demand; nevertheless, the commissioners, although they sell such materials for the purposes aforesaid, shall have the same remedies for compelling the payment of so much of the said expenses as may remain due after the application of the proceeds of such sale as are hereinbefore given to them for compelling the payment of the whole of the said expenses.

Commissioners may sell the materials, restoring to the owner overplus arising from the sale.

And with respect to precautions during the construction and repair of the sewers, streets, and houses (2), be it enacted as follows:

79. The commissioners shall, during the construction or repair of any of the streets vested in them, and during the construction or repair of any sewers or drains, take proper precaution for guarding against accident, by shoreing up and protecting the adjoining houses, and shall cause such bars or chains to be fixed across or in any of the

Bars to be erected across streets while repairs or alterations are

(1) See sections 22—68 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 904—934.

(2) These provisions, with respect to precautions during the construction and repair of the sewers, streets, and houses, are incorporated with the Public Health Act, 1875, by section 160 of that Act, *ante*, p. 131, and by section 316, *ante*, p. 215; in the incorporated provisions, "the commissioners" means the urban sanitary authority. As to the recovery and application of penalties, see note (1) to section 64, *ante*.

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making, and lights placed at night.

streets, to prevent the passage of carriages and horses while such works are carried on, as to them shall seem proper; and the commissioners shall cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents (1); and every person who takes down, alters, or removes any of the said bars or chains, or extinguishes any light, without the authority or consent of the commissioners, shall for every such offence be liable to a penalty (2) not exceeding five pounds.

Hoards to be set up during repairs.

80. Every person intending to build or take down any building within the limits of the special Act, or to cause the same to be so done, or to alter or repair the outward part of any such building, or to cause the same to be so done, where any street or footway will be obstructed or rendered inconvenient by means of such work, shall before beginning the same cause sufficient hoards or fences to be put up, in order to separate the building where such works are being carried on from the street, with a convenient platform and handrail, if there be room enough, to serve as a footway for passengers, outside of such hoard or fence, and shall continue such hoard or fence, with such platform and handrail as aforesaid, standing and in good condition, to the satisfaction of the commissioners, during such time as the public safety or convenience requires, and shall in all cases in which it is necessary, in order to prevent accidents, cause the same to be sufficiently lighted during the night; and every such person who fails to put up such fence or hoard, or platform with such handrail as aforesaid, or to continue the same respectively standing and in good condition as aforesaid during the time aforesaid, or who does not, while the said hoard or fence is standing, keep the same sufficiently lighted in the night, or who does not remove the same, when directed by the commissioners, within a reasonable time afterwards, shall for every such offence be liable to a penalty (2) not exceeding five pounds, and a further penalty (2) not exceeding forty shillings for every day while such default is continued.

Penalty for not lighting deposits of building materials or excavations.

81. When any building materials, rubbish or other things are laid, or any hole (4) made, in any of the streets, whether the same be done by order of the commissioners or not, the person causing such materials or other things to be so laid, or such hole to be made, shall at his own expense cause a sufficient light to be fixed in a proper place upon or near the same, and continue such light every night from sun-setting to sun-rising while such materials or hole remain; and such person shall at his own expense cause such materials or other things and such hole to be sufficiently fenced and inclosed until such materials or other things are removed or the hole filled up or otherwise made secure; and every such person who fails so to light, fence, or inclose such materials or other things, or such hole, shall for every such offence be liable to a penalty (2) not exceeding five pounds, and a further penalty (2) not exceeding forty shillings for every day while such default is continued (3).

Penalty for continuing deposits of building materials or excavations an unreasonable time.

82. In no case shall any such building materials or other things or such hole (4) be allowed to remain for an unnecessary time, under a penalty (2) not exceeding five pounds to be paid for every such offence by the person who causes such materials or other things to be laid or such hole to be made, and a further penalty not exceeding forty shillings for every day during which such offence is continued after the conviction for such offence; and in any such case the proof that the time has not exceeded the necessary time shall be upon the person so causing such materials or other things to be laid, or causing such hole to be made.

Dangerous places to be

83. If any building or hole (4) or any other place near any street be, for want of suffi-

(1) See section 56 of the Highway Act, 1835, *ante*, p. 794, and *Fearnley* v. *Ormsby*, 4 C. P. D. 136, 27 W. R. 823, 43 J. P. 384.

(2) As to the recovery and application of such penalties, see note (1), section 64, *ante*.

(3) Where a local surveyor of highways, in repairing a road, placed stones thereon, and allowed them to remain at night insufficiently fenced and without sufficient light, it was held that he was properly convicted, under section 72 of the Highways Act, 1835 (*ante*, p. 802), of wilfully obstructing the highway: *Fearnley* v. *Ormsby*, 4 C. P. D. 136, 27 W. R. 823, 43 J. P. 384. See also, section 56 of the Highways Act, 1835, *ante*, p. 794.

(4) A goit is not a hole within the meaning of this section: *Wilson* v. *Mayor of Halifax*, L. R. 3 Ex. 114, 37 L. J. Ex. 44, 17 L. T. N. S. 660, 16 W. R. 707, therefore, where the defendants, a local board, left unfenced a goit adjoining a public footpath within their district, by reason of which the plaintiff's husband, while using the footpath, fell into the goit and was drowned, it was held, that the defendants were not liable under this

cient repair, protection, or inclosure, dangerous to the passengers along such street, the commissioners shall cause the same to be repaired, protected, or inclosed so as to prevent danger therefrom; and the expenses of such repair, protection, or inclosure shall be repaid to the commissioners by the owner of the premises so repaired, protected, or inclosed, and shall be recoverable from him as damages.

repaired or inclosed.

And with respect to objections to the works to be constructed by or subject to the approval of the commissioners, be it enacted as follows:

Commissioners to give notice of new levels or sewers.

84. Twenty-eight days at the least before fixing the level (1) of any street which has not become a public highway, or any street which has not been theretofore levelled or paved, and before making any sewer where none was before, or altering the course or level of or abandoning or stopping any sewer, the commissioners shall give notice of their intention by posting a printed or written notice in a conspicuous place at each end of every such street through or in which such work is to be undertaken, which notice shall set forth the name or situation of the street intended to be levelled or paved, and the names of the places through or near which it is intended that the new sewer shall pass, or the existing sewer be altered or stopped up, and also the places of the beginning and the end thereof, and shall refer to plans of such intended work, and shall specify a place where such plans may be seen, and a time when and place where all persons interested in such intended work may be heard thereupon; and they shall at the same time give to the inspector notice of the said intended work, and of the time and place appointed for hearing objections thereto.

Meeting of commissioners to hear objections in the presence of the inspector.

85. The commissioners shall meet at the time and place mentioned in the said notice, to consider, in the presence of the inspector, or of the surveyor of the commissioners, any objections made against such intended work, and all persons interested therein, or likely to be aggrieved thereby, shall be entitled to be heard before the commissioners at such meeting; and thereupon the commissioners may, with the concurrence of the inspector, if any inspector has been appointed and is present at such meeting, or in the absence of the inspector, or if no inspector have been appointed, then in their discretion, abandon or make such alterations in the said intended work as they judge fit; and no such work to which any objection is made at such meeting at which any such inspector shall be present shall be executed unless the inspector, or if no inspector have been appointed, then unless the surveyor of the commissioners, after the person making such objection or his agent has been heard, certify that the work in his judgment ought to be executed, nor shall such work be begun until the end of seven days after an order for the execution thereof has been duly made by the commissioners, and entered in their books.

Persons aggrieved by order of commissioners may appeal to quarter sessions.

86 (2). Any person liable to pay or to contribute towards the expense of any of the works aforesaid, or otherwise aggrieved by any order of the commissioners relating thereto, may, at any time within seven days next after the making of any such order, give notice in writing to the commissioners that he intends to appeal against such order to the court of quarter sessions holden next after the expiration of ten days next after such notice, and along with such notice he shall give a statement in writing of the grounds of the appeal; and if within four days next after giving such notice the party enter into a recognisance before some justice, with two sufficient sureties, conditioned to try the appeal, and abide the order of the court, and pay such costs as shall be awarded by the court thereupon, the work so appealed against shall not be begun until after the judgment of the court upon such appeal; and such court, upon due proof of such notice and of such recognisance having been given and entered into, shall hear and determine the matter of the appeal, and shall make such order thereon, either confirming, quashing, or varying the same, and shall award such costs to either of the parties, as the court in its discretion thinks fit: Provided always, that the appellant shall not be heard in

section, as the section refers to holes caused in the construction and repair of houses, &c. (*ib.*)

(1) As to the levelling of streets in urban districts, see sections 149 and 150 of the Public Health Act, 1875, *ante*, pp. 117–124. By section 157 of the same Act, *ante*, p. 128, urban authorities have power to make bye-laws with respect to the level, &c., of new streets.

(2) Compare the provisions as to appeal under the Public Health Act, 1875, in sections 268 and 269 of that Act, *ante*, pp. 192—194.

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support of such appeal unless such notice and statement have been given and such recognisance entered into as aforesaid, nor on the hearing of such appeal shall he go into evidence of any other grounds of appeal than those set forth in such statement as aforesaid.

And with respect to cleansing the streets (1), be it enacted as follows:

Commissioners to cause streets to be cleansed, and dust and ashes to be removed from the houses.

87. The commissioners shall cause all the streets, together with the foot pavements, from time to time to be properly swept and cleansed, and all dust and filth of every sort found thereon to be collected and removed, and shall cause all the dust, ashes, and rubbish (2) to be carried away from the houses and tenements of the inhabitants of the town or district within the limits of the special Act, at convenient hours and times, and shall cause the privies and cesspools within the said town or district to be from time to time emptied and cleansed in a sufficient and proper manner: Provided always, that the occupier of any house or tenement within the limits of the special Act may keep and remove any such soil, ashes, or rubbish as shall be made on his own premises, and shall be kept for manure, so that the same be not a nuisance to the inhabitants residing near such premises, and that the same be removed at such times and in such manner as shall be approved of by the commissioners.

Occupiers to cause footways to be swept.

Penalty for neglect.

88. The occupiers of buildings and lands within or adjoining the streets shall once in every day (*Sundays* excepted), before eight of the clock in the forenoon of each day, cause to be swept and cleansed the footways and pavements in front or at the side of their respective buildings and lands; and every such occupier making default herein shall for every such offence be liable to a penalty not exceeding five shillings; and for the purpose aforesaid, when any house shall be let in separate apartments, the person letting such apartments shall be deemed the occupier.

Commissioners may compound for sweeping footways.

89. The commissioners may compound, for such time as they think fit, with any person liable to sweep or clean any footway under the provisions of this or the special Act, for sweeping and cleaning the same in the manner directed by this or the special Act.

Dust, &c., collected to be vested in the commissioners.

90. The dust and filth which the commissioners shall cause to be collected from the streets, privies, sewers, and cesspools, and all the dust, ashes, and rubbish (2) which the commissioners shall cause to be collected and carried away from the houses or elsewhere within the said limits, shall be the property of the commissioners, and the commissioners shall have power to sell and dispose of the same as they think proper, and the money arising from the sale thereof shall be applied towards the purposes of the special Act.

Commissioners may provide lands, &c., for deposit of soil and materials.

91. The commissioners may from time to time provide places convenient for the deposit of the nightsoil, dung, ashes, and other filth and rubbish (2) to be collected under the authority of this or the special Act, and for stabling and keeping all horses, carts, implements, and other things required for the purposes of this or the special Act, or of any Act to be incorporated therewith; and for any of such purposes the commissioners may purchase or hire any lands or buildings by them considered necessary, or they may cause any new building to be made upon any land which shall be purchased or hired by them under the provisions of this or the special Act.

Dust boxes to be erected by commissioners.

92. The commissioners, if they think fit so to do, may cause any number of moveable or fixed dust boxes or other conveniences, wherein dust and ashes may be deposited until removed and carried away, to be provided and placed in such of the streets as they shall judge necessary, and may require the occupiers of houses or tenements within such streets to cause all their dust and ashes to be deposited daily in the said dust boxes or other conveniences; and every person who, after such dust boxes or conveniences have been so provided, shall deposit or cause or permit to be deposited any ashes or dust in any part of any street, except in some of the said dust boxes or other conveniences, and every person who shall lay or cause to be laid any dirt, dung, or other filth in any part of any street, shall for every such offence forfeit and pay a sum not exceeding ten shillings.

(1) The provisions with respect to cleansing streets and houses under the Public Health Act, 1875, are contained in sections 42—47 of that Act, *ante*, pp. 65—67.

(2) Under this section the commissioners are bound to remove only domestic rubbish, but not the dust, ashes and rubbish of a manufactory: *Lyndon* v. *Standbridge*, 2 H. & N. 45, 26 L. J. Ex. 386, 29 L. T. 111, 5 W. R. 590. Compare *Law* v. *Dodd*, 17 L. J. M. C. 65, 1 Exch. 845.

Commissioners may cause public conveniences to be erected.

93. The commissioners may erect such public urinals within the limits of the special Act, and in such situations as they think fit, and may defray the expense thereof, and of keeping the same in good order, and may make compensation for any injury occasioned to any person by the erection thereof, out of the moneys to be levied under this and the special Act.

Commissioners to cause streets to be watered, and wells, pumps, &c., to be provided.

94. The commissioners shall, as often as occasion requires, cause the streets to be watered, and they may contract with any water company or other party for a supply of water for that purpose, and for cleansing the sewers and drains; and, if necessary, they may place pipes, conduits, and pumps in any of the streets, or provide any other works and engines proper for that purpose, and remove and alter the same when and as they think proper.

Commissioners to appoint scavengers

95. The commissioners shall appoint and employ a sufficient number of scavengers, or contract with any company or other person to employ scavengers, for sweeping, cleansing, and watering the streets, and for removing all dust, ashes, rubbish, and filth (1) therefrom, and from the houses and tenements therein, and for emptying privies and cesspools, in the manner by this or the special Act directed; and such scavengers shall, on such days and at such hours, and in such manner as the commissioners from time to time appoint, sufficiently execute all such works and duties as they have respectively contracted or been employed to perform; and every such contractor who fails to sweep and properly cleanse or water any street which he has contracted to sweep, cleanse, or water, or who fails to clean out and empty any privy, cesspool, or sewer which he has contracted to clean out and empty, at the time and in the manner appointed by the commissioners, or to collect or remove any dirt, ashes, or rubbish which he has contracted to remove, at the time and in the manner prescribed by the commissioners for that purpose, or who lays any of such soil, dust, ashes, rubbish, or filth in any other place than such as are appointed by the commissioners for that purpose, shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty for obstructing scavengers.

96. Every occupier of any building or land within the said limits, and every other person who refuses to permit the said scavengers to remove such dirt, ashes, or rubbish (1), as by this or the special Act they are authorised to do, or who obstructs the said scavengers in the performance of their duty, shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on persons other than scavengers removing dirt.

97. Every person other than the person employed by the commissioners, or by some person contracting with the commissioners for that purpose, who collects or carries away any nightsoil, dust, ashes, rubbish, or filth (1) by this or the special Act directed to be removed by persons employed by the commissioners, from any street or public place within the limits of the special Act, shall be liable to a penalty not exceeding forty shillings for every such offence (2).

Penalty for conveying offensive matter at improper times.

98. The commissioners may from time to time fix the hours within which only it shall be lawful to empty privies or remove offensive matter within the limits of the special Act; and when the commissioners have fixed such hours, and given public notice thereof, every person who within the limits of the special Act empties or begins to empty any privy, or removes along any thoroughfare within the said limits any offensive matter, at any time except within the hours so fixed, and also every person who at any time, whether such hours have been fixed by the commissioners or not, uses for any such purpose any cart or carriage not having a covering proper for preventing the escape of the contents of such cart, or of the stench thereof, or who wilfully slops or spills any such offensive matter in the removal thereof, or who does not carefully sweep and clean every place in which any such offensive matter has been placed, or unavoidably slopped or spilled, shall be liable to a penalty not exceeding forty shillings, and in default of the apprehension of the actual offender, the driver or person having

(1) See preceding note.

(2) This section, rendering it unlawful for any person, not employed by the commissioners, to remove dirt from the streets, was held to have destroyed an alleged custom for the inhabitants of a district, under a Local Improvement Act, to cleanse their streets, and throw into the sewers and streams such part of the mud and soil as could not be conveniently carted away: *Evans* v. *Corporation of Birmingham*, 21 L. T. 182.

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the care of the cart or carriage employed for any such purpose shall be deemed to be the offender.

And with respect to the prevention of nuisances (1), be it enacted as follows:

Stagnant pools of water and other annoyances to be removed.

99 (2). No person shall suffer any waste or stagnant water to remain in any cellar or other place within any house belonging to or occupied by him within the limits of the special Act, so as to be a nuisance; and every person who so suffers any such water to remain for forty-eight hours after receiving notice from the commissioners to remove the same, and every person who allows the contents of any privy or cesspool to overflow or soak therefrom, to the annoyance of the occupiers of any adjoining property, shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty not exceeding five shillings for every day during which such nuisance continues; and the commissioners may drain and cleanse out any stagnant pools, ditches, or ponds of water within the limits of the special Act, and abate any such nuisance as aforesaid, and for that purpose may enter, by their officers and workmen, into and upon any building or land within the said limits at all reasonable times, and do all necessary acts for any of the purposes aforesaid; and the expenses incurred thereby shall be paid by the person committing such offence, or occupying the building or land whence such annoyance proceeds, and if there be no occupier, by the owner of such building or land, and shall be recoverable as damages.

Regulations to prevent accumulation of dung, &c.

100 (3). If the dung or soil of any stable, cowhouse, or pigstye or other collection of refuse matter, elsewhere than in any farmyard, be at any time allowed to accumulate within the limits of the special Act for more than thirty days, or for more than seven days after a quantity exceeding one ton has been collected in any place not allowed by the commissioners, such dung, soil, or refuse, if not removed within forty-eight hours after notice from any officer of the commissioners for that purpose, shall become the property of the commissioners, and they or any person with whom they have at that time any subsisting contract for the removal of refuse, may sell and dispose of the same, and the money thence arising shall be applied towards the purposes of the special Act.

On certificate of the officer of health, filth to be removed.

101 (4). If at any time the officer of health, or, if for the time being there be no officer of health, any two surgeons or physicians, or one surgeon and one physician, residing within the limits of the special Act, certify under his or their hand to the commissioners that any accumulation of dung, soil, or filth, or other noxious or offensive matter within the limits of the special Act, ought to be removed, as being injurious to the health of the inhabitants, the clerk to the commissioners shall forthwith give notice to the owner or reputed owner of such dung, soil, or filth, or to the occupier of the land where the same are, to remove the same within twenty-four hours after such notice; and in case of failure to comply with such notice the said dung, soil, or filth shall thereupon become vested in the commissioners, and they, or any person with whom they have at that time contracted for the removal of all such refuse may sell and dispose of the same, and the money thence arising shall be applied towards the purposes of the special Act.

Houses to be whitewashed and purified on certificate of officer of health, &c.

102 (5). If at any time the officer of health, or, if for the time being there be no officer of health, any two surgeons or physicians, or one surgeon and one physician, residing within the said limits, certify under his or their hands to the commissioners that any house or part of any house or building within the limits of the special Act is in such a filthy or unwholesome condition that the health of the inmates or of the neighbours is thereby affected or endangered, or that the whitewashing, cleansing, or purifying of any house or building or any part thereof would tend to prevent or check infectious or contagious disease therein, or that any drain, privy, or cesspool is in such a defective state that the health of the neighbours is thereby affected or endangered, the commissioners

(1) For the definition and the different kinds of nuisances, see note (5), *ante*, p. 87. See also the provisions of the Public Health Act, 1875, relating to nuisances (*i.e.*, sections 91—110), *ante*, pp. 87—100.

(2) Compare sub-section 2 of section 91 of the Public Health Act, 1875, *ante*, p. 89.

(3) Compare sub-section 4 of section 91 of the Public Health Act, 1875, *ante*, p. 89.

(4) Compare sections 49 and 50 of the Public Health Act, 1875, *ante*, p. 68, as to the removal of filth in urban districts.

(5) See section 46 of the Public Health Act, 1875, *ante*, p. 66.

shall order the occupier of such house or part thereof to whitewash, cleanse, and purify the same, and the owner of such drain, privy, or cesspool to amend the condition thereof, in such manner and within such time as the commissioners deem reasonable; and if such occupier or owner do not comply with such order he shall be liable to a penalty not exceeding ten shillings for every day's neglect thereof; and in such case the commissioners may cause such house or any part thereof to be whitewashed, cleansed, or purified, or the condition of such drain, privy, or cesspool to be amended, and may recover the expense thereof from such occupier or owner in the same manner as damages.

No interment in any grave without leaving two feet six inches clear of soil above the coffin.

103. No coffin containing a corpse shall be buried in any grave within the limits of the special Act, not being a vault or catacomb, without at least thirty inches of soil between the ordinary surface of such burial ground and the upper side of the coffin; and if the person having the preparation or the immediate charge of the preparation of the grave to receive such coffin permit the coffin to be buried in such grave, or if the person having the control of the burial ground knowingly permit any coffin to be buried in any grave in which there is not left after the burial thereof thirty inches at the least of soil, measuring from the ordinary surface of such burial ground to the upper side of the coffin, the person having the immediate charge of the preparation of the grave, and the person having the control of the burial ground in which such burial is made, shall for every such offence be liable to a penalty not exceeding five pounds.

Justices may order nuisances to be abated.

104 (1). If any candle-house, melting-house, melting-place, or soap-house, or any slaughter-house, or any building or place for boiling offal or blood, or for boiling or crushing bones, or any pig-stye, necessary house, dunghill, manure heap, or any manufactory, building, or place of business within the limits of the special Act, be at any time certified to the commissioners by the inspector of nuisances or officer of health, or, if for the time being there be no inspector of nuisances or officer of health, by any two surgeons or physicians, or one surgeon and one physician, to be a nuisance or injurious to the health (2) of the inhabitants, the commissioners shall direct complaint to be made before two justices; and any justice may summon before any two justices the person by or on whose behalf the work complained of is carried on, and such justices shall inquire into such complaint, and they may, by an order in writing under their hands, order such person to discontinue or remedy the nuisance within such time as to them shall appear expedient: Provided always, that if it appear to such justices that in carrying on any business complained of the best means then known to be available for mitigating the nuisance or the injurious effects of such business have not been adopted, they may suspend their final determination, upon condition that the person so complained against shall undertake to adopt within a reasonable time such means as the said justices shall judge to be practicable and order to be carried into effect for mitigating or preventing the injurious effects of such business.

Penalty for disobedience of orders of justices.

105 (3). If any such nuisance, or the cause of any such injurious effects as aforesaid, be not discontinued or remedied within such time as shall be ordered by the said justices, the person by or on whose behalf the business causing such nuisance is carried on shall be liable to a penalty not exceeding five pounds for every day during which such nuisance shall be continued or unremedied after the expiration of such time as aforesaid: Provided always, that when any person who thinks himself aggrieved by any such order shall, according to the provisions of this or the special Act, appeal against any such order, such person shall not be liable to discontinue or remedy the nuisance or cause of the injurious effects mentioned therein, or to pay any penalty, until after the expiration of five days after the determination of such appeal and the confirmation of such order, unless such appeal cease to be prosecuted.

Commissioners to order costs of prosecutions

106 (4). The commissioners may direct any prosecution for any public nuisance whatsoever created, permitted, or suffered within the limits of the special Act, and may order proceedings to be taken for the recovery of any penalties, and for the punishment of any

(1) As to the abatement of such nuisances in any urban district, see section 114 of the Public Health Act, 1875, *ante*, pp. 101, 102.
(2) See note (5), *ante*, p. 101.
(3) See section 114 of the Public Health Act, 1875, *ante*, p. 102.
(4) Compare 107 of the Public Health Act, 1875, *ante*, p. 99.

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persons offending against the provisions of this or the special Act, or of any Act incorporated therewith, and may order the expenses of such prosecution or other proceedings to be paid out of the rates authorised to be imposed under the provisions of this and the special Act.

to be paid out of the rates.

Act not to affect nuisances at common law.

107. Nothing in this Act contained shall be construed to render lawful any act or omission on the part of any person which is, or but for this Act would be, deemed to be a nuisance at common law, nor to exempt any person guilty of a nuisance at common law from prosecution or action in respect thereof, according to the forms of proceeding at common law, nor from the consequences, upon being convicted thereof (1).

And with respect to the prevention of smoke, be it enacted as follows:

Fireplaces of factories, &c., to consume their own smoke.

108 (2). Every fireplace or furnace constructed after the passing of the special Act, in order to be used within the limits of such Act in the working of engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, gaswork, or in any manufactory whatsoever (although a steam engine be not used or employed therein), shall be so constructed as to consume the smoke (3) arising from the combustibles used in such fireplace or furnace; and every such fireplace or furnace existing within the said limits at the date of the passing of the special Act, used for the purposes aforesaid, not so constructed as to consume the smoke arising from such fireplace or furnace, shall within the prescribed period, or if no period be prescribed, then within two years after the passing of the special Act, be so altered in its construction as to consume such smoke; and if after such period any person use for any of the purposes aforesaid any fireplace or furnace not so constructed as aforesaid, or if at any time any person use any such fireplace or furnace constructed after the passing of the special Act, and not so constructed as aforesaid, or so negligently use any such fireplace or furnace as not to consume the smoke arising from the combustibles used therein, every person so offending shall be liable to a penalty of forty shillings for every day during any part of which such furnace or fireplace shall be so used and continued after one month's notice in writing shall have been given to the owner or occupier of such furnace or fireplace by the commissioners to remedy or discontinue the use of the same.

And with respect to the construction of houses for prevention of fire (4), be it enacted as follows:

Party walls to be carried up through the roof.

Walls of buildings and coverings of roofs to be

109. The party (5) walls of all buildings erected after the passing of the special Act within the limits thereof shall be carried through and above the roof, to form a parapet of not less than twelve inches in height, measured at right angles with the slope of the roof, above the covering of the roof of the highest building to which such party walls belong; and all such party walls, and the external walls of all buildings, erected after the passing of the special Act, in or near any street, or within the curtilage of any house adjoining any street, shall be constructed of incombustible materials, and the coverings

(1) Where a special Act incorporated the provisions of this Act as to making and maintaining public sewers and the drainage of houses, except so far as they were inconsistent with it, or expressly varied or excepted by it, and by a section of the special Act the corporation were authorised to construct one or more trunk or other sewer or sewers, sufficiently capacious to receive the foul and drainage water and filth of the town and convey the same into the river A., it was held that the power to drain into the river was controlled by section 24 of this Act, and also by section 107, though that clause was not expressly incorporated in the local Act; and that the corporation were not authorised by the section of the local Act to create a nuisance by draining into the river: *Att.-Gen.* v. *Leeds Corporation*, L. R. 5 Ch. 583, 39 L. J. Ch. 711, 19 W. R. 19.

(2) Compare sub-section 7 of section 91 of the Public Health Act, 1875, *ante*, p. 90.

(3) The Birmingham Improvement Act, 1851, incorporated this section, with a provision that the penalty may be remitted if the furnace consumed the smoke, "as far as possible;" it was held that "as far as possible" meant as far as possible consistently with carrying on the trade in which the furnace was employed: *Cooper* v. *Wooley*, L. R. 2 Ex. 88, 36 L. J. M. C. 27, 15 L. T. N. S. 539, 15 W. R. 450.

(4) By sub-section 2 of section 157 of the Public Health Act, 1875, *ante*, p. 128, every urban authority can make bye-laws for the prevention of fires.

(5) A wall may be a party wall to such height as it belongs in common to two buildings, and cease to be a party wall for the rest of its height: *Weston* v. *Arnold*, L. R. 8 Ch. 1084, 43 L. J. Ch. 123, 22 W. R. 284.

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of the roof thereof shall not, without the previous consent in writing of the commissioners, be constructed of combustible materials; and it shall not be lawful for the owner of any building within the limits of the special Act, having at the passing of the special Act a roof covered with thatch or other combustible material, and contiguous to or adjoining to any other building, to suffer such covering to such roof to remain for a longer period than seven years after the passing of the special Act, unless with the consent in writing of the commissioners; and every person who shall erect such a building, or cover any roof, or suffer the covering of any roof to continue, contrary to the provision herein contained, and who shall not remove or alter the same within one month after notice given to him for that purpose by the commissioners, shall be liable to a penalty not exceeding one pound for every day that such building or covering to such roof shall so continue.

made of incombustible materials.

And with respect to supplying buildings with fresh air (1), be it enacted as follows:

Regulating construction of buildings intended as places for public meetings.

110. Before beginning to build any building intended to be used as a church, chapel, or school, or place of public amusement or entertainment, or for holding large numbers of people for any purpose whatsoever, within the limits of the special Act, the person intending to build the same shall give fourteen days' notice in writing to the commissioners, and shall accompany such notice with a plan and description of the manner proposed for its construction, with respect to the means of supplying fresh air to such building; and no person shall begin to build such building until the manner proposed for its construction, with respect to the means for supplying fresh air, have been approved of by the commissioners; and in default of sending such notice, or if any such building be erected without such approval, the commissioners may cause such building or such part of it as they consider necessary, to be pulled down (2) or altered, at the expense of the owner, and any expense incurred by the commissioners in so doing may be recovered as hereinbefore provided (3) with respect to ruinous or dangerous buildings taken down or repaired by the commissioners.

No person to begin to build until plan has been approved by commissioners.

If commissioners fail to signify their approval of plan within fourteen days, party may proceed to build.

111 (4). Provided always, that if the commissioners fail to signify in writing their approval or disapproval (5) of the manner of construction of such building, with respect to the means of supplying fresh air shown on such plan and description as aforesaid, within fourteen days after receiving such notice, accompanied by such plan and description, the person giving such notice may, notwithstanding anything herein contained, proceed to build the building therein referred to in the manner shown on such plan and description; provided that such building be otherwise in accordance with the provisions of this and the special Act.

Persons may appeal against determination of commissioners.

112. Provided also, that if the person so intending to build be dissatisfied with the determination of the commissioners as to the said proposed manner of construction, he shall have the same right of appeal against the determination of the commissioners, and such appeal shall be followed by the same incidents, as hereinbefore provided (6) in the case of appeals against any order of the commissioners with respect to works to be constructed by or subject to the approval of the commissioners.

Cellars in courts not to be occupied as

113 (7). It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be occupied as a dwelling place (8), any cellar under any house in any

(1) As to the power to make bye-laws for the ventilation of buildings in urban districts, see sub-section 3 of section 157 of the Public Health Act, 1875, *ante*, p. 129.

(2) Upon a similar power in the 76th section of the Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), it was held that the board could not demolish a house without first giving the person guilty of the omission an opportunity of being heard: *Cooper* v. *Wandsworth District Board of Works*, 9 Jur. N. S. 1155, 14 C. B. N. S. 180, 32 L. J. C. P. 185, 8 L. T. N. S. 278, 11 W. R. 646; see *Masters* v. *Pontypool Board*, cited in note (1), *ante*, p. 131; see also, note (2), p. 130, and the cases referred to therein.

(3) See sections 76—78, *ante*.

(4) Compare section 158 of the Public Health Act, 1875, *ante*, pp. 130, 131.

(5) See *Masters* v. *Pontypool Board*, cited in note (1), *ante*, p. 131.

(6) See section 86, *ante*.

(7) Compare the provisions as to occupation of cellar dwellings in the Public Health Act, 1875, sections 71—75, *ante*, pp. 80—82.

(8) By section 74 of the Public Health Act, 1875, *ante*, p. 81, a cellar is to be deemed

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court within the limits of the special Act, after the commissioners have given notice to the owners thereof that the letting of cellars as dwelling places in such court is prohibited from that time forth; and it shall be the duty of the commissioners to issue such notices from time to time, as soon as is convenient, until such notice has been given with respect to every court within the limits of the special Act.

dwellings after letting prohibited.

No cellars under the height of seven feet from the floor to the ceiling to be let as dwellings.

114 (1). It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be occupied as a dwelling place, any cellar or room under any house within the said limits, although not situated in a court, which cellar or room shall be less in height from the floor to the ceiling than seven feet, or which shall be less than one-third of its height above the level of the street or ground adjoining the same, or otherwise shall not have two feet at least of its height from the floor to the ceiling above the said level, with an open area of two feet wide from the level of the floor of such cellar or room up to the level of the said street or ground, or which shall not have appurtenant thereto the use of a watercloset or privy and ashpit, according to the enactment herein contained, or which shall not also have a glazed window made to open to the full extent of the half thereof, the area of which is not less than six feet clear of the frame, and a fireplace, with a chimney or flue, or which cellar, being an inner or back cellar let or occupied along with a front cellar as part of the same letting or occupation, has not a ventilating flue (unless such inner or back cellar shall be part of a house built before the passing of the special Act), or which shall not be well and effectually drained by means of a drain the bottom of which is one foot at least below the level of the floor of such cellar or room.

Penalty on letting such cellars as dwelling places.

115 (2). Every person who lets separately (except as aforesaid) or who knowingly suffers to be occupied for hire, as a dwelling place, any cellar or room within the limits of the special Act, contrary to the provisions of this and the special Act, shall be liable to a penalty not exceeding twenty shillings, and a further penalty not exceeding five shillings for every day during which such cellar or room is so occupied, after conviction of the first offence.

And with respect to lodging houses (3), be it enacted as follows:

For the regulation and inspection of lodging-houses.

116. It shall not be lawful to keep or use as a public lodging house within the limits of the special Act any house, not being a licensed victualling house, which shall be rated to the relief of the poor on a less sum than ten pounds, nor in any case unless such house shall have been registered as a lodging house in a book to be kept by the commissioners for that purpose; and every house shall be deemed a public lodging house within the meaning of this Act in which persons are harboured or lodged for hire for a single night, or for less than a week at one time, or any part of which is let for any term less than a week.

Commissioners to keep a register of lodging-house keepers, and make rules for promoting cleanliness and ventilation.

117 (4). The commissioners shall cause a register to be kept, in which shall be entered the names of all such persons as apply to have the houses occupied by them registered as lodging houses, and the situations of such houses; and the commissioners shall from time to time fix the number of lodgers who may be received into each such lodging house, and make rules for promoting cleanliness and ventilation in such lodging house; and they shall order that a ticket containing the number of lodgers allowed to be received into the house, and a table of rules for promoting cleanliness and ventilation, shall be hung up or placed in a conspicuous part of each room into which lodgers are received; and the keepers of all such lodging houses shall at all times observe the said rules, and give access to such lodging houses, when required by any persons appointed by the commissioners, for the purpose of inspection thereof, or for the purpose of performing therein any disinfecting process which the commissioners may order.

118. Every person who shall keep any lodging house, and receive lodgers therein, without such lodging house having been duly registered, or who shall receive into the

to be occupied as a dwelling, within the meaning of that Act, when any person passes the night therein.

(1) See section 72 of the Public Health Act, 1875, *ante*, p. 81.

(2) See section 73 of the Public Health Act, 1875, *ante*, p. 81.

(3) Compare the provisions as to Common Lodging Houses in the Public Health Act, 1875, sections 76—89, *ante*, pp. 82—86.

(4) See sections 76, 79, 80, of the Public Health Act, 1875, *ante*, pp. 82—84.

same more lodgers than shall be allowed by the commissioners, or who shall fail to keep such ticket or such table of rules as aforesaid hung up or displayed as required by the commissioners, or who shall neglect to cause such rules to be observed in any such lodging house, or who shall refuse to admit to such lodging house at all reasonable times, any person appointed by the commissioners for any of the purposes aforesaid, or who shall wilfully obstruct any such person in performing any disinfecting process therein which the commissioners may order, shall be liable to a penalty not exceeding forty shillings for each such offence (1).

Penalty on lodging-house keepers not complying with the provisions of the Act.

And with respect to lighting the town or district (2), be it enacted as follows:

119. The commissioners may contract for the prescribed period or (where no period shall be prescribed) for any period not exceeding three years at any one time, with the owners of any gasworks, or with any other person, for the supply of such gas or oil or other means of lighting, and may provide such lamps, lamp posts, and other works as the commissioners think necessary for lighting such streets.

Commissioners may contract for lighting the streets.

120. If the commissioners, and the owners of any gasworks authorised by Act of Parliament to supply gas within the limits of the special Act, and with whom the commissioners may be desirous of contracting, shall not agree as to the price to be paid for such supply, then such price shall be settled by arbitration; and for that purpose the clauses (3) of the Lands Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this and the special Act.

For ascertaining price to be paid for gas in case of dispute.

And with respect to the supply of water (4), be it enacted as follows:

121. The commissioners shall cause all existing public cisterns, pumps, wells, conduits, and other waterworks used for the gratuitous supply of water to the inhabitants within the limits of the special Act, to be continued, maintained, and supplied with water, or they shall substitute other such works equally convenient, and shall cause them to be maintained and supplied with water; and such public cisterns and other works shall be vested in the commissioners, and be under their management and control; and the commissioners may construct any number of new cisterns, pumps, conduits, and other waterworks, for the gratuitous use of any persons who choose to carry the same away, not for sale, but for their own private use, and may supply with water any public baths or wash-houses; provided that the commissioners shall not construct any such new works without the prescribed approval, or, if no approval be prescribed, without the approval of the commissioners of Her Majesty's woods and forests, land revenues, works, and buildings; and before giving their approval to the construction of any such new works, the last-mentioned commissioners shall cause a local inquiry to be made in the manner prescribed by an Act of the last session of Parliament, intituled "An Act for making preliminary Inquiries in certain Cases of Application for Local Acts," and shall withhold their inquiry (5) if upon such inquiry they shall be satisfied that an equally good and abundant supply of water for such public purposes can be procured as cheaply by any other means than by the construction of such new works.

Power to commissioners to construct public cisterns and pumps for supply of water to baths and wash-houses.

Commissioners not to construct such new works without approval.

9 & 10 Vict. c. 106.

122. The commissioners may contract for the prescribed period, or (where no period shall be prescribed) for any period not exceeding three years at one time, with the owners of any waterworks or any other person for such supply of water as the commissioners shall think necessary for the purposes of this or the special Act.

Commissioners may contract for supply of water.

123 (6). If the commissioners and the owners of any waterworks authorised by Act of Parliament to supply water within the limits of the special Act with whom the commissioners may be desirous of contracting, do not agree as to the price to be paid for such supply, then such price (except where by the Act authorising such waterworks

For ascertaining price to be paid for water in case of dispute.

(1) For similar penalties under the Public Health Act, 1875, see sections 79, 85, of that Act, *ante*, pp. 84, 85.

(2) As to the provisions for lighting streets, &c., in urban districts, see sections 161—163 of the Public Health Act, 1875, *ante*, pp. 132, 133.

(3) *I.e.*, sections 25—37 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 906—912.

(4) As to the supply of water under the Public Health Act, 1875, see section 51 *et seq.*, *ante*, p. 69.

(5) This is a misprint for "approval."

(6) Compare section 52 of the Public Health Act, 1875, *ante*, p. 74.

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some other mode of determining such price shall be provided) shall be settled by arbitration, and for that purpose the clauses (1) of the Lands Clauses Consolidation Act, 1845, with respect to the settlement of disputes by arbitration, shall be incorporated with this and the special Act.

Commissioners to cause fireplugs, &c., to be provided and maintained.

124 (2). The commissioners shall cause fireplugs, and all necessary works, machinery, and assistance for securing an efficient supply of water in cases of fire, to be provided and maintained, and for this purpose they may enter into any agreement with any water company or other party, and they shall paint or mark on the buildings and walls within the streets words or marks near to such fireplugs to denote the situation thereof, and do such other things for the purposes aforesaid as they may from time to time deem expedient.

And with respect to slaughter-houses (3), be it enacted as follows:

Commissioners may license slaughter-houses, &c.

125. The commissioners may license such slaughter-houses and knacker's yards as they from time to time think proper for slaughtering cattle within the limits of the special Act.

No new slaughter-houses in future to be erected without a licence

126. No place shall be used or occupied as a slaughter-house or knacker's yard within the said limits which was not in such use and occupation at the time of the passing of the special Act, and has so continued ever since, unless and until a licence (4) for the erection thereof, or for the use and occupation thereof as a slaughter-house or knacker's yard, have been obtained from the commissioners; and every person who, without having first obtained such licence as aforesaid, uses (5) as a slaughter-house or knacker's yard any place within the said limits not used as such at the passing of the special Act, and so continued to be used ever since, shall for each offence be liable to a penalty not exceeding five pounds, and a like penalty for every day after the conviction for such offence upon which the said offence is continued.

Existing slaughter-houses, &c., to be registered.

127. Every place within the limits of the special Act which shall be used as a slaughter-house or knacker's yard shall, within three months after the passing of such Act, be registered by the owner or occupier thereof at the office of the commissioners, and on application to the commissioners for that purpose the commissioners shall cause every such slaughter-house or knacker's yard to be registered in a book to be kept by them for that purpose; and every person who after the expiration of the said three months, and after one week's notice of this provision from the commissioners, uses or suffers to be used any such place as a slaughter-house or knacker's yard, without its being so registered, shall be liable to a penalty not exceeding five pounds for such

(1) *I.e.*, sects. 25—37 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 906—912.

(2) As to the duty of urban authorities to provide fireplugs, see section 66 of the Public Health Act, 1875, *ante*, p. 78.

(3) See the definition of slaughter-house within the meaning of the Public Health Act, 1875, *ante*, p. 47. These provisions with respect to slaughter-houses are incorporated with the Public Health Act, 1875, by section 169 of that Act, *ante*, p. 136. See also section 316 of the same Act (*ante*, p. 215) as to the construction of the incorporated provisions, and the recovery and application of penalties incurred under them. As to a licence to erect and use a slaughter-house, see *Anthony* v. *Brecon Markets Co.*, L. R. 7 Ex. 399, 41 L. J. Ex. 201, 26 L. T. N. S. 979, 21 W. R. 27.

Slaughter-houses in the metropolis are regulated by 37 & 38 Vict. c. 67, sections 11 and 14 of which have been repealed by section 1 of the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

(4) As to what amounts to a licence, compare *Howarth* v. *Mayor of Manchester*, 6 L. T. N. S. 683.

(5) A conviction for "using" an unlicensed slaughter-house under this section cannot be sustained against a person who merely pays the owner of the premises for being allowed to kill animals there: *R.* v. *Heyworth*, 14 L. T. N. S. 600, 30 J. P. 423. Where a person, who had duly registered his slaughter-house, rebuilt a ruinous part of the premises and added a little to the area inclosed within the walls of the premises when rebuilt, it was held that the enlarged premises did not require a licence, as, notwithstanding the addition and partial rebuilding, they continued the same place as before the passing of the Act: *Hanman* v. *Adkins*, 40 J. P. 744. So, where a stable formed a part of premises licensed as a slaughter-house for pigs, it was held that the owner could, without a new licence, convert the stable into a place for slaughtering sheep and bullocks: *Brighton Local Board of Health* v. *Stenning*, 15 L. T. N. S. 567.

offence, and a penalty not exceeding ten shillings for every day after the first day during which such place shall be used as a slaughter-house or knacker's yard without having been so registered.

Commissioners may make bye-laws for regulation of slaughter-houses, &c.

128 (1). The commissioners shall from time to time, by bye-laws to be made and confirmed in the manner hereinafter provided (2), make regulations for the licensing, registering, and inspection of the said slaughter-houses, and knacker's yards, and preventing cruelty therein, and for keeping the same in a cleanly and proper state, and for removing filth at least once in every twenty-four hours, and requiring them to be provided with a sufficient supply of water, and they may impose pecuniary penalties on persons breaking such bye-laws; provided that no such penalty exceed for any one offence the sum of five pounds, and in the case of a continuing nuisance the sum of ten shillings for every day during which such nuisance shall be continued after the conviction for the first offence.

Justices may suspend licence of slaughter-houses, &c. in addition to penalty imposed.

129. The justices before whom any person is convicted of killing or dressing any cattle contrary to the provisions of this or the special Act, or of the non-observance of any of the bye-laws or regulations made by virtue of this or the special Act, in addition to the penalty imposed on such person under the authority of this or the special Act, may suspend for any period not exceeding two months the licence granted to such person under this or the special Act, or, in case such person be the owner or proprietor of any registered slaughter-house or knacker's yard, may forbid for any period not exceeding two months the slaughtering of cattle therein; and such justices, upon the conviction of any person for a second or other subsequent like offence, may, in addition to the penalty imposed under the authority of this or the special Act, declare the licence granted under this or the special Act revoked, or, if such person be the owner or proprietor of any registered slaughter-house, may forbid absolutely the slaughtering of cattle therein; and whenever the licence of any such person is revoked as aforesaid, or whenever the slaughtering of cattle in any registered slaughter-house or knacker's yard is absolutely forbidden as aforesaid, the commissioners may refuse to grant any licence whatever to the person whose licence has been so revoked, or on account of whose default the slaughtering of cattle in any registered slaughter-house has been forbidden.

Penalty for slaughtering cattle during suspension of licence, &c.

130. Every person who during the period for which any such licence is suspended, or after the same is revoked as aforesaid, slaughters cattle in the slaughter-house or knacker's yard to which such licence relates, or otherwise uses such slaughter-house or knacker's yard, or allows the same to be used as a slaughter-house or knacker's yard, and every person who during the period that the slaughtering of cattle in any such registered slaughter-house or knacker's yard is forbidden as aforesaid, or after such slaughtering has been absolutely forbidden therein, slaughters any cattle in any such registered slaughter-house, shall be liable to a penalty not exceeding five pounds for such offence, and a further penalty of five pounds for every day on which any such offence is committed after the conviction for the first offence.

Officers may enter and inspect slaughter-houses, &c.

131. The inspector of nuisances, the officer of health, or any other officer appointed by the commissioners for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any building or place whatsoever within the said limits kept or used for the sale of butcher's meat, or for slaughtering cattle, and examine whether any cattle, or the carcase of any such cattle, is deposited there, and in case such officer shall find any cattle, or the carcase or part of the carcase of any beast, which appears unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case, upon such inspection and examination, such cattle, carcase, or part of a carcase, be found to be unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such a way as to prevent the same being exposed for sale or used for the food of man; and such justice

(1) As to the confirmation of bye-laws made under this section, see sections 2 and 3 of the Public Health (Confirmation of Bye-laws) Act, 1884 (47 Vict. c. 12). Compare section 169 of the Public Health Act, 1875, *ante*, p. 136, by which urban authorities can provide and make bye-laws for the management of slaughter-houses.

(2) See sections 200—208, *post*, pp. 1028, 1029.

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may adjudge the person to whom such cattle, carcase, or part of a carcase belongs, or in whose custody the same is found, to pay a penalty not exceeding ten pounds for every such animal or carcase or part of a carcase so found; and the owner or occupier of any building or place kept or used for the sale of butcher's meat, or for slaughtering cattle, and every other person, who obstructs or hinders such inspector or other officer from entering into and inspecting the same, and examining, seizing, or carrying away any such animal or carcase, or part of a carcase, so appearing to be unfit for the food of man, shall be liable to a penalty not exceeding five pounds for each offence.

And with respect to things to be done by the commissioners by special order only, be it enacted as follows:

As to certain matters authorised to be done by the commissioners by special order only.

132. Where by this or the special Act the commissioners are empowered to do anything by special order only, it shall not be lawful for them to do such thing unless the resolution to do the same have been agreed to by the commissioners in some meeting whereof special notice has been given, and has been confirmed in a subsequent meeting held not sooner than four weeks after the preceding meeting, and which subsequent meeting has been advertised once at least in each of the weeks intervening between the two meetings in some newspaper circulating within the limits of the special Act, and of which special notice in writing has been given to each of the commissioners.

Final resolution not to be carried into effect for one month, nor then if a majority of the ratepayers remonstrate against the same.

133. Provided always, that after any resolution has been confirmed in a subsequent meeting as aforesaid, the commissioners shall not proceed to carry the same into effect until after the expiration of one month from the date of such second meeting, and during such month such resolution shall be advertised once at least in each week in some newspaper circulating within the limits of the special Act, and public notice thereof shall also be given by means of placards posted in public places within the said limits, and reference shall in such advertisement and notice be made to some place provided by the commissioners where the plan or particulars of the work or matter to which such resolution relates may be gratuitously seen by the ratepayers; and if before the expiration of such month a remonstrance in writing against carrying into effect such resolution, or any part thereof, signed by a majority of the ratepayers having votes in the election of the commissioners (such majority being computed with reference to the number of votes to which in such election each ratepayer is entitled under the special Act, or any Act incorporated therewith), be presented to the commissioners, such resolution, or such part thereof as such remonstrance applies to, shall not be carried into effect, and where any such remonstrance applies to part only of any such resolution, the commissioners may either carry into effect the remainder of such resolution, or rescind the same, as they think fit.

Commissioners may purchase slaughter-houses, &c.; and places for public recreation.

134. The commissioners may from time to time, with the concurrence in writing of the inspector, and by special order as herein defined, but not otherwise, purchase, rent, build, or otherwise provide such slaughter-houses and knacker's yards as they think proper for slaughtering cattle within the limits of the special Act.

135 (1). The commissioners may by a special order as herein defined, but not otherwise, purchase, rent, or otherwise provide lands, grounds, or other places, either within the limits of the special Act, or at a reasonable distance therefrom, not exceeding three miles from the centre of the principal market place, if any, or from the principal office of the commissioners, and in a situation to be approved of by the inspector, to be used as a pleasure ground or place of public resort or recreation; and the commissioners may from time to time level, drain, plant, and otherwise lay out and improve any such public lands or grounds for the more convenient use and enjoyment thereof.

Public bathing places and drying grounds.

136 (2). The commissioners may from time to time by special order as herein defined, but not otherwise, purchase, rent, or otherwise provide, either within the limits of the special Act, or at a reasonable distance therefrom, suitable and convenient land and buildings in a situation and according to plans to be approved of by the inspector, to be used for public baths and wash-houses, and public open bathing places, and public dry-

(1) See section 164 of the Public Health Act, 1875, *ante*, p. 133, and notes thereto.

(2) See, further, the Baths and Wash-houses Acts, 1846, 1847, and 1878 (9 & 10 Vict. c. 74, 10 & 11 Vict. c. 61, and 41 Vict. c. 14), *post*, pp. 1191—1202, and section 69 of the Town's Police Clauses Act, 1847, *post*, p. 1047.

ing grounds, for the use and accommodation of the inhabitants within the limits of the special Act, in washing and drying clothes and other articles, and may fit up the same respectively with all requisite and proper conveniences, and from time to time enlarge, renew, and repair the same respectively, and afford the use thereof respectively to such inhabitants, at such reasonable charges and under and subject to such regulations as the commissioners may deem expedient; and every person who offends against any such regulations shall be liable to a penalty not exceeding forty shillings for every offence (1).

Proportion of baths for the working classes.

137 (2). Provided always, that the number of baths for the use of the working classes in any building provided by the commissioners shall not be less then twice the number of the other baths of any higher class.

Charges for the use of baths.

138 (3). The commissioners may from time to time make such reasonable charges for the use of such baths, bathing places, wash-houses, and drying grounds as they think fit, but as regards the working classes, not exceeding the charges, if any, mentioned in the special Act, unless for the use of any washing tub or trough for more than two hours in any one day, in which case any charge may be made which the commissioners deem reasonable.

Recovery of charges for the use of baths, &c.

139 (4). For the recovery of the charges at such wash-houses and drying grounds, the officers, servants, and others having the management thereof may, at the period of using the same, or at any subsequent time, detain the clothes or other goods and chattels in or upon any such wash-house or drying ground of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made; and in case such payment be not made within seven days, the commissioners may sell such clothes, goods and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge, and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person.

Publication of bye-laws in regard to baths, &c.

140 (5). A printed copy or sufficient abstract of the bye-laws made by the commissioners relating to the use of such baths, bathing places, and wash-houses, so far as regards every such bath, bathing place, or wash-house, shall be put up in such bath room, bathing place, and wash-house.

Sale of baths, &c., on discontinuing them.

141 (6). Whenever any of such public baths, bathing places, wash-houses, or drying grounds are deemed by the commissioners to be unnecessary or too expensive to be kept up, the commissioners may, by special order as herein defined, but not otherwise, discontinue the same, and sell the lands, buildings, and materials for the best price that can reasonably be obtained, and convey the same accordingly; and the purchase money shall be paid to the treasurer of the commissioners, and be disposed of as the commissioners direct.

Application to be made to Parliament if additional powers necessary.

142 (7). If it appear that any works which the commissioners deem necessary for promoting the health or convenience of the inhabitants of the district within the limit of the special Act cannot lawfully be carried into effect by the commissioners, under the powers vested in them by this or the special Act, by reason either that the monies authorised to be raised by them are insufficient for the purpose, or that any lands are required which the commissioners are not by this or the special Act authorised to take or use, or for any other reason, the commissioners may, by special order as herein defined, but not otherwise, cause application to be made to Parliament for an Act to enable them to execute such works, and may defray the expenses of such application out of the rates authorised to be levied by them under this and the special Act.

(1) As to the erection of public baths, see, further, sections 25—27 of the Baths and Wash-houses Act, 1846, *post*.

(2) Similar provisions are contained in section 36 of the Baths and Wash-houses Act, 1846, *post*, and in section 5 of the Baths and Wash-houses Act, 1847, *post*.

(3) See section 7 of the Baths and Wash-houses Act, 1847, *post*.

(4) A similar provision for the recovery of the charges is contained in section 38 of the Baths and Wash-houses Act, 1846, *post*.

(5) See section 35 of the Baths and Wash-Houses Act, 1846, *post*.

(6) See section 32 of the Baths and Wash-Houses Act, 1846, *post*.

(7) This section, so far as inconsistent with the Municipal Corporations (Borough Funds) Act (35 & 36 Vict. c. 91), is repealed by section 9 of that Act.

Secs. 143—148.

Power to commissioners to provide public clocks.

143 (1). And with respect to clocks, be it enacted, that the commissioners may from time to time provide such clocks as they consider necessary, and cause them to be fixed upon or against any public building, or, with the consent of the owner and occupier, upon or against any private building, the situation of which may be convenient for that purpose, and may cause the dials thereof to be lighted at night, and from time to time alter and remove any such clocks to such other like situation as they shall consider expedient.

And with respect to entry by the commissioners or their officers in execution of this or the special Act, be it enacted as follows:

Commissioners empowered to enter upon lands for the purposes of this Act.

144 (2). The commissioners shall, for the purposes of this or the special Act, have power by themselves or their officers to enter at all reasonable hours in the daytime into and upon any buildings or lands within the limits of the special Act, as well for the purpose of inspection as for the purpose of executing any work authorised to be executed by them under this or the special Act, or any Act incorporated therewith, without being liable to any legal proceedings on account thereof: Provided always, that, except when herein or in the special Act it is otherwise provided, the commissioners or their officers shall not make any such entry, unless with the consent of the occupier, until after the expiration of twenty-four hours' notice for that purpose given to the occupier.

Penalty on persons obstructing commissioners in their duty.

145 (3). Every person who shall at any time obstruct the commissioners or any person employed by them in the performance of anything which they are respectively empowered or required to do by this or the special Act, or any Act to be incorporated therewith, shall be liable to a penalty not exceeding five pounds.

And with respect to ensuring the execution of the works by this or the special Act required to be done by the owners or occupiers of houses or lands, be it enacted as follows:

As to service of notice on owners and occupiers of buildings and lands.

146 (4). Where under this or the special Act any notice is required to be given to the owner or occupier of any building or land, such notice addressed to the owner or occupier thereof, as the case may require, may be served on the occupier of such building or land or left with some inmate of his abode, or, if there be no occupier, may be put up on some conspicuous part of such building or land: and it shall not be necessary in any such notice to name the occupier or owner of such building or land: Provided always, that when such owner of any such building or land, and his residence, are known to the commissioners, it shall be the duty of the commissioners, if such owner be residing within the limits of the special Act, to cause every notice required to be given to the owner to be served on such owner, or left with some inmate of his abode; and if such owner be not resident within the limits of the special Act they shall send every such notice by the post, addressed to the residence of such owner.

Commissioners, in default of owner or occupier, may execute works and recover expenses.

147. Whenever under the provisions of this or the special Act, or any Act incorporated therewith, any work of any kind is required to be executed by the owner or occupier of any house or lands, and default is made in the execution of such work, the commissioners may cause such work to be executed, and the expense incurred by the commissioners in respect thereof shall, except in the case in which such expenses are hereinbefore directed to be defrayed by drainage rates (5), be repaid to them by the person by whom such work ought to have been executed.

Occupier, in default of owner, may execute works and deduct expenses from his rent.

148. Whenever default is made by the owner of any buildings or lands in the execution of any work by this or the special Act, or any Act incorporated therewith, required to be executed by him, the occupier of such buildings or lands may, with the approval of the commissioners, cause such work to be executed, and the expense thereof shall be repaid to such occupier by the owner of the buildings or lands, and such occupier may deduct the amount of such expense out of the rent from time to time becoming due from him to such owner.

(1) By section 165 of the Public Health Act, 1875, *ante*, p. 134, urban authorities may provide public clocks.

(2) See section 305 of the Public Health Act, 1875, *ante*, p. 210, and notes thereto.

(3) Compare section 306 of the Public Health Act, 1875, *ante*, p. 211.

(4) As to the service of notices under the Public Health Act, 1875, see section 267 of that Act, *ante*, p. 192.

(5) See section 35, *ante*, p. 995, and sections 163—166, *post*.

149. If the owner of any buildings or lands made liable by this or the special Act for the repayment to the commissioners of any expenses incurred by them do not, as soon as the same become due and payable from him, repay all such expenses to the commissioners, the commissioners may recover the same from such owner in the same manner as damages, or in an action of debt in any of the superior courts, or in any other court having jurisdiction (1).

How expenses are to be recovered from owner.

150. The commissioners may, by way of additional remedy, whether any such action or proceeding has been brought or taken against any such owner or not, require the payment of all or any part of the expenses payable by the owner for the time being from the person who then or at any time thereafter occupies any such buildings or lands under such owner; and in default of payment thereof by such occupier, on demand, the same may be levied by distress and sale of the goods and chattels of such occupier in the same manner as any rate may be recovered from him under this or the special Act (2); and every such occupier shall be entitled to deduct from the rent payable by him to his landlord so much as is so paid by or recovered from him in respect of any such expenses (3).

Power to levy charges on occupier, who may deduct the same from his rent.

151 (2). Provided always, that no occupier of any buildings or lands shall be liable to pay more money in respect of any expenses charged by this or the special Act on the owner thereof than the amount of rent due from him for the premises in respect of which such expenses are payable at the time of the demand made upon him, or which at any time after such demand and notice not to pay the same to his landlord have accrued and become payable by him, unless he neglect or refuse, upon application made to him for that purpose by the commissioners truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable; but the burthen of proof that the sum demanded of any such occupier is greater than the rent which was due by him at the time of such demand, or which has since accrued, shall lie upon such occupier: Provided further, that nothing herein contained shall be taken to affect any special contract made between any such owner or occupier respecting the payment of the expenses of any such works as aforesaid.

Occupier not to be liable for more than the amount of rent due.

152. Where any such expenses payable to the commissioners by any owner of any such building or lands amount to more than half the amount of the net annual value of such building or lands, the commissioners may, if they think fit, at the request of any such owner, allow time for the repayment of such expenses, and receive the same by such instalments as they, under the circumstances of the case, consider reasonable, but so that the same be repaid by annual instalments of not less than one-seventh part of the whole sum originally due, with interest for the principal money from time to time remaining unpaid after the yearly rate of five pounds in the hundred during the period of forbearance; but all such sums remaining due, notwithstanding the commissioners have agreed to allow any time for the repayment thereof as aforesaid, shall from time to time at the expiration of the several times so allowed for repayment thereof, be recoverable in like manner as such respective amounts would have been recoverable if no such time had been allowed for repayment thereof.

Commissioners may allow time for repayment by owners of improvement expenses.

153 (4). If the occupier of any building or lands within the limits of the special Act

Proceedings in case of

(1) By a special Act, incorporating the Railways Clauses Act, 1845, and this Act, it was enacted that certain expenses incurred by the commissioners in paving streets, &c., might be "recovered as damages." Section 140 of the Railway Clauses Act provided that, in all cases where damages were directed to be paid, and the method of ascertaining the amount or enforcing the payment is not provided for, such amount shall be determined by two justices; it was held, in an action brought to recover expenses so incurred, that such an action was not maintainable, for that the proper construction of the several Acts was, that the expenses were to be recovered as damages upon a proceeding before justices: *Mayor of Blackburn* v. *Parkinson*, 1 E. & E. 71, 5 Jur. N. S. 572, 28 L. J. M. C. 7. See further as to the recovery of expenses: *Mayor of Portsmouth* v. *Smith*, 46 L. T. N. S. 552.

(2) The recovery of such rates is provided for in sections 191—199, *post*, pp. 1026—1028.

(3) Compare sections 104 and 213 of the Public Health Act, 1875, *ante*, pp. 97, 163.

(4) A similar provision is contained in section 306 of the Public Health Act, 1875, *ante*, p. 211.

Secs. 153—158.

tenants opposing the execution of this Act.

prevent the owner thereof carrying into effect in respect of such buildings or lands any of the provisions of this or the special Act, or of any Act incorporated therewith, after notice of his intention so to do has been given by the owner to such occupier, any justice, upon proof thereof, may make an order in writing requiring such occupier to permit the owner to execute all such works with respect to such buildings or lands as may be necessary for carrying into effect the provisions of this and the special Act, or of any Act incorporated therewith; and if after the expiration of ten days from the date of such order such occupier continue to refuse to permit such owner to execute such works, such occupier shall for every day during which he so continues to refuse be liable to a penalty not exceeding five pounds; and every such owner during the continuance of such refusal shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

Respecting existing contracts for building.

154. Nothing herein or in the special Act contained shall extend to avoid any agreement in writing entered into before the passing of the special Act for erecting or altering any building, but the same shall be performed with such alterations as may be rendered necessary by this or the special Act, and as if such alterations had been stipulated for in such agreement; and the difference between the cost of the work according to the agreement and the cost of such work as executed according to the provisions of this and the special Act shall be ascertained by the parties to the respective agreements, and paid for or deducted as the case may require; and if the said parties do not agree upon the amount of such difference, the same shall, on request of either party (notice being given to the other), be decided by the surveyor to the commissioners, and for his trouble in making such decision each of the said parties shall pay to the said surveyor such sum not exceeding one pound, and to be disposed of for such purposes of the special Act as the commissioners shall direct.

Respecting contracts for leases.

155. Nothing herein or in the special Act contained shall affect any lease or agreement for a lease whereby any person may be bound to erect buildings upon any building ground within the limits of the special Act, but the buildings mentioned in such lease or agreement shall be built according to the conditions which may be rendered necessary by this or the special Act, in the same manner as if this and the special Act had been passed and in operation at the time of making such lease or agreement, and the same had been made subject thereto, and that without either party being entitled to any compensation.

And with respect to the rates directed by this Act to be made for sewers, drains, and private improvements, be it enacted as follows:

As to the recovery of private improvement expenses.

156. Where by this or the special Act the occupiers of any lands or buildings are made liable to the payment of any expenses which are directed to be recoverable as private improvement expenses (1), the commissioners may charge the occupiers of such lands and buildings respectively with special rates, over and above any other rates to which such persons may be liable under this and the special Act, after the yearly rate of six pounds ten shillings in the hundred pounds on the cost of such private improvements respectively, such special rates to be payable during thirty years next after such expenses have been incurred (2).

Where new sewers are made commissioners may make special sewer rates.

157. Whenever any new sewer shall be made the commissioners may charge the occupiers of all lands and buildings liable to contribute to the rates for making the same with special sewer rates over and above any other rates to which such persons may be liable under this or the special Act, after the yearly rate of six pounds ten shillings in the hundred pounds on the cost of making such new sewer, such special sewer rates to be payable during thirty years next after such expenses have been incurred.

Except where it shall be otherwise provided by the special Act, the commissioners shall make a sewer rate to be called the general sewer rate, distinct from any other rate which they may be authorised to make under the special Act, and the money to be raised by such general sewer rates shall be applied in maintaining and clearing the

Commissioners to make a general sewer rate distinct from other rates.

158.

(1) As to expenses recoverable from occupiers as private improvement expenses, see sections 53, 54, *ante*, p. 998.

(2) See, as to the recovery of such expenses, *Mayor of Portsmouth* v. *Smith*, 46 L. T. N. S. 552; compare sections 213—215 of the Public Health Act, 1875, *ante*, pp. 163, 164.

sewers, and all other expenses connected with such sewers not hereinbefore provided for, or which may not be fully defrayed by the special sewer rates, and for securing and paying off any moneys which may be borrowed for the purpose aforsaid on security of the special sewer rates under the provisions of this or the special Act, or of any Act incorporated therewith, and the interest of such moneys which the special sewer rates shall be insufficient to defray.

Commissioners may borrow money by mortgage of sewer rates.

159 (1). The commissioners may borrow money by mortgage of the special and general sewer rates for making new sewers or inclosing open sewers, and also for any private improvement expenses, by mortgage of the rates respectively applicable to defray such expenses, and for that purposes the clauses (2) of the "Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act; and in order to discharge the principal money borrowed as aforesaid on security of any such rates, the commissioners shall in every year pay off not less than one thirtieth part of any principal sum so borrowed.

Sewer rate to be of such amount as to pay off moneys borrowed thereon in thirty years.

160. The commissioners shall from time to time, unless it be otherwise provided by the special Act, make the general sewer rate of such amount as will with the special sewer rates raise money sufficient not only to defray the current expenses of maintaining the sewers that shall have been purchased or made, but also to keep down the interest of any moneys borrowed on securities of the special and general sewer rate, and to pay off the principal of such moneys within a period not longer than thirty years.

Cases where rates may be charged upon separate and distinct districts.

161. Where by this or the special Act the commissioners are authorised to order that any rate shall be levied by assessments to be made for separate and distinct districts, the commissioners from time to time may order assessments to be made in respect of the rates authorised to be so levied upon separate and distinct districts, and in such case the commissioners shall cause their surveyor to describe and define in the plan of the town or district within the limits of the special Act every such separate and distinct district for the purposes of separate rating as aforesaid, and so from time to time as occasion shall require.

Rates to be levied on separate and distinct districts.

162. The commissioners may in such case, instead of making one assessment for the whole town or district within the limits of the special Act, make separate and distinct assessments, as occasion shall require, for every such separate and distinct district respectively, and may appoint, if they see fit, surveyors, collectors, and other officers for every such district, and they shall cause separate and distinct accounts to be kept of all moneys collected and received under any rate in each distinct district, and of all payments and disbursements in respect thereof, and they shall, unless otherwise provided by the special Act, apply the moneys to be collected and received from each distinct district under any such rate as aforesaid for the several purposes to which the same may be lawfully applied under the authority of this and the special Act, but so nevertheless that each district shall, as near as may be, bear its own expenses; and in case any such expenses shall apply to or be incurred in respect of two or more districts, the same shall be apportioned and divided between such districts in a fair and equitable manner.

Drainage rates.

163. In all cases when the commissioners have paid or become liable to the payment of any expenses in constructing or laying any drain or pipe from any house or building, or in providing any privy, ashpit, or cesspool for the use of the occupiers thereof, and when neither the owner nor occupier of such house or building is willing to defray the said expenses forthwith, the commissioners shall lay drainage rates on the occupiers of such houses and buildings respectively, to be continued for six successive years and no longer; and the sum to be annually levied by every such drainage rate shall be one-fifth part of the whole expense incurred in constructing, laying, or providing such drain, privy, ashpit, or cesspool as aforesaid, and shall be applied in satisfaction thereof; and the amount of any such drainage rate may be added to any other rate levied from the occupiers of such houses and buildings, and recovered therewith by the like ways and means.

(1) Similar powers of borrowing by mortgage of rates are contained in sections 233 *et seq.* of the Public Health Act, 1875, *ante*, p. 173.

(2) These clauses, so incorporated with this Act, are sections 75—88 of the Commissioners Clauses Act, 1847 (10 Vict. c. 16).

Secs. 164—169.

Occupiers may deduct a proportion of drainage rate from their rent.

164 (1). Every occupier of any such house or building at a rent not less than the rack-rent who has paid any such drainage rate shall be entitled to deduct three-fourths of the rate so paid by him from the rent payable by him to his landlord: every occupier at a rent less than the rack-rent who has paid any such drainage rate shall be entitled to deduct from the rent payable by him to his landlord such proportion of three-fourths of the rate so paid by him as the rent payable by him bears to the rack-rent.

Landlords, being also tenants, may deduct proportion of drainage rate from their rent.

165. Every landlord, from whom any part of his rent has been deducted on account of such drainage rate, and who is himself liable to the payment of rent, shall be entitled to deduct from the rent payable by him such proportion of the sum so deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord receiving rent, and also liable to pay rent on account of such house or building; provided that no landlord, being also a tenant, shall be entitled under this provision to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him.

Limitation of expenditure for house drains, &c.

166. Without the written consent of the owner of any such house or building, the commissioners shall not be empowered to expend during any term of six successive years more in the whole than one year's rack-rent thereof in constructing or laying any such pipe or drain, or in providing any such privy, cesspool, or ashpit.

And with respect to the manner of making rates authorised by this or the special Act (2), be it enacted as follows:

Rates to be levied on persons holding, using, or occupying houses, &c.

167. Every rate which the commissioners are by this or the special Act authorised to make or levy shall be made and levied by them at yearly, half-yearly, or such other periods, as they think fit, upon every person who occupies any of the prescribed kinds of property, or (if no property be prescribed) any house, shop, warehouse, counting-house, coach-house, stable, cellar, vault, building, workshop, manufactory, garden, land, or tenement whatsoever (3) (except as hereinafter is excepted), within the limits of the special Act or of the district where such rate is assessed on the occupiers of lands and buildings of a separate district as hereinbefore provided, according to the full net annual value thereof respectively; and the said rates shall be vested in the commissioners, and shall be payable at such times as they appoint: Provided always, that every person occupying lands used as arable, meadow, or pasture ground only, or as woodlands or market gardens, or nursery grounds, shall be rated in respect of the same in the prescribed proportion only; if no proportion be prescribed, in the proportion of one-third part only of such net annual value thereof as aforesaid.

Proportion to be paid by holders of lands, nursery grounds, &c.

Exemptions from rates.

168 (4). Provided also, that no person shall be rated to any rate made in pursuance of this or the special Act in respect of tithes, or of any church, chapel, meeting house, or other building exclusively used for public worship, or any building exclusively used for the purposes of gratuitous education of the poor or of public charity, or any building or land belonging to the commissioners.

Rates may be prospective or retrospective.

169 (5). The commissioners may make any such rate as aforesaid prospectively in order to raise money to pay charges and expenses to be incurred thereafter, or retrospectively in order to raise money to pay charges and expenses already incurred.

(1) A similar provision as to a private improvement rate is contained in section 214 of the Public Health Act, 1875, *ante*, p. 164.

(2) These provisions with respect to the manner of making rates authorised by this or the special Act are incorporated with the Town Police Clauses Act, 1847, by section 70 of that Act, *post*, p. 1048.

(3) Where a clause in a local Act empowered commissioners to make rates upon all persons who "shall inhabit, hold, occupy, possess, or enjoy any land, house, shop, warehouse, cellar, vault, or other tenements or hereditaments within any of the said streets, squares," &c., of a certain district, it was held that an incorporated water company, whose mains, pipes, and other apparatus were laid down within the district, were liable to be rated as occupiers of land: *R.* v. *East London Waterworks Co.*, 18 Q. B. 705. Compare *R.* v. *East London Waterworks Co.*, 16 Jur. 121, 21 L. J. M. C. 49; S. C. *nom. East London Waterworks Co.* v. *Trustees for Mile End Old Town*, 17 Q. B. 512. See also 2 E. & E. 447. A railway was held to be rateable as "works" within a local Act, though "land" was expressly exempted: *R.* v. *Midland Ry. Co.*, 25 L. T. 114.

(4) Compare the provisions as to exemption of churches, &c., from rates, in section 151 of the Public Health Act, 1875, *ante*, p. 124.

(5) Compare section 210 of the Public Health Act, 1875, *ante*, p. 160.

Secs. 170—176.

Commissioners to cause estimates to be prepared before making a rate.

170 (1). The commissioners from time to time, before proceeding to make any rate which by this or the special Act, or any Act incorporated therewith, they are authorised to levy, shall cause an estimate to be prepared of the money required for the several purposes in respect of which they are authorised to levy such rate, showing the several sums required, the rateable value of the property assessable, and the rate on each pound of such value necessary to raise the money required, which estimate, after the same has been approved of by the commissioners, shall be forthwith entered on the rate-book to be kept by the commissioners as hereinafter provided.

Notice of rate to be given.

171 (2). Notice of the intention of making every rate authorised to be made under the provisions of this or the special Act, or any Act incorporated therewith, and of the time at which the same is intended to be made, and of a place where a statement of the proposed rate is deposited for inspection by the ratepayers, shall be given by the commissioners by placards posted up in public places, and shall be advertised in some newspaper circulating within the limits of the special Act, in the week immediately previous to such rate being made, or as nearly so as may be.

Form of rate.

172. Every such rate shall be fairly transcribed in a book to be kept for that purpose, and may be in the form given in the Schedule (A.) annexed to this Act, or as near thereto as the circumstances of the case will admit of; and every such rate shall contain an account of every particular set forth at the head of the respective columns so far as the same can be ascertained; and every such rate shall be signed by not less than six of the commissioners.

Rate to be open to inspection of ratepayers, who may take copies, &c.

173 (3). The statement of the proposed rate, and the rate immediately after the same is made, shall be open to the inspection of any person interested or rated in such rate at all reasonable times, and any such person may take copies or extracts from such statement or rate without paying anything for the same; and any person having the custody of such statement or rate who refuses or does not permit any person so interested or rated as aforesaid to take copies or extracts from such statement or rate shall for every such offence be liable to a penalty not exceeding five pounds.

Rates may be amended.

174 (4). The commissioners may from time to time amend any rate made by virtue of this or the special Act by inserting therein the name of any person claiming and entitled to have his name therein as owner or occupier, or by inserting therein the name of any person who ought to have been rated, or by striking out the name of any person who ought not to have been rated, or by raising or reducing the sum at which any person has been rated, if it appear to them that such person has been under-rated or over-rated, or by making such other amendments therein as will make such rate conformable to this and the special Act, and no such amendment shall be held to avoid the rate: provided always, that every person aggrieved by any such alteration shall have the same right of appeal therefrom as he would have had if his name had been originally inserted in such rate, and no such alteration had been made; and as respects such person the rates shall be considered to have been made at the time when he received notice of such alteration; and every person whose rates are altered shall be entitled to seven days' notice of such alteration before the rate shall be payable by him.

Value of property to be ascertained according to poor rate.

175. The annual value of all property rateable under this or the special Act shall be ascertained according to the next preceding assessment for the relief of the poor within the limits of the special Act, except in such cases as are hereinafter mentioned.

If poor rate an unfair criterion, a valuation to be made.

176. Provided always, that if at any time the rate for the relief of the poor within the limits of the special Act be in the judgment of the commissioners an unfair criterion by which the said rates should be made, they may cause a valuation to be made of all the rateable property within the limits of the special Act, or of any such separate district as aforesaid, by some competent person appointed by them for that purpose, and the rates made by the commissioners for the purposes of this Act shall be made upon such

(1) See section 218 of the Public Health Act, 1875, *ante*, p. 166.

(2) As to the length of notice required to be given by an urban authority before making a "general district rate," see section 210 of the Public Health Act, 1875, *ante*, p. 161.

(3) See section 219 of the Public Health Act, 1875, *ante*, p. 166.

(4) Similar provisions are contained in section 221 of the Public Health Act, 1875, *ante*, p. 167.

Secs. 176—181.

6 & 7 Will. 4, c. 96.

valuation; and in every such valuation the property rateable shall be computed at its net annual value, as defined by an Act made in the seventh year of his late Majesty, intituled "An Act to regulate Parochial Assessments" (1), or any other Act for the time being in force for regulating parochial assessment.

Person appointed a valuer to make a declaration before acting.

177. Before any such valuation shall be made the person appointed to make it shall make and subscribe a solemn declaration to make such valuation fairly and impartially according to the best of his judgment, and an entry or minute shall be made in the book of proceedings of the commissioners of the making and subscribing of such declaration, and of the date thereof, and any justice to whom application is made for that purpose shall administer such declaration.

Poor rate to be open to inspection by commissioners.

178 (2). The commissioners, or any person by them authorised, may from time to time inspect any of the rates for the relief of the poor in any parish, township, or other district within the limits of the special Act, and the books in which are contained all the assessments by which the same are made, and may take copies thereof or extracts therefrom respectively; and any person having the custody of such rates or assessments who does not suffer the commissioners, or any person authorised by them, to inspect the same at reasonable times, or to take copies thereof or extracts therefrom, shall be liable to a penalty not exceeding five pounds for every such offence.

Owner of property unoccupied to be assessed to the sewer rate.

179. When any property in respect of which the occupier would be liable to be rated to any sewer rate made under the provisions of this or the special Act is unoccupied at the time of making such rate, the commissioners shall rate and assess the owner of such unoccupied premises to such rate, and every such owner shall pay the amount of such rate: Provided always, that nothing herein contained shall affect the right herein reserved to recover any arrears of such rates from any future occupier of such premises.

Unoccupied premises to be included in the rates; and if the premises are afterwards occupied a portion of rates to be paid.

180. When any property in respect of which any person is liable to be assessed as occupier to any rate under the provisions of this or the special Act, or any Act incorporated therewith, other than the sewer rate, is unoccupied at the time of making any such rate, the commissioners shall in every such case include such property in the said rate, describing it in the column appropriated to the name of the occupier as being "empty;" and if any person afterwards occupy such property during any part of the period for which such rate was made, the commissioners shall insert in such rate the name of such occupier, and collect from such occupier or from the owner, if he be liable to pay the same, a portion of the said rate proportioned to the time during which such person occupies such property, and every such person shall thereupon be deemed to all intents and purposes to be properly rated; and all such rates may be collected and recovered from the person liable to pay the same under the provisions of this or the special Act in the same manner as other rates made payable thereunder: Provided always, that any person whose name is so inserted in such rate, and such owner as last aforesaid, may appeal against such rate to the justices at special sessions, or to the next quarter sessions holden after such insertion of his name as aforesaid, admitting of such appeal, in the same manner as he might have appealed if named in the rate: Provided also, that, except as aforesaid, no rate other than the sewer rate shall be payable by any person in respect of unoccupied premises.

Owners of property not exceeding 10*l.* per annum net annual value to pay rates instead of occupier.

181. The owners of all rateable property, of which the full net annual value does not exceed the prescribed sum, or (where no sum is prescribed) the sum of ten pounds, or which are let to weekly or monthly tenants, or in separate apartments, shall be rated to and pay the rates by this or the special Act directed to be made, instead of the occupiers thereof.

(1) See the definition of net annual value in section 4 of the Public Health Act, 1875, *ante*, p. 45, which is the same as that in section 1 of the Parochial Assessments Act. This section of the Parochial Assessments Act has been repealed, so far as relates to the metropolis, by section 77 of the Valuation (Metropolis) Act, 1869, but this latter section has been in part repealed by section 1 of the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39).

(2) Similar provisions for the inspection of poor-rate books by persons appointed by the urban authority are contained in section 212 of the Public Health Act, 1875, *ante*, p. 163.

Secs. 182—187.

182. Whenever the name of any owner liable to be rated under the provisions of this or the special Act is not known to the commissioners, or to the person making the rates, it shall be sufficient to rate such owner in the rate book of the commissioners as the owner of the property to be rated by the designation of "the owner," without stating his name.

Not necessary to name the owner where unknown.

183. Provided always, that when any owner is rated in respect of any rateable property in the occupation of any tenant under any lease or agreement made prior to the passing of the special Act, such tenant shall repay to the owner all sums paid by him during the continuance of such lease on account of any rates under this or the special Act payable by the occupier, unless it have been agreed that the owner shall pay all rates in respect of such property; and every sum so payable by the tenant to the owner may be recovered, if not paid upon demand, as arrears of rent could be recovered from the occupier by the said owner.

Tenants under existing leases to repay the owner.

184. Provided also, that the occupiers of any rateable property, being tenants thereof from year to year, may demand to be assessed for the same, and to pay the rates in respect thereof made under the authority of this or the special Act, and the commissioners shall assess every such occupier so long as he duly pays the said rates.

Occupiers may be rated if they think fit.

And with respect to the appeal to be made against any rate (1), be it enacted as follows:

185 (2). If any person think himself aggrieved by any rate on the ground of inequality, unfairness, or incorrectness in the valuation of any rateable property included therein, or in the amount assessed thereon, he may at any time within one month after such rate is made appeal to the justices at any special sessions holden for the division within which the rateable property is situated for the purpose of considering appeals against the poor rates, or in Ireland may appeal to the justices of the petty sessions of the district, or to the justices acting for the district, within which the rateable property is situated; but no such appeal shall be entertained by such justices unless seven days' notice in writing of such appeal be given by the aggrieved party to the commissioners; and at the sessions for which such notice is given, or any adjournment thereof, the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness, in the valuation of any property included therein, or in the amount assessed thereon, of which notice has been so given, but no other objection; and their decision shall be final, unless the party impugning such decision, within fourteen days after the same is made, give notice in writing to the other party of his intention to appeal against such decision, stating in such notice the nature and grounds of such appeal, and within five days after giving such notice enter into a recognizance before some justice of the peace, with sufficient sureties, conditioned to try such appeal at the then next quarter sessions at which the same can be tried, and to abide the order of and pay such costs as shall be awarded by the court at such sessions, or any adjournment thereof.

Persons aggrieved may appeal to petty sessions on the ground of incorrectness, &c., of valuation.

Their decision to be final unless appealed from to quarter sessions.

186. If any person think himself aggrieved by any rate made under the authority of this or the special Act, or by any matters included in or omitted from the same, he may, at any time within one month after the same is made, give notice of his intention to appeal to the next quarter sessions holden not less than fourteen days after such notice; but no such appeal shall be entertained at such quarter sessions unless fourteen days' notice in writing of such appeal, stating the nature and grounds thereof, be given by the aggrieved party to the commissioners: Provided always, that no such notice of appeal shall prevent the issuing of the warrant of distress for recovery of any such rate as hereinafter provided, or the execution thereof.

Parties may appeal to the quarter sessions against a rate.

187. The court shall hear and determine the appeal in a summary way at the quarter sessions for which any such notice of appeal is given, or at the following sessions, when the court thinks fit to adjourn the appeal to the following sessions, and the decision of the court shall be final and conclusive on all parties.

Quarter sessions to hear appeal, whose decision shall be final.

(1) These provisions, with regard to the appeal to be made against rates, are incorporated with the Town Police Clauses Act, 1847, by section 70 of that Act, *post*, p. 1048.

(2) Compare the provisions as to appealing against rates made under the Public Health Act, 1875, in section 269 of that Act, and notes thereto, *ante*, pp. 193, 194; and as to appealing against a highway rate, see section 105 of the Highway Act, 1835, *ante*, p. 823.

Secs. 188—193.

No order of special sessions to be in force pending appeal.

188. No order of the said justices shall be of any force pending an appeal touching the same subject matter to the court of quarter sessions having jurisdiction to try such appeal, or in opposition to the order of any such court on such appeal.

On appeal, the quarter sessions and petty sessions to have same power of amending and quashing rates, and of awarding costs, as in appeals against poor rates.

189. The said justices and the court of quarter sessions respectively shall in any such appeal as aforesaid have the same powers of amending or quashing the rate in respect of which the appeal is made as are by law vested in courts of quarter sessions for amending or quashing the rates for the relief of the poor within their jurisdiction upon appeal against such rates, and shall likewise have respectively, in any appeal against any rate made under the authority of this or the special Act, the same powers of awarding costs to be paid by or to any of the parties to the appeal, and of recovering such costs, as are now vested in them respectively for awarding and recovering costs in an appeal against any rate for the relief of the poor within their jurisdiction: Provided always, that if the said justices or court shall quash the rate in respect of which the appeal is made, then, notwithstanding the quashing of such rate, all sums of money charged by such rate on any person charged by such rate may, if the justices or court so order, be levied by such means and in the same manner as if no appeal had been made against such rate; and the money which any person charged on such rate pays, or which is recovered from him, shall be taken as a payment on account of the next effective rate made on him for the same purposes for which the rate so quashed was made.

Order of justices not to be removed by certiorari.

190. No order of the said justices or court of quarter sessions upon any such appeal as aforesaid shall be removed by *certiorari* or otherwise into any of Her Majesty's Courts of Record at Westminster (1).

And with respect to the recovery of rates (2), be it enacted as follows:

Rates to be recovered by distress.

191 (3). If any person rated under the authority of this or the special Act fail to pay any of the said rates due from him for the space of fourteen days after demand thereof in writing by the commissioners or their collector, any justice, on the application of the commissioners or their collector, may summon such person to appear before him at a time to be mentioned in the summons to show cause why the rates due from him should not be paid; and in case no sufficient cause for the non-payment of such rate be shown, the same shall be levied by distress, and such justice shall issue his warrant accordingly, or the commissioners may recover the same by action of debt; provided that if no sufficient distress whereon to levy the amount due in respect of such rates can be found within the jurisdiction of the said justice, then, upon oath thereof made before any justice of any other county or jurisdiction in which any goods or chattels of the person not paying the said rates may be found, such justice shall certify the said oath by endorsing the said warrant, and thereupon the amount due in respect of the said rates, and unpaid by the said person, may be levied by distress of the goods and chattels of such person as assessed in the last-mentioned county or jurisdiction.

Form of warrant of distress.

Constables to assist in making distress.

192. The warrant of distress for the recovery of any rate made payable by this or the special Act may be in the form or to the effect mentioned in Schedule (B.) to this Act annexed; and in all cases where a distress is hereby authorised to be made, every constable authorised by the warrant to levy any sum mentioned therein shall, upon being required by a collector of the rates, aid in making a distress or sale pursuant to such warrant; and every constable who refuses to do so shall be liable to a penalty not exceeding five pounds.

Rate books to be evidence.

193. In any proceeding to levy and recover or consequent on the levying or recovering of any rate under the provisions of this or the special Act, the books of rates of the commissioners, and all entries made therein in manner by this or the special Act directed, by the production thereof alone, and without any evidence that the notices and other requirements of this or the special Act have been given or complied with, or proof of the seal of the commissioners if they are incorporated, or if not, then on proof

(1) See the notes to section 262 of the Public Health Act, 1875, and cases cited therein, *ante*, p. 187.

(2) These provisions with respect to the recovery of rates are incorporated with the Town Police Clauses Act, 1847, by section 70 of that Act, *post*, p. 1048.

(3) See the notes to section 256 of the Public Health Act, 1875, *ante*, p. 184.

of the signatures of the commissioners whose names appear thereon or subscribed therein, shall be received as evidence of such rate and of the contents thereof.

Secs. 193—198.

194. If any person quit or be about to quit any rateable property before he has paid the rates then payable by him in respect thereof, and do not pay the same to the commissioners or their collector on demand, any justice having jurisdiction where such person resides, or his goods are found, may summon such person to show cause why the rates should not be paid, and if no sufficient cause for the non-payment of such rates be shown accordingly, the same shall be levied by distress, and such justice shall issue his warrant accordingly.

Remedy against persons quitting before payment of rates.

195 (1). When any rate has been made for a particular period, and the owner or occupier (2) who is rated to such rate ceases to be the owner or occupier of the property in respect whereof he is rated before the end of such period, such owner or occupier shall be liable to pay a portion only of the rate payable for the whole of such period proportionate to the time during which he continued to be owner or occupier; and in every such case if any person after the making of such rate become the owner or occupier of any property so rated as aforesaid during part of the period for which such rate was made, such person shall pay a portion of such rate proportioned to the time during which he held or occupied the property so rated, and the same shall be recovered from him in the same manner as if he had been originally rated for such property.

Rates to be apportioned on holder quitting.

196. When the owner of any rateable property is rated in respect thereof under the authority of this or the special Act, and the rate remains unpaid for three months, the commissioners, or their collector, may demand the amount of such rate from the occupier for the time being of such rateable property, and on non-payment thereof may recover the same by distress and sale of his goods and chattels in like manner as rates may be recovered from the occupier of any property liable to be rated; and every such occupier shall be entitled to deduct from the rent payable by him to such owner so much as was so paid by or recovered from him.

Rates due from owner may be recovered from occupier.

197. Provided always, that no such occupier shall be required to pay, nor shall his goods and chattels be distrained for, any further sum than the amount of rent due from him at the time of the demand made upon him for such amount of rate, or which after such demand, and after notice not to pay the same to his landlord, at any time accrues and becomes payable by him, unless he refuse, on application being made to him for that purpose by or on behalf of the commissioners, truly to disclose the amount of his rent, and the name and address of the person to whom such rent is payable; but the burthen of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier.

Occupier not to be required to pay more than the amount of rent owing by him.

198 (3). If, on the request of the commissioners, or of the collector of the said rates, the occupier of any property refuses or wilfully omits to disclose, or wilfully mis-states to the commissioners or collector making such request, the name of the owner of such property, or of the person receiving or authorised to receive the rents of the same, any justice of the peace, on oath made before him of such request, and of such refusal or wilful omission or mis-statement, may summon the person who has so refused or wilfully omitted or mis-stated as aforesaid to appear at a time and place to be mentioned in such summons before such justice, or before some other justice; and if the person so summoned neglect or refuse to attend at the time and place mentioned in the summons, or if he attend and do not show good cause to the justice then present for such his refusal or wilful omission or mis-statement, such justice, upon proof, in case of the neglect or refusal to attend as aforesaid, of the due service of the said summons, or on such attend-

Occupier refusing to give name of owner liable to a penalty.

(1) A similar provision is contained in sub-section 3 of section 211 of the Public Health Act, 1875, *ante*, p. 163.

(2) Where a person was assessed for property of some of which he was neither owner nor occupier, and the commissioners issued a distress warrant to levy the whole, it was held that the warrant was altogether void and the distress illegal: *Tucker* v. *Maitland*, 24 L. T. 111; see also *Hurrell* v. *Wink*, 8 Taunt. 369.

(3) A similar provision is contained in section 306 of the Public Health Act, 1875, *ante*, p. 211.

Secs. 198—204.

ance, may impose a penalty upon such person who has so refused, or wilfully made such omission or mis-statement, not exceeding the sum of five pounds.

Surveyors of highways may proceed for the recovery of arrears of highway rates.

199. The several persons who at the time of the passing of the special Act are surveyors (1) of highways for any township or other district within the limits of the special Act, may proceed for the recovery of any highway rate made in such township or district, and then remaining unpaid, in the same manner as they might have done if this and the special Act had not been passed, and they shall apply the money which they so recover, in the first place, in reimbursing themselves any expenses which they have incurred as such surveyors as aforesaid, and in discharge of any debts legally owing from them in respect of the highways within such township or district; and the surplus, if any, arising from any buildings or lands within the limits of the special Act, or a proportionate part thereof, shall be paid by them to the treasurer to the commissioners, and shall be applied to the same purposes as the rates by this or the special Act authorised to be levied are directed to be applied.

And with respect to the bye-laws to be made by virtue of this or the special Act (2), be it enacted as follows:

Bye-laws.

200. The commissioners may from time to time make such bye-laws as they think fit for the several purposes for which they are hereinbefore or by the special Act empowered to make bye-laws, and from time to time repeal, alter, or amend any such bye-laws, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or the provisions of this or the special Act, and be reduced into writing, and have affixed thereto the common seal of the commissioners if they be a body corporate, or the signatures of two of the commissioners if they be not a body corporate, and, if affecting other persons than the officers or servants of the company, be confirmed and published as herein provided.

Bye-laws may be enforced by imposition of penalties.

201 (3). The commissioners, by the bye-laws so to be made by them, may impose such reasonable penalties as they think fit, not exceeding forty shillings for each breach of such bye-laws: Provided always, that such bye-laws be so framed as to allow the justices before whom any penalty imposed thereby is sought to be recovered to order the whole or part only of such penalty to be paid, or to remit the whole penalty.

Bye-laws to be confirmed.

202 (4). No bye-law made by the commissioners under the authority of this or the special Act, except such as relate solely to the commissioners or their officers or servants, shall come into operation until the same be confirmed in the prescribed manner, and if no manner of confirmation be prescribed, then not until it be allowed by some judge of one of the superior courts or by the justices in quarter sessions; and it shall be incumbent on such justices, on the request of the commissioners, to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow of the same as they think meet.

Notice of confirmation to be given.

203 (4). No such bye-laws shall be confirmed unless notice of the intention to apply for a confirmation of the same have been given in one or more newspapers circulating within the limits of the special Act one month at least before the hearing of such application; and any person desiring to object to any such bye-law, on giving to the commissioners notice of the nature of his objection ten days before the hearing of the application for the allowance thereof, may by himself or his counsel, attorney, or agent, be heard thereon, but not so as to allow more than one objecting party to be heard on the same matter of objection.

A copy of proposed

204 (4). For one month at least previous to any such application for confirmation of any bye-law, a copy of the proposed bye-laws shall be kept at the principal office of the

(1) By section 144 of the Public Health Act, 1875, *ante*, p. 113, the powers of surveyors of highways within urban districts are vested in the urban authority.

(2) These provisions with respect to bye-laws are incorporated with the Town Police Clauses Act, 1847, by section 71 of that Act, *post*, p. 1048. With respect to bye-laws made under the provisions of the Public Health Act, 1875, see sections 182—188 of that Act, *ante*, pp. 147—150. As to the general requisites to the validity of bye-laws, see note (3), *ante*, pp. 147, 148.

(3) See section 183 of the Public Health Act, 1875, *ante*, p. 148.

(4) See section 184 of the Public Health Act, 1875, *ante*, p. 149.

commissioners, and all persons may at all reasonable times inspect such copy without fee or reward; and the commissioners shall furnish every person who applies for the same with a copy thereof, or of any part thereof, on payment of sixpence for every one hundred words so to be copied.

bye-laws to be open to inspection.

205 (1). Such bye-laws, when confirmed, shall be published in the prescribed manner, and when no manner of publication is prescribed they shall be printed, and the clerk to the commissioners shall deliver a printed copy thereof to every person applying for the same without charge; and a copy thereof shall be painted or placed on boards, which shall be hung up on the front or in some conspicuous part of the principal office of the commissioners, and also on some conspicuous part of the works or locality to which the same relates; and such boards, with the bye-laws thereon, shall be from time to time renewed as occasion requires, and shall be open to inspection without fee or reward; and any such clerk who does not allow the same to be inspected at all reasonable times shall for every such offence be liable to a penalty not exceeding five pounds.

Publication of bye-laws.

206. Such bye-laws, when so confirmed and published, shall be binding upon and be observed by all parties, and shall be sufficient to justify all parties acting under the same.

Bye-laws to be binding on all parties.

207 (2). The production of written or a printed copy of the bye-laws, requiring confirmation by a judge of the superior courts or the court of quarter sessions, authenticated by the signature of the judge or of the chairman of the court which approved of the same, and a written or printed copy of the bye-laws not requiring such confirmation authenticated by the common seal of the commissioners, if they be incorporated, or, if not incorporated, authenticated by the signature of two commissioners, shall be evidence of the existence and of the due making of such bye-laws in all prosecutions under the same, without adducing proof of the signature of such judge or chairman, or the common seal or signatures of the commissioners; and with respect to the proof of the publication thereof it shall be sufficient to prove that a board containing a copy thereof was affixed and continued in the manner by this Act directed, and in case of its being afterwards displaced or damaged, that such board was replaced or restored as soon as conveniently might be, unless proof be adduced by the party complained against that such painted board did not contain a copy of the bye-law under which he is prosecuted, or that it was not duly affixed or continued as required by this Act.

Evidence of bye-laws.

208. Any person who destroys, pulls down, injures, or defaces any board on the premises of the commissioners on which any bye-law of the commissioners is painted or placed shall for every such offence be liable to a penalty not exceeding five pounds.

Penalty on pulling down boards.

209 (3). And with respect to the tender of amends, be it enacted, that if any party have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender have been made it shall be lawful for the defendant, by leave of the court where such action is pending, at any time before issue joined, to pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

Tender of amends.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

210. The clauses of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and penalties, and to the determination

Clauses of 8 & 9 Vict. c. 20, as to

(1) See section 185 of the Public Health Act, 1875, *ante*, p. 149.
(2) See section 186 of the Public Health Act, 1875, *ante*, p. 149.
(3) Compare section 264 of the Public Health Act, 1875, *ante*, pp. 189, 190, and section 104 of the Highway Act, 1835, *ante*, p. 823. There is a similar provision as to tender of amends in section 135 of the Lands Clauses Act, 1845, *ante*, p. 976; in section 139 of the Railway Clauses Act, 1845; and in section 141 of the Companies Clauses Act, 1845.

Secs. 210—216.

of any other matter referred to justices (1), shall be incorporated in this and the special Act; and such clauses shall apply to the town or district within the limits of the special Act, and to the commissioners, and shall be construed as if the word "commissioners" had been inserted therein instead of the word "company."

recovery of damages and penalties incorporated with this and special Act, &c.

211 (2). *Provided always, that in Ireland, in the case of any penalty imposed by justices, where the application is not otherwise provided for, such justices may award not more than one half of such penalty to the informer, and shall award the remainder to the guardians of the poor of the union within which the offence was committed, to be applied in aid of the poor rates of such union.*

In Ireland part of penalties to be paid to guardians of unions.

212. All things herein or in the special Act, or any Act incorporated herewith, authorised or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices (3).

Things required to be done by two justices may, in certain cases, be done by one.

213 (4). Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

And with respect to affording access to the special Act, be it enacted as follows:

214 (5). The commissioners shall at all times, after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace of the county in which the town or district within the limits of the special Act is situated a copy of such special Act, so printed as aforesaid; and the said clerk of the peace shall receive, and he and the commissioners respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts and copies therefrom, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Copies of special Act to be kept by commissioners at their office, and deposited with the clerks of the peace, &c., and be open to inspection. 7 Will. IV. and 1 Vict. c. 83.

215. If the commissioners shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy is not so kept or deposited.

Penalty on commissioners failing to keep or deposit such copies.

216 (6). *And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.*

Act may be amended, &c.

(1) These clauses are sections 140—159 of that Act. Similar provisions are contained in sections 136 *et seq.*, of the Lands Clauses Act, 1845, *ante*, pp. 976, *et seq.* For the recovery of penalties under the Public Health Act, 1875, see sections 251 *et seq.*, of that Act, *ante*, p. 181.

(2) This section has been repealed by section 1 of Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

(3) Any metropolitan police magistrate can do alone any act which by law is directed to be done by more than one justice by section 14 of 2 & 3 Vict. c. 71; and by section 1 of 21 and 22 Vict. c. 73, the same power is extended to every stipendiary magistrate.

(4) There is a similar provision in section 263 of the Public Health Act, 1875, *ante*, p. 188.

(5) This section is the same as section 150 of the Lands Clauses Act, 1845, *ante*, p. 979; and also as section 162 of the Railways Clauses Act, 1845.

(6) This section has been repealed by section 1 of the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

SCHEDULES referred to in the foregoing Act.

SCHEDULE (A.)—Section 172.

Form of Rate.

An assessment to the sewer rate [*or* other rate, *&c.*, *as the case may be*] for the [*name the district or town*], made this day of in the year of our Lord 18 , after the rate of pence in the pound, by virtue of the [*name special Act*].

No. on the rate.	Name of Person rated.	Name of the Owner of Property rated.	Description and Situation of Property.	Gross annual Value.	Full net annual Value.	Rate at *d.* in the Pound.	Amount of Drainage Rate (if any).

Signed by us, this day of in the year of our Lord .

A. B.
C. D.
E. F.
G. H
I. K.
L. M.
} Improvement Commissioners.

SCHEDULE (B.)—Section 192.

Form of Warrant of Distress for the Recovery of a Rate.

County of
[*or* Borough, *&c.*]
to wit.

WHEREAS complaint hath been duly made by one of the collectors of rates to the improvement commissioners, that of, *&c.*, hath not paid and has refused to pay the sum of duly assessed upon him in and by a certain rate for the said town [*or* district] called the [*herein name the rate*], bearing date on or about the day of in the year of our Lord, one thousand eight hundred and and duly made according to the directions and for the purposes of [*here name the special Act*], although the same hath been duly demanded of him: And whereas it appears to me one of Her Majesty's justices of the peace in and for the said county [*or* borough, *&c.*] as well upon the oath of one of the said collectors of rates, as otherwise, that the said sum of hath been duly demanded in writing by him from the said and that the said hath refused to pay the same, for the space of fourteen days after such demand made, and doth refuse to pay the same: And whereas the said having appeared before me, in pursuance of my summons for that purpose, hath not shown to me any sufficient cause why the same should not be paid [*or* and whereas it hath been duly proved to me upon oath that the said hath been duly summoned to appear before me to show cause why he refuseth to pay the said rate or assessment, but he the said hath neglected to appear according to the said summons, and hath not shown to me any sufficient cause why the same should not be paid]: These are therefore, in Her Majesty's name, to command you to levy the said sum of by distress of the goods and chattels of the said ; and if the same shall not be paid within the space of days next after such distress by you taken, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels by you distrained, and out of the money arising by such sale that you do detain the sum of and also your reasonable charges of taking, keeping, and selling the said distress, rendering to him the said the overplus, on demand; and if sufficient distress cannot be found of the goods and chattels of the said whereon to levy the said sum of that then you certify the same to me, together with this warrant, to the end that such further proceedings may be had therein as to the law doth appertain. Given under my hand and seal, the day of in the year of our Lord 18 .

, *J.P.* (L.S.)

THE TOWN POLICE CLAUSES ACT, 1847.

10 & 11 VICT. C. 89.

An Act for consolidating in one Act certain provisions usually contained in Acts for regulating the Police of Towns. (1) [*2nd July*, 1847.]

Secs. 1, 2.

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament for regulating the police of towns and populous districts, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such towns or districts, as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That this Act shall extend only to such towns or districts in *England* or *Ireland* as shall be comprised in any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the town or district which shall be comprised in such Act, and to the Commissioners appointed for improving and regulating the same, so far as such clauses shall be applicable thereto respectively, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act and be construed therewith as forming one Act.

Extent of Act.

Interpretations in this Act:

And with respect to the construction of this Act, whether incorporated in whole or in part with any other Act, and of any Act incorporated therewith, be it enacted as follows:

"the special Act;"

"prescribed;"

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed for the improvement or regulation of any town or district defined or comprised therein and with which this Act shall be incorporated; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that

(1) As to the meaning of the word "town," see note to the title of the Towns Improvement Clauses Act, 1847, *ante*, p. 987.

Section 171 of the Public Health Act, 1875, *ante*, p. 136, incorporates the following provisions of this Act:

(1) With respect to obstructions and nuisances in the streets, *i.e.*, sections 21—29.
(2) With respect to fires, *i.e.*, sections 30—33.
(3) With respect to places of public resort, *i.e.*, sections 34—36.
(4) With respect to hackney carriages, *i.e.*, sections 37—68.
(5) With respect to public bathing, *i.e.*, section 69.

As to the construction of the provisions so incorporated, see section 171 (*ante*, p. 136), and section 316 (*ante*, p. 215) of that Act. By the latter section, "the commissioners" means the urban authority, and all penalties incurred under the provisions of any Act incorporated with the Public Health Act, 1875, shall be recovered and applied in the same way as penalties incurred under that Act; as to which see sections 251—254 of that Act, *ante*, pp. 181—183.

purpose in the special Act" had been used; and the expression "the Commissioners" (1) shall mean the commissioners, trustees, or other persons or body corporate intrusted by the special Act with powers for executing the purposes thereof.

Secs. 2—5.

"the commissioners."

3. The following words and expressions, in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretations in this and the special Act.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

Number.

Words importing the masculine gender shall include females:

Gender.

The word "person" shall include a corporation, whether aggregate or sole:

"Person."

The word "lands" shall include messuages, lands, tenaments, and hereditaments of any tenure:

"Lands."

The word "street" (2) shall extend to and include any road, square, court, alley, and thoroughfare or public passage within the limits of the special Act:

"Street."

The word "month" shall mean calendar month:

"Month."

The expression "superior courts" shall mean Her Majesty's Superior Courts of Record at *Westminster* or *Dublin*, as the case may require, and shall include the Court of Common Pleas of the County Palatine of *Lancaster* and the Court of Common Pleas of the County of *Durham:*

"Superior Courts."

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"Oath."

The word "county" shall include riding, or other division of a county having a separate commission of the peace, and shall also include county of a city or county of a town:

"County."

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" (3) shall be understood to mean two or more justices met and acting together:

"Justice."

"Two justices."

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act, and if such expression be not there defined, shall mean the general or quarter sessions of the peace which shall be held in or at the place nearest to the district comprised within the special Act for the county in which such district or some part thereof is situated, or for some division of such county having a separate commission of the peace:

"Quarter sessions."

The word "cattle" shall include horses, asses, mules, sheep, goats, and swine.

"Cattle."

And with respect to citing this Act, or any part thereof, be it enacted as follows:

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "the Town Police Clauses Act, 1847."

Short title of the Act.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Form in which portions of this Act may be incorporated with other Acts.

(1) By section 316 of the Public Health Act, 1875, *ante*, p. 215, where the provisions of any Act are incorporated with that Act, the urban or rural authority shall be deemed to be "the commissioners." As to what provisions of this Act are so incorporated, see note to the title of this Act, *ante*.

(2) The word "street" here means a place over which the public have a right of passage: *Curtis* v. *Embery*, L. R. 7 Ex. 369, 42 L. J. M. C. 39, 21 W. R. 143.

(3) By 2 & 3 Vict. c. 71, s. 14, any metropolitan police magistrate can do any act which by law is directed to be done by more than one justice; and by 21 & 22 Vict. c. 73, s. 1, the same power is extended to every stipendiary magistrate.

Secs. 6—12.

And with respect to the appointment, and the powers, duties, and privileges, of constables, be it enacted as follows:

Appointment of constables. 2 & 3 Vict. c. 93. 3 & 4 Vict. c. 88.

6. If any constables shall have been appointed within the limits of the special Act under the provisions of an Act passed in the third year of the reign of Her Majesty, intituled "An Act for the Establishment of County and District Constables by the Authority of the Justices of the Peace;" and of another Act passed in the fourth year of the reign of Her Majesty, intituled "An Act to amend the Act for the Establishment of County and District Constables;" and if the justices for the county in which such district is situated, in general or quarter session assembled, report to one of Her Majesty's Principal Secretaries of State that the constables so appointed ought to be discontinued, and the said constables be, in pursuance thereof or otherwise, discontinued, or where no constables shall have been appointed under the provisions of the last-mentioned Act, the commissioners may from time to time appoint and employ a superintendent constable and also such number of constables as they judge necessary for the protection of the inhabitants and property within the said limits, and allow the superintendent constable and the other constables such salaries or wages as they think proper; and it shall be lawful for the commissioners from time to time to remove any such superintendent constable, constables, and officers as they think fit.

Power to apply for additional constables in case of need.

7. Where constables shall have been appointed under the last two recited Acts, or either of them, the commissioners, if they think it necessary so to do, may apply to the chief constable of the county in which the district within the said limits is situated, under the provisions of the last-recited Act, to appoint any additional number of constables within the said limits, and they may pay the charge of such appointments out of the rates to be levied under this and the special Act.

Constables to be sworn in.

8. Any justice may swear in any person appointed and employed as a constable under this and the special Act, and the constables so sworn in shall have, within the limits of the special Act, and in any place not more than five miles beyond such limits, the like powers, privileges, and duties, and shall have the same indemnities and protection, and shall be subject to the like penalties and forfeitures, as any constable duly appointed has or is subject to within his constablewick by law.

Expenses of prosecutions, and allowances to constables.

9. The commissioners may defray the expense of prosecuting any felons or offenders, and of defending any constable in the execution of his duty, and may make such allowances to any constable disabled in the execution of his duty, or worn out by length of service, as the commissioners think reasonable.

Constables not to resign without leave or notice.

10. No constable appointed under this or the special Act shall resign his office, or withdraw himself from the duties thereof, unless expressly allowed so to do in writing by the commissioners or by the superintendent constable, or until after he has given to such superintendent constable one month's notice; and every constable who so resigns or withdraws himself without such leave or notice shall be liable to forfeit all arrears of pay then due to him, or to a penalty of not more than five pounds, or, in the discretion of the justices before whom he shall be convicted, may be committed to prison, there to remain for a time not exceeding fourteen days.

Constables dismissed to deliver up accoutrements.

11. Every constable appointed under this or the special Act who is dismissed from or ceases to hold and exercise his office shall forthwith deliver over to the superintendent constable, or to such person and at such time and place as the commissioners direct, all the clothing, accoutrements, appointments, and other necessaries which have been supplied to him for the execution of his duty, under pain of imprisonment, with or without hard labour, for any time not exceeding one month; and any justice of the peace may issue his warrant to search for and seize to the use of the commissioners, all the clothing, accoutrements, appointments, and other necessaries not so delivered over, wherever the same are found.

Penalty for unlawful possession of accoutrements, or for assuming the dress of constables.

12. Every person who, not being at the time a constable appointed under this or the special Act, has in his possession any article being part of the clothing, accoutrements, or appointments supplied to any such constable, and who is not able satisfactorily to account for his possession thereof, or who puts on the dress or takes the name, designation, or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do or procure to be done of his own

authority, or for any other unlawful purpose, shall, in addition to any other punishment to which he is liable for such offence, be liable to a penalty of not exceeding ten pounds.

Power to provide offices, watch-houses, &c.

13. The commissioners may from time to time purchase or rent any buildings or land, and convert such buildings into or build on such land offices, watch-houses, lock-up houses, and other places necessary for the purposes of this and the special Act, with all proper conveniences thereto, and may repair the same from time to time, and furnish and fit up the same, and employ proper persons to take care thereof.

Duties of constables.

14. The constables appointed by virtue of this and the special Act shall keep watch and ward within the limits of the special Act, and shall use their best endeavours to prevent any mischief by fire, and all felonies, misdemeanours, and breaches of the peace.

Power to police constables and persons aggrieved to apprehend certain offenders.

15. Any person found committing any offence punishable either upon indictment or as a misdemeanour upon summary conviction by virtue of this or the special Act may be taken into custody, without a warrant, by any of the said constables, or may be apprehended by the owner of the property on or with respect to which the offence is committed, or by his servant or any person authorised by him, and may be detained until he can be delivered into the custody of a constable; and the persons so arrested shall be taken, as soon as conveniently may be, before some justice, to be examined and dealt with according to law: Provided always, that no person arrested under the powers of this or the special Act shall be detained in custody by any constable or other officer, without the order of some justice, longer than shall be necessary for bringing him before a justice, or than forty hours at the utmost.

Penalty for neglect of duty.

16. Every constable acting within the limits of the special Act who is guilty of any neglect or violation of his duty as a constable, and convicted thereof before two justices, shall be liable to a penalty not exceeding ten pounds, the amount of which penalty may be deducted from the salary or wages due to him or to become due to him, or, in the discretion of the justices before whom he is convicted, he may lawfully be imprisoned for any time not exceeding one month, with or without hard labour.

Power to constables to take recognisances.

17. Whenever any person charged with any offence under this or the special Act, or any Act incorporated therewith, not amounting to felony, and of which he is liable to be summarily convicted before a justice, is in the custody of any constable acting as aforesaid, without the warrant of a justice, the superintendent constable of the district, or appointed under this Act, or other the superior officer of police acting within the said limits, may, if he deem it prudent so to do, but in such cases only in which the offender cannot be conveniently taken before a justice, take the recognisance of such person, with or without sureties, conditioned as hereinafter mentioned.

Form of recognisances

18. Every recognisance so taken shall be taken without fee or reward, and shall be conditioned for the appearance of the person thereby bound before a justice, at a certain day not later than seven days from the date of such recognisance, and the time and place of such appearance shall be specified in the recognisance.

Recognisances to be registered and returned to the justices.

19. The officer taking any such recognisance shall enter in a book to be kept for that purpose the name, residence, and occupation of the party and his sureties, if any, entering into such recognisance, together with the condition thereof, and the sum thereby acknowledged, and shall return every such recognisance to the justice at the time and place when and where the party is bound to appear, and every such recognisance shall have the like force and effect as if the same had been taken before a justice.

Penalties on persons assaulting constables.

20. Every person who assaults or resists, or who aids or incites any person to assault or resist, any constable in the execution of his duty under the provisions of this or the special Act, shall for every such offence be liable to a penalty not exceeding five pounds, or, in the discretion of the justice before whom he is convicted, may be imprisoned for any term not exceeding one month, with or without hard labour.

And with respect to obstructions and nuisances in the streets (1), be it enacted as follows (2):

(1) As to the meaning of the word "street," see note to section 3, *ante*, p. 1033.

(2) These provisions with respect to obstructions and nuisances in the streets are incorporated in the Public Health Act, 1875, by section 171 of that Act, *ante*, p. 136.

As to the construction of the incorporated provisions, see section 171 (*ante*, p. 136), and section 316 of that Act, *ante*, p. 215.

Secs. 21–26.

Power to prevent obstructions in the streets during public processions, &c.

21. The commissioners may from time to time make orders for the route to be observed by all carts, carriages, horses, and persons, and for preventing obstruction of the streets within the limits of the special Act, in all times of public processions, rejoicings, or illuminations, and in any case when the streets are thronged or liable to be obstructed, and may also give directions to the constables for keeping order and preventing any obstruction (1) of the streets in the neighbourhood of theatres and other places of public resort, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty (2) not exceeding forty shillings.

Power to regulate the route of persons driving stage carriages, &c., during divine service.

22. On application to the commissioners by the minister or churchwardens or chapelwardens of any church, chapel, or other place of public worship within the limits of the special Act, the commissioners may make orders for regulating the route by which persons shall drive any cart or carriage, or cattle (3), or the manner in which they shall drive them, in the neighbourhood of such places of worship, during the hours of divine service on Sunday, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving, and any orders so made shall be printed and put up on or near the church, chapel, or place of public worship to which the same refer, and in some conspicuous places near and leading thereto, and elsewhere as the commissioners direct, and every wilful breach of any such order shall be deemed a separate offence against this Act, and every person committing any such offence shall be liable to a penalty (2) not exceeding forty shillings.

Proprietors of stage carriages deviating from route by order free from penalty.

23. No proprietor of any stage carriage duly licensed to carry passengers for hire shall be liable to any penalty for any deviation from the route or line of route specified in his licence which the driver of such stage carriage makes in consequence of any regulation or direction made or given by the commissioners.

Power to impound stray cattle.

24. If any cattle be at any time found at large in any street within the limits of the special Act, without any person having the charge thereof, any constable or officer of police, or any person residing within the limits of the special Act, may seize and impound such cattle in any common pound within the said limits, or in such other place as the commissioners appoint for that purpose, and may detain the same therein until the owner thereof pay to the commissioners a penalty (2) not exceeding forty shillings, besides the reasonable expenses of impounding and keeping such cattle (4).

Power to sell stray cattle for penalty and expenses.

25. If the said penalty and expenses be not paid within three days after such impounding, the pound-keeper, or other person appointed by the commissioners for that purpose, may proceed to sell or cause to be sold any such cattle; but previous to such sale seven days' notice thereof shall be given to or left at the dwelling-house or place of abode of the owner of such cattle, if he be known, or if not, then notice of such intended sale shall be given by advertisement, to be inserted seven days before such sale in some newspaper published or circulated within the limits of the special Act; and the money arising from such sale, after deducting the said sums, and the expenses aforesaid, and all other expenses attending the impounding, advertising, keeping, and sale of any such cattle so impounded, shall be paid to the commissioners, and shall be by them paid, on demand, to the owner of the cattle so sold.

Persons guilty of pound-breach to be committed for three months.

26. Every person who releases or attempts to release any cattle from any pound or place where the same are impounded under the authority of this or the special Act, or who pulls down, damages, or destroys the same pound or place, or any part thereof, with intent to procure the unlawful release of such cattle, shall, upon conviction of such offence

(1) As to causing an obstruction in a thoroughfare, see *Ball* v. *Ward*, cited in note (1), *post*, p. 1038.

(2) As to the recovery and application of such penalties, see the note to the title of this Act, *ante*, p. 1032.

(3) Where a local Act imposed a penalty on any drover or other person, who conducts or drives in, upon, or through the streets any cattle during Sunday, it was held that the penalty was not incurred by a person who conveyed the cattle in a carriage or van through the streets: *Triggs* v. *Lester*, 30 J. P. 228.

(4) As to cattle straying on a highway, see 28 & 29 Vict. c. 101, s. 25, and the cases cited in the notes thereto, *ante*, pp. 864, 865.

before any two justices (1), be committed by them to some common gaol or house of correction for any time not exceeding three months.

Secs. 26–28.

Power to provide a pound.

27. The commissioners may purchase a piece of land within the limits of the special Act for the purpose of a pound for stray animals, and may erect a pound thereon, and such pound when made shall be kept in repair by the commissioners (2).

Penalty on persons committing any of the offences herein named.

28. Every person who in any street (3), to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty (4) not exceeding forty shillings for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days, and any constable or other officer appointed by virtue of this or the special Act shall take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence; (that is to say,) (5)

Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose) any horse or other animal, or exhibits in a caravan or otherwise any show or public entertainment, or shoes, bleeds, or farries any horse or animal (except in cases of accident), or cleans, dresses, exercises, trains or breaks, or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in cases of accident where repair on the spot is necessary):

Every person who suffers to be at large an unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal:

Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state:

Every person, who after public notice given by any justice directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice (6):

Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle over-driven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot:

Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care:

Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter of a greater length from such fastening to the horse's head than four feet:

(1) See note (3), p. 1033.

(2) A person who distrains cattle is bound to impound them in a proper pound; and if the usual pound is in an unfit state, he must find another: *Bignell* v. *Clarke*, 5 H. & N. 485, 29 L. J. Ex. 257, 2 L. T. N. S. 189.

(3) As to the meaning of the word "street," see note to section 3, *ante*.

(4) As to the recovery and application of such penalties, see the note to the title of this Act, *ante*, p. 1032.

(5) Compare the list of offences in connection with highways specified in section 72 of the Highway Act, 1835, *ante*, pp. 802—806; and see further the Vagrant Act, 5 Geo. IV. c. 83, and the Vagrant Amendment Act, 1873, 36 & 37 Vict. c. 38, s. 3.

(6) See further, the Dogs Act, 1871, 34 & 35 Vict. c. 56.

Section 28.

Every person who rides or drives furiously any horse or carriage, or drives furiously any cattle:

Every person who causes any public carriage, sledge, truck, or barrow, with or without horses, or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burthen, standing for hire in any place appointed for that purpose by the commissioners or other lawful authority), and every person who, by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means, wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare (1):

Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same:

Every person who leads or rides any horse or other animal, or draws or drives any cart or carriage, sledge, truck, or barrow upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway:

Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing-place, stool, bench, stall, or showboard on any footway, or who places any blind, shade, covering, awning, or other projection over or along any such footway, unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground:

Every person who places, hangs up, or otherwise exposes to sale any goods, wares, merchandise, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway:

Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway:

Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon:

Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution:

Every person who wilfully and indecently exposes his person:

Every person who publicly offers for sale (2) or distribution, or exhibits to public view, any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language.

Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any fireworks. (3)

Every person who wilfully and wontonly disturbs any inhabitant, by pulling or ringing any door bell, or knocking at any door, (4) or who wilfully and unlawfully extinguishes the light of any lamp:

(1) An appellant had an auction caravan, standing in the market-place of a town, for which he paid a rent or toll to the improvement commissioners appointed by a local Act as the lords of the manor. The caravan was only three feet from a public street of the town, and many persons obstructed the thoroughfare by stopping to listen to appellant's sales. The justices convicted the appellant, under this section, of causing an obstruction in a thoroughfare. It was held, on a case stated, that what the appellant did was not an offence within this Act: *Ball* v. *Ward*, 33 L. T. N. S. 170, 40 J. P. 213.

(2) See the Sale of Obscene Books, &c., Prevention Act (20 & 21 Vict. c. 83), under which justices may authorise the search of suspected premises; see also 1 & 2 Vict. c. 38, s. 2, and 14 & 15 Vict. c. 100, s. 29.

(3) By section 80 of the Explosives Act, 1875 (38 & 39 Vict. c. 17), *ante*, p. 700, if any person throw, cast, or fire any firework in or into any high street, thoroughfare, or public place, he shall be liable to a penalty not exceeding £5.

(4) The mere fact of a man being instructed to deliver papers at the house of a third

Every person who flies any kite, or who makes or uses any slide upon ice or snow:

Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime:

Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers):

Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning):

Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down:

Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing, except snow thrown so as not to fall on any passenger:

Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement story:

Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area, pit, or sewer without sufficient light after sunset to warn or prevent persons from falling thereinto:

Every person who throws or lays any dirt, litter, or ashes, or nightsoil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughter-house, butcher's shop, or dunghill into any street: Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost, to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases:

Every person who keeps any pigstye to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance (1):

Penalty on drunken persons, &c., guilty of riotous or indecent behaviour.

29. Every person drunk in any street (2), and guilty of any riotous or indecent behaviour therein, and also every person guilty of any violent or indecent behaviour in any police office or any police station house within the limits of the special Act, shall be liable to a penalty (3) not exceeding forty shillings for every such offence, or, in the discretion of the justice before whom he is convicted, to imprisonment for a period not exceeding seven days (4).

person is no answer to a complaint against him under this section, charging him with having "wilfully and wantonly" disturbed the party and his family by violently knocking and ringing at the door at an unreasonable hour of the night: *Clarke* v. *Hoggins*, 11 C. B. N. S. 545.

(1) By section 47 of the Public Health Act, 1875, *ante*, p. 67, a penalty is imposed upon any person who keeps any swine or pigstye in any dwelling-house, or so as to be a nuisance to any person; see also *Banbury Urban Sanitary Authority* v. *Page*, cited in note (5) to that section. A bye-law, made by a rural sanitary authority, purporting to act under the powers of sections 44 and 276 of the Public Health Act, 1875 (*ante*, pp. 66 and 198), prohibiting the keeping of swine within a distance of fifty feet from any dwelling-house within their district, was held unreasonable and bad: *Heap* v. *Burnley Union*, 12 Q. B. D. 617, 53 L. J. M. C. 76, 32 W. R. 661, 48 J. P. 359.

(2) See note to section 3, *ante*.

(3) As to the recovery and application of such penalties, see note to title of this Act, *ante*, p. 1032.

(4) By section 12 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), a penalty is imposed on persons found drunk in any highway or other public place, or on any licensed premises. Where a person was summoned before two justices on a charge of being drunk and

Secs. 29–34.

And with respect to fires (1), be it enacted as follows:

Penalty for setting chimneys wilfully on fire.

30. Every person who wilfully sets or causes to be set on fire any chimney within the limits of the special Act shall be liable to a penalty (2) not exceeding five pounds: Provided always, that nothing herein contained shall exempt the person so setting or causing to be set on fire any chimney from liability to be indicted for felony.

Penalty for accidentally allowing chimneys to catch fire.

31. If any chimney accidentally catch or be on fire within the said limits the person occupying or using the premises in which such chimney is situated shall be liable to a penalty (2) not exceeding ten shillings: Provided always, that such forfeiture shall not be incurred if such person prove to the satisfaction of the justice before whom the case is heard that such fire was nowise owing to omission, neglect, or carelessness of himself or servant.

Fire engines and firemen may be provided by the commissioners.

32. The commissioners may purchase or provide such engines for extinguishing fire, and such water buckets, pipes, and other appurtenances for such engines, and such fire escapes and other implements for safety or use in case of fire, and may purchase, keep, or hire such horses for drawing such engines as they think fit, and may build, provide, or hire places for keeping such engines with their appurtenances, and may employ a proper number of persons to act as firemen, and may make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and such rewards for their exertions in cases of fire as they think fit (3).

Fire police permitted to go beyond the limits of the Act in certain cases.

33. The commissioners may send such engines, with their appurtenances, and the said firemen, beyond the limits of the special Act, for extinguishing fire in the neighbourhood of the said limits; and the owner (4) of the lands or buildings where such fire shall have happened shall in such case defray the actual expense which may be thereby incurred, and shall also pay to the commissioners a reasonable charge for the use of such engines with their appurtenances, and for the attendance of such firemen; and in case of any difference between the commissioners and the owner (4) of the said lands or buildings, the amount of the said expenses and charge, as well as the propriety of sending the said engines and firemen as aforesaid for extinguishing such fire (if the propriety thereof be disputed), shall be determined by two justices, whose decision shall be final; and the amount of the said expenses and charge shall be recovered by the commissioners as damages.

And with respect to places of public resort (5), be it enacted as follows:

Penalty on victuallers harbouring constables while on duty.

34. Every victualler or keeper of any public house, or person licensed to sell wine, spirits, beer, cider, or other fermented or distilled liquors by retail, to be drunk or consumed on the premises, within the limits of the special Act, who knowingly harbours or entertains or suffers to remain in his public house or place wherein he carries on his business any constable during any part of the time appointed for his being

guilty of riotous behaviour under this section, and the justices convicted him of drunkenness under 21 Jac. 1, c. 7, the conviction was held bad: *Martin* v. *Pridgeon*, 28 L. J. M. C. 179, 5 Jur. N. S. 894, 7 W. R. 412, 33 L. T. 119, 8 Cox, C. C. 170.

(1) These provisions with respect to fires are incorporated in the Public Health Act, 1875, by section 171 of that Act, *ante*, p. 136.

See note to the title of this Act, *ante*, p. 1032.

By section 66 of the Public Health Act, 1875, *ante*, p. 78, urban authority are required to provide fire plugs; and by section 157 of the same Act, *ante*, p. 128, they can make bye-laws for the prevention of fires.

(2) As to the recovery and application of such penalties, see the note to the title of this Act, *ante*, p. 1032.

(3) A local government board is not entitled, under this section, to charge for the use of apparatus employed and value of water consumed on the occasion of a fire on premises situated within the district of such board: *Local Board of Bridlington* v. *Bower*, 22 W. R. 165, 38 J. P. 73.

(4) An occupier is an owner within this section, and is liable for the expense of sending an engine to extinguish a fire on his premises: *Lewis* v. *Arnold*, L. R. 10 Q. B. 245, 44 L. J. M. C. 68, 32 L. T. N. S. 553, 23 W. R. 729.

(5) These provisions with respect to places of public resort are incorporated with the Public Health Act, 1875, and applied to urban districts, by section 171 of that Act, *ante*, p. 136. As to the construction of the provisions so incorporated, see section 171, (*ante*, p. 136), and section 316 of that Act, *ante*, p. 215.

on duty, unless for the purpose of quelling any disturbance or restoring order, shall, for every such offence, be liable to a penalty (1) not exceeding twenty shillings (2).

Penalty on coffee shop keepers harbouring disorderly persons.

35. Every person keeping any house, shop, room, or other place of public resort within the limits of the special Act for the sale or consumption of refreshments of any kind who knowingly suffers common prostitutes or reputed thieves to assemble at and continue in his premises shall, for every such offence, be liable to a penalty (1) not exceeding five pounds (3).

Penalty on persons keeping places for bear-baiting, cock-fighting, &c.

36. Every person who within the limits of the special Act keeps or uses or acts in the management of any house, room, pit, or other place for the purpose of fighting, baiting (4), or worrying any animals shall be liable to a penalty (1) of not more than five pounds, or, in the discretion of the justices before whom he is convicted, to imprisonment, with or without hard labour, for a time not exceeding one month; and the commissioners may, by order in writing authorise the superintendent constable (5), with such constables as he thinks necessary, to enter any premises kept or used for any of the purposes aforesaid, and take into custody all persons found therein without lawful excuse, and every person so found shall be liable to a penalty (1) not exceeding five shillings, and a conviction for this offence shall not exempt the owner, keeper, or manager of any such house, room, pit, or place from any penal consequences to which he is liable for the nuisance thereby occasioned.

And with respect to hackney carriages (6), be it enacted as follows:

Hackney carriage to be licenssed.

37. (7). The commissioners may from time to time license to ply for hire within the prescribed distance (8), or if no distance is prescribed, within five miles from the general post office of the city, town, or place to which the special Act refers (which in that case shall be deemed the prescribed distance) (8), such number of hackney coaches or carriages of any kind or description adapted to the carriage of persons as they think fit.

What to be hackney carriages.

38. Every wheeled carriage, whatever may be its form or construction, used in standing or plying for hire in any street (9) within the prescribed distance (8), and every

(1) As to the recovery and application of such penalties, see the note to the title of this Act, *ante*, p. 1032.

(2) See 2 & 3 Vict. c. 93, s. 16; and section 16 of the Licensing Act, 1872, 35 & 36 Vict. c. 94, which provides that any licensed person who knowingly harbours any constable while on duty, shall be liable to a penalty not exceeding £10 for the first offence, and not exceeding £20 for the second offence.

(3) An alehouse, licensed under "The Licensing Act, 1828," 9 Geo. 4, c. 61, was held to be a place of public resort for the sale of refreshments, within this section, and the keeper of it liable to penalties under this section, for allowing prostitutes to assemble therein: *Cole* v. *Coulton*, 29 L. J. M. C. 125, 6 Jur. N. S. 698, 2 L. T. N. S. 216, 8 W. R. 412; see also, *Greig* v. *Bendeno*, 27 L. J. M. C. 294, 1 E. B. & E. 133, 4 Jur. N. S. 875. Compare section 32 of 23 & 24 Vict. c. 27, and section 14 of the Licensing Act, 1872, which imposes on any licensed person who knowingly allows his house to be the resort of prostitutes, a penalty for the first offence not exceeding £10, and for the second offence, not exceeding £20.

(4) Compare section 3 of the Act for the Prevention of Cruelty to Animals, 12 & 13 Vict. c. 92. A match took place between the owners of two dogs as to which could kill the greatest number of rabbits by running after them. The match took place in a field containing an area of three acres, walled in so that the rabbits could not escape; it was held that this was not baiting animals within section 3 of 12 & 13 Vict. c. 92: *Pitts* v. *Millar*, L. R. 9 Q. B. 380, 43 L. J. M. C. 96, 30 L. T. N. S. 328; see as to cock-fighting: *Morley* v. *Greenhalgh*, 9 Jur. N. S. 745, 3 B. & S. 374.

(5) By section 171 of the Public Health Act, 1875, *ante* p. 136, "superintendent constable" includes any superintendent of police.

(6) These provisions with respect to hackney carriages, are incorporated with the Public Health Act, 1875, and applied to urban districts, by section 171 of that Act, *ante*, p. 136. As to the construction of the incorporated provisions, see section 171, *ante*, p. 136, and section 316 of that Act, *ante*, p. 215.

(7) Compare section 172 of the Public Health Act, 1875, *ante*, p. 137.

(8) By section 171 of the Public Health Act, 1875, *ante*, p. 136, "within the prescribed distance" means the urban district.

(9) See section 3, *ante*. A piece of ground, the property of a railway company, though used as an approach to a station, and though not fenced off from the public highway, is not a "street" or "road" within the meaning of section 3 and this section, so as to render persons who by agreement with the company keep carriages standing there, liable to a

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carriage standing upon any street within the prescribed distance (1), having thereon any numbered plate required by this or the special Act to be fixed upon a hackney carriage, or having thereon any plate resembling or intended to resemble any such plate as aforesaid, shall be deemed to be a hackney carriage within the meaning of this Act; and in all proceedings at law or otherwise the term "hackney carriage" shall be sufficient to describe any such carriage: Provided always, that no stage coach used for the purpose of standing or plying for passengers to be carried for hire at separate fares, and duly licensed for that purpose, and having thereon the proper numbered plates required by law to be placed on such stage coaches, shall be deemed to be a hackney carriage within the meaning of this Act (2).

Fee to be paid for license.

39. For every such license there shall be paid to the clerk of the commissioners, or other person appointed by them to receive the same, such sum as the commissioners direct, not exceeding five shillings.

Persons applying for license to sign a requisition for same.

40. Before any such license is granted a requisition for the same, in such form as the commissioners from time to time provide for that purpose, shall be made and signed by the proprietor or one of the proprietors of the hackney carriage in respect of which such license is applied for, and in every such requisition shall be truly stated the name and surname and place of abode of the person applying for such license, and of every proprietor or part proprietor of such carriage, or person concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of such carriage; and any person who, on applying for such license, states in such requisition the name of any person who is not a proprietor or part proprietor of such carriage, or who is not concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, and also any person who wilfully omits to specify truly in such requisition as aforesaid the name of any person who is a proprietor or part proprietor of such carriage, or who is concerned as aforesaid in the keeping, employing, or letting to hire of such carriage, shall be liable to a penalty (3) not exceeding ten pounds.

What shall be specified in the licenses.

41. In every such license shall be specified the name and surname and place of abode of every person who is a proprietor (4) or part proprietor of the hackney carriage in respect of which such license is granted, or who is concerned, either solely or in partnership with any other person, in the keeping, employing, or letting to hire of any such carriage, and also the number of such license which shall correspond with the number to be painted or marked on the plates to be fixed on such carriage, together with such other particulars as the commissioners think fit.

Licenses to be registered.

42. Every license shall be made out by the clerk of the commissioners, and duly entered in a book to be provided by him for that purpose, and in such book shall be contained columns or places for entries to be made of every offence committed by any proprietor or driver or person attending such carriage, and any person may at any reasonable time inspect such book without fee or reward.

License to be in force for one year only.

43. Every license so to be granted shall be under the common seal of the commissioners, if incorporated, or if not incorporated, shall be signed by two or more of the commissioners, and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such license, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners.

penalty for allowing carriages to ply for hire without a license: *Curtis* v. *Embery*, L. R. 7 Ex. 369, 42 L. J. M. C. 39, 21 W. R. 143.

(1) "Within the prescribed distance" means within the urban district by section 171 of the Public Health Act, 1875, *ante*, p. 136.

(2) A local improvement Act enacted that the provisions of this Act as to hackney carriages should be extended to all stage coaches, omnibusses, and carriages of every description plying for hire within the borough, it was held that the proviso of this section was incorporated into and overrode the local Act, and that omnibusses required no license from the local board: *Cousins* v. *Stockbridge*, 30 J. P. 166.

(3) As to the recovery and application of such penalties, see note to the title of this Act, p. 1032.

(4) As to the liability of the proprietor, see *Powles* v. *Hider*, 2 Jur. N. S. 472, 6 E. & B. 207, 25 L. J. Q. B. 331.

44. So often as any person named in any such license as the proprietor or one of the proprietors, or as being concerned either solely or in partnership with any person in the keeping, employing, or letting to hire of any such carriage, changes his place of abode, he shall, within seven days next after such change, give notice thereof in writing, signed by him, to the commissioners, specifying in such notice his new place of abode; and he shall at the same time produce such license at the office of the commissioners, who shall, by their clerk, or some other officer, endorse thereon and sign a memorandum specifying the particulars of such change; and any person named in any such license as aforesaid as the proprietor, or one of the proprietors, of any hackney carriage, or as being concerned as aforesaid, who changes his place of abode, and neglects or wilfully omits to give notice of such change, or to produce such license in order that such memorandum as aforesaid may be endorsed thereon within the time and in the manner limited and directed by this or the special Act, shall be liable to a penalty (1) not exceeding forty shillings.

Notice to be given by proprietors of hackney carriages of any change of abode.

45. If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance (2) without having obtained a license (3) as aforesaid for such carriage, or during the time that such license is suspended, as hereinafter provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance (2), for which such license as aforesaid has not been previously obtained, or without having the number of such carriage corresponding with the number of the license openly displayed on such carriage, every such person so offending shall for every such offence be liable to a penalty (1) not exceeding forty shillings.

Penalty for plying for hire without a license.

46. No person shall act as driver of any hackney carriage licensed in pursuance of this or the special Act to ply for hire within the prescribed distance (2) without first obtaining a license from the commissioners, which license shall be registered by the clerk to the commissioners, and a fee of one shilling shall be paid for the same; and every such license shall be in force (4) until the same is revoked, except during the time that the same may be suspended as after mentioned.

Drivers not to act without first obtaining a license.

47. If any person acts as such driver as aforesaid without having obtained such license or during the time that his license is suspended, or if he lend or part with his license, except to the proprietor of the hackney carriage, or if the proprietor of any such hackney carriage employ any person as the driver thereof who has not obtained such license, or during the time that his license is suspended, as hereinafter provided, every such driver, and every such proprietor shall, for every such offence, respectively be liable to a penalty (1) not exceeding twenty shillings.

Penalty on drivers acting without license.

48. In every case in which the proprietor of any such hackney carriage permits or employs any licensed person to act as the driver thereof, such proprietor shall cause to be delivered to him, and shall retain in his possession, the license of such driver while such driver remains in his employ; and in all cases of complaint, where the proprietor of a hackney carriage is summoned to attend before a justice, or to produce the driver, the proprietor so summoned shall also produce the license of such driver, if he be then in his

Proprietor to retain license of drivers when in his employ, and to produce the same when summoned.

(1) As to the recovery and application of such penalties, see the note to the title of this Act, *ante*, p. 1032.

(2) "Within the prescribed distance," means within the urban district, see section 171 of the Public Health Act, 1875, *ante*, p. 136.

(3) The penalty attaches, although the road is a turnpike road, under the management of turnpike trustees: *Sims* v. *Matlock, Bath, Local Board*, 32 J. P. 134. See as to plying for hire, without a license, in the premises of a railway company: *Curtis* v. *Embery*, cited in note to section 38, *ante*. See also, *Case* v. *Storey*, L. R. 4 Ex. 319, 38 L. J. M. C. 115, 20 L. T. N. S. 618, 17 W. R. 802. The possession of a revenue license to let horses and carriages for hire under 2 & 3 Will. 4, c. 120, does not supersede the necessity of the proprietor having a license for his carriage to ply for hire under sections 37 and 45 of this Act: *Buckle* v. *Wrightson*, 34 L. J. M. C. 43, 11 Jur. N. S. 281, 11 L. T. N. S. 341, 13 W. R. 92.

(4) By section 171 of the Public Health Act, 1875, *ante*, p. 136, it is provided that, notwithstanding anything in these provisions incorporated with that Act, a license granted to the driver of any hackney carriage in pursuance thereof, shall be in force for one year only, or until the next general licensing meeting where a day for such meeting is appointed.

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Justices may endorse convictions upon licenses.

Penalty on proprietors for neglect.

Proprietor to return license to drivers when quitting his service if they behave well, if otherwise, proprietors to summon them.

Compensation in case of license being improperly withheld.

Licenses to be suspended or revoked for misconduct.

Number of persons to be carried in a hackney carriage to be painted thereon.

Penalty for neglect or for refusal to carry the prescribed number.

Penalty on driver for refusing to drive.

Penalty for demanding more than the sum agreed for, though less than the legal fare.

Agreement to pay more than the legal fare not to be

employ; and if any driver complained of be adjudged guilty of the offence alleged against him, such justice shall make an endorsement upon the license of such driver, stating the nature of the offence and the amount of the penalty inflicted; and if any such proprietor neglect to have delivered to him and to retain in his possession the license of any driver while such driver remains in his employ, or if he refuse or neglect to produce such license as aforesaid, such proprietor shall for every such offence be liable to a penalty (1) not exceeding forty shillings.

49. When any driver leaves the service of the proprietor by whom he is employed without having been guilty of any misconduct such proprietor shall forthwith return to such driver the license belonging to him; but if such driver have been guilty of any misconduct, the proprietor shall not return his license, but shall give him notice of the complaint which he intends to prefer against him, and shall forthwith summon such driver to appear before any justice to answer the said complaint; and such justice, having the necessary parties before him, shall inquire into and determine the matter of complaint, and if upon inquiry it appear that the license of such driver has been improperly withheld, such justice shall direct the immediate re-delivery of such license, and award such sum of money as he thinks proper to be paid by such proprietor to such driver by way of compensation.

50. The commissioners may, upon the conviction for the second time of the proprietor or driver of any such hackney carriage for any offence under the provisions of this or the special Act with respect to hackney carriages, or any bye-law made in pursuance thereof, suspend or revoke, as they deem right, the license of any such proprietor or driver.

51. No hackney carriage shall be used or employed or let to hire, or shall stand or ply for hire within the prescribed distance, unless the number of persons to be carried by such hackney carriage, in words at length, and in form following, (that is to say,) "To carry persons," be painted on a plate placed on some conspicuous place on the outside of such carriage, and in legible letters, so as to be clearly distinguishable from the colour of the ground whereon the same are painted, one inch in length, and of a proportionate breadth; and the driver of any such hackney carriage shall not be required to carry in or by such hackney carriage a greater number of persons than the number painted thereon.

52. If the proprietor of any hackney carriage permit the same to be used, employed, or let to hire, or if any person stand or ply for hire with such carriage, without having the number of persons to be carried thereby painted and exhibited in manner aforesaid, or if the driver of any such hackney carriage refuse, when required by the hirer thereof, to carry in or by such hackney carriage the number of persons painted thereon, or any less number, every proprietor or driver so offending shall be liable to a penalty (1) not exceeding forty shillings.

53. Any driver of a hackney carriage standing at any of the stands for hackney carriages appointed by the commissioners, or in any street, who refuses or neglects, without reasonable excuse, to drive such carriage to any place within the prescribed distance, or the distance to be appointed by any bye-law of the commissioners, not exceeding the prescribed distance, to which he is directed to drive by the person hiring or wishing to hire such carriage, shall for every such offence be liable to a penalty (1) not exceeding forty shillings.

54. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree beforehand with any person hiring such hackney carriage to take for any job a sum less than the fare allowed by this or the special Act, or any bye-law made thereunder, such proprietor or driver shall be liable to a penalty (1) not exceeding forty shillings if he exact or demand for such job more than the fare so agreed upon.

55. No agreement whatever made with the driver, or with any person having or pretending to have the care of any such hackney carriage, for the payment of more than the fare allowed by any bye-law made under this or the special Act, shall be binding on the

(1) As to the recovery and application of such penalties, see the note to the title of this Act, *ante*, p. 1032.

person making the same, and any such person may, notwithstanding such agreement, refuse, on discharging such hackney carriage, to pay any sum beyond the fare allowed as aforesaid, and if any person actually pay to the driver of any such hackney carriage, whether in pursuance of any such agreement or otherwise, any sum exceeding the fare to which such driver was entitled, the person paying the same shall be entitled, on complaint made against such driver before any justice of the peace, to recover back the sum paid beyond the proper fare, and moreover such driver shall be liable to a penalty (1) for such exaction not exceeding the sum of forty shillings, and in default of the repayment by such driver of such excess of fare, or of payment of the said penalty, such justice shall forthwith commit such driver to prison, there to remain for any time not exceeding one month, unless the said excess of fare and the said penalty (1) be sooner paid.

binding, and sum paid beyond the proper fare may be recovered back.

56. If the proprietor or driver of any such hackney carriage, or if any other person on his behalf, agree with any person to carry in or by such hackney carriage persons not exceeding in number the number so painted on such carriage as aforesaid, for a distance to be in the discretion of such proprietor or driver, and for a sum agreed upon, such proprietor or driver shall be liable to a penalty (1) not exceeding forty shillings if the distance which he carries such persons be under that to which they were entitled to be carried for the sum so agreed upon according to the fare allowed by this or the special Act, or any bye-law made in pursuance thereof.

Driver to carry, under an agreement for a discretionary distance, the distance to which hirer is entitled for the fare.

57. When any hackney carriage is hired and taken to any place, and the driver thereof is required by the hirer there to wait with such hackney carriage, such driver may demand and receive from such hirer his fare for driving to such place, and also a sum equal to the fare of such carriage for the period, as a deposit over and above such fare, during which he is required to wait as aforesaid, or if no fare for time be fixed by the bye-laws, then the sum of one shilling and sixpence for every half hour during which he is so required to wait, which deposit shall be accounted for by such driver when such hackney carriage is finally discharged by such hirer; and if any such driver who has received any such deposit as aforesaid refuses to wait as aforesaid, or goes away or permits such hackney carriage to be driven or taken away without the consent of such hirer, before the expiration of the time for which such deposit was made; or if such driver on the final discharge of such hackney carriage refuse duly to account for such deposit, every such driver so offending shall be liable to a penalty (1) not exceeding forty shillings.

Deposit to be made for carriages waiting.

Penalty on the driver refusing to wait, or to account for the deposit.

58. Every proprietor or driver of any such hackney carriage who is convicted of taking as a fare a greater sum than is authorised by any bye-law made under this or the special Act shall be liable to a penalty (1) not exceeding forty shillings, and such penalty may be recovered before one justice; and in the conviction of such proprietor or driver an order may be included for payment of the sum so overcharged, over and above the penalty and costs; and such overcharge shall be returned to the party aggrieved, whose evidence shall be admissible in proof of the said offence.

Overcharge by hackney coachmen, &c. to be included in conviction, and returned to aggrieved party.

59. Any proprietor or driver of any such hackney carriage which is hired who permits or suffers any person to be carried in or upon or about such hackney carriage during such hire, without the express consent of the person hiring the same, shall be liable to a penalty (1) not exceeding twenty shillings.

Penalty for permitting persons to ride without consent of the hirer.

60. No person authorised by the proprietor of any hackney carriage to act as driver of such carriage shall suffer any other person to act as driver of such carriage without the consent of the proprietor thereof, and no person, whether licensed or not, shall act as driver of any such carriage without the consent of the proprietor, and any person so suffering another person to act as driver, and any person so acting as driver without such consent as aforesaid, shall be liable to a penalty (1) not exceeding forty shillings for every such offence.

No person to act as driver of any carriage without the consent of the proprietor.

61. If the driver or any other person having or pretending to have the care of any such hackney carriage be intoxicated while driving, or if any such driver or other person by wanton and furious driving, or by any other wilful misconduct, injure or endanger any person in his life, limbs, or property, he shall be liable to a penalty (1) not exceeding

Penalty on drivers misbehaving.

(1) As to the recovery and application of such penalties, see the note to the title of this Act, *ante*, p. 1032.

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five pounds, and in default of payment thereof the justice before whom he is convicted of such offence may commit him to prison, there to remain for any time not exceeding two months.

Penalty for leaving carriages unattended at places of public resort.

62. If the driver of any such hackney carriage leave it in any street or at any place of public resort or entertainment, whether it be hired or not, without some one proper to take care of it, any constable may drive away such hackney carriage and deposit it, and the horse or horses harnessed thereto, at some neighbouring livery stable or other place of safe custody; and such driver shall be liable to a penalty (1) not exceeding twenty shillings for such offence, and in default of payment of the said penalty upon conviction, and of the expenses of taking and keeping the said hackney carriage and horse or horses, the same, together with the harness belonging thereto, or any of them, shall be sold by order of the justice before whom such conviction is made, and after deducting from the produce of such sale the amount of the said penalty, and of all costs and expenses, as well of the proceedings before such justice as of the taking, keeping, and sale of the said hackney carriage, and of the said horse or horses and harness, the surplus (if any) of the said produce shall be paid to the proprietor of such hackney carriage.

Damage done by driver may be recovered from the proprietor.

63. In every case in which any hurt or damage has been caused to any person or property as aforesaid by the driver of any carriage let to hire, the justice before whom such driver has been convicted may direct that the proprietor of such carriage shall pay such a sum not exceeding five pounds as appears to the justice a reasonable compensation for such hurt or damage; and every proprietor who pays any such compensation as aforesaid may recover the same from the driver, and such compensation shall be recoverable from such proprietor, and by him from such driver, as damages.

Improperly standing with carriage; refusing to give way to, or obstructing any other driver; or depriving him of his fare.

64. Any driver of any hackney carriage who suffers the same to stand for hire across any street or alongside of any other hackney carriage, or who refuses to give way, if he conveniently can, to any other carriage, or who obstructs or hinders the driver of any other carriage in taking up or setting down any person into or from such other carriage, or who wrongfully in a forcible manner prevents or endeavours to prevent the driver of any other hackney carriage from being hired, shall be liable to a penalty (1) not exceeding twenty shillings.

Justices empowered to award compensation to drivers for loss of time in attending to answer complaints not substantiated.

65. If the driver of any such hackney carriage be summoned or brought before any justice to answer any complaint or information touching or concerning any offence alleged to have been committed by such driver against the provisions of this or the special Act, or any bye-law made thereunder, and such complaint or information be afterwards withdrawn or quashed or dismissed, or if such driver be acquitted of the offence charged against him, the said justice, if he think fit, may order the complainant or informant to pay to the said driver such compensation for his loss of time in attending the said justice touching or concerning such complaint or information as to the said justice seems reasonable, and in default of payment of such compensation, the said justice may commit such complainant or informant to prison for any time not exceeding one month, unless the same shall be sooner paid.

Penalty for refusing to pay the fare.

66. If any person refuse to pay on demand to any proprietor or driver of any hackney carriage the fare allowed by this or the special Act, or any bye-law made thereunder, such fare may, together with costs, be recovered before one justice as a penalty.

Penalty for damaging carriage.

67. Any person using any hackney carriage plying under a licence granted by virtue of this or the special Act, who wilfully injures the same, shall for every such offence be liable to a penalty (1) not exceeding five pounds, and shall also pay to the proprietor of such hackney carriage reasonable satisfaction for the damage sustained by the same; and such satisfaction shall be ascertained by the justices before whom the conviction takes place, and shall be recovered by the same means as the penalty.

Commissioners may

68. The commissioners (2) may from time to time (subject to the restrictions of this

(1) As to the recovery and application of such penalties, see the note to the title of this Act, *ante*, p. 1032.

(2) As these provisions are incorporated with the Public Health Act, 1875, "the commissioners" means the urban sanitary authority.

and the special Act) make bye-laws for all or any of the purposes following (1); that is to say,) Secs. 68, 69.

make bye-laws for regulating hackney carriages.

For regulating the conduct of the proprietors and drivers of hackney carriages plying within the prescribed distance (2) in their several employments, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling:

For regulating the manner in which the number of each carriage, corresponding with the number of its license, shall be displayed:

For regulating the number of persons to be carried by such hackney carriages, and in what manner such number is to be shown on such carriage, and what number of horses or other animals is to draw the same, and the placing of check strings to the carriages, and the holding of the same by the driver, and how such hackney carriages are to be furnished or provided:

For fixing the stands of such hackney carriages and the distance to which they may be compelled to take passengers, not exceeding the prescribed distance:

For fixing the rates or fares, as well for time as distance, to be paid for such hackney carriages within the prescribed distance, and for securing the due publication of such fares:

For securing the safe custody and re-delivery of any property accidentally left in hackney carriages, and fixing the charges to be made in respect thereof.

And with respect to public bathing (3), be it enacted as follows:

Bathing machines.

69. Where any part of the sea-shore or strand of any river used as a public bathing-place is within the limits of the special Act the commissioners (3) may make bye-laws (4) for the following purposes; (that is to say,)

For fixing the stands of bathing machines (5) on the sea-shore or strand, and the limits within which persons of each sex shall be set down for bathing, and within which persons shall bathe:

For preventing any indecent exposure of the persons of the bathers (6):

(1) As to the confirmation of bye-laws made under this section, see sections 2 and 3 of the Public Health (Confirmation of Bye-laws) Act, 1884, 47 Vict. c. 12, *post*, p. 1475. Where a local board, acting under a Local Improvement Act, made a bye-law "that the several places in the district where painted boards shall from time to time be placed by the said local board to distinguish them as stands, should be the stands for such number of carriages, &c., as should be mentioned on such boards, and prohibiting drivers from placing their vehicles, &c., or plying for hire, elsewhere than on such stands under a penalty of 40s.; it was held that the bye-law was valid, although it did not on the face of it specify the exact localities where the stands were to be: *Blackpool Local Board of Health* v. *Bennett; Same* v. *Kenyon*, 4 H. & N. 127, 7 W. R. 382; *S. C., Bennett* v. *Blackpool Local Board of Health*, 28 L. J. M. C. 203. See further, as to the making of bye-laws, by sanitary authorities, pp. 147 to 150 and notes, *ante*; and as to the general requisites to the validity of a bye-law, see note (3), *ante*, p. 147.

By section 172 of the Public Health Act, 1875, *ante*, p. 136, an urban sanitary authority can make bye-laws for regulating stands for horses standing for hire within their district, and fixing rates of hire, and as to the qualification of drivers and conductors, and for securing their good and orderly conduct while in charge.

(2) By sect. 171 of the Public Health Act, 1875, *ante*, p. 136, "within the prescribed district" means within the urban district.

(3) These provisions with respect to bathing are incorporated with the Public Health Act, 1875, and applied to urban districts, by section 171 of that Act, *ante*, p. 136. As to the construction of the incorporated provision, see section 171, *ante*, p. 136, and section 316 of that Act, *ante*, p. 215. By the latter section "the commissioners" means the urban authority. See also the provisions as to public bathing, in sections 136—139 of the Towns Improvement Clauses Act, 1847.

(4) As to the confirmation of bye-laws made under this section, see sections 2 and 3 of the Public Health (Confirmation of Bye-laws) Act, 1884, 47 Vict. c. 121, *post*, p. 1475.

(5) These cannot be placed on any part of the foreshore which is private property: *Mace* v. *Philcox*, 15 C. B. N. S. 600, 10 Jur. N. S. 680, 33 L. J. C. P. 124, 9 L. T. N. S. 766.

(6) It is unlawful for men to bathe, without any screen or covering, so near to a public footway frequented by females, that exposure of their persons must necessarily occur, and they who so bathe are liable to an indictment for indecency: *R.* v. *Reed*, 12 Cox, C. C. 1; so it is an indictable offence for a man to undress himself on the beach and to

Secs. 69–75.

For regulating the manner in which the bathing machines shall be used, and the charges to be made for the same:

For regulating the distance at which boats and vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits (1).

Regulations as to rates.

70. And with respect to the rates to be made for carrying the purposes of this and the special Act into execution, be it enacted, that all the clauses of the Towns Improvement Clauses Act, 1847, with respect to the following matters; (that is to say,)

With respect to the manner of making rates authorized by that or the special Act; (2).

With respect to the appeal to be made against any rate (3); and

With respect to the recovery of rates (4);

shall be incorporated with this and the special Act.

Bye-laws.

71. And with respect to bye-laws, be it enacted, that all the clauses of the Towns Improvement Clauses Act, 1847, with respect to the bye-laws (5) to be made by virtue of that or the special Act shall be incorporated with this and the special Act.

Tender of amends.

72. And with respect to the tender of amends, be it enacted, that if any party have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last mentioned party shall not recover in any such action; and if no such tender have been made, the defendant, by leave of the court where such action is pending, may at any time before issue joined pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

Recovery of damages and penalties.

73. The clauses of the Railways Clauses Consolidation Act, 1845 (6), with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the town or district within the limits of the special Act, and to the commissioners, and shall be construed as if the word "commissioners" had been inserted therein instead of the word "company."

74 (7). [In Ireland part of penalties to be paid to guardians of unions].

All things required to be done by two justices may, in certain cases, be done by one.

75. All things herein or in the special Act, or any Act incorporated herewith, authorised or required to be done by two justices, may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices (8).

bathe in the sea near inhabited houses from which he may be seen: *R.* v. *Crunden*, 2 Camp. 89.

(1) As to the licensing of pleasure boats and vessels, see section 172 of the Public Health Act, *ante*, p. 137.

(2) See the Towns Improvement Clauses Act, 1847, sections 167—184, *ante*, pp. 1022—1025.

(3) See sections 185—190 of the Towns Improvement Clauses Act, 1847, *ante*, pp. 1025, 1026.

(4) See sections 191—199 of the Towns Improvement Clauses Act, 1847, *ante*, pp. 1026—1028.

(5) See sections 200—208 of the Towns Improvement Clauses Act, 1847, *ante*, pp. 1028, 1029.

With respect to bye-laws made under the provisions of the Public Health Act, 1875, see sections 182—188 of that Act, *ante*, pp. 147—150. As to the general requisites to the validity of bye-laws, see note (3), *ante*, pp. 147—148.

(6) See the Railways Clauses Consolidation Act, 1845, 8 & 9 Vict. c. 20, ss. 140—161, *post*, pp. 1092—1095.

(7) This section has been repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

(8) By 2 & 3 Vict. c. 71, s. 14, any metropolitan police magistrate can do alone any act which by law is directed to be done by more than one justice; and by 21 & 22 Vict. c. 73, s. 1, the same power is extended to every stipendiary magistrate.

76. Every person who, upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Persons giving false evidence liable to penalties of perjury.

And with respect to affording access to the special Act, be it enacted as follows:

77. The commissioners shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act printed by the printers to Her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace of the county in which the town or district within the limits of the special Act is situated, a copy of such special Act so printed as aforesaid; and the said clerk of the peace shall receive, and he and the commissioners respectively shall retain, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make copies or extracts therefrom, in the like manner and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled "an Act to compel clerks of the peace for counties, and other persons, to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament."

Copies of special Act to be kept and deposited and allowed to be inspected.

7 Will. IV. and 1 Vict. c. 83.

78. If the commissioners fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy is not so kept or deposited.

Penalty on failing to keep or deposit such copies.

79 (1). *And be it enacted, that this Act may be amended or repealed by any Act to be passed in this Session of Parliament.*

Act may be amended, &c.

(1) This section has been repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

MARKETS AND FAIRS CLAUSES ACT, 1847.

10 VICT. c. 14.

An Act for consolidating in one Act certain provisions usually contained in Acts for constructing or regulating Markets and Fairs (1). [23*rd April*, 1847.]

Section 1. Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the construction or regulation of markets and fairs, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such markets or fairs as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act, which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

(1) By section 166 of the Public Health Act, 1875, *ante*, p. 134, urban authorities are empowered to provide markets; and by section 167 of the same Act, *ante*, p. 135, the following provisions of this Act, in so far as the same relate to markets, are incorporated with that Act, that is to say,

(1) With respect to the holding of the market or fair, and the protection thereof, *i.e.*, sections 12—16.
(2) With respect to the weighing goods and carts, *i.e.*, sections 21—30.
(3) With respect to the stallages, rents, and tolls, *i.e.*, sections 31—41, provided that all tolls leviable by an urban authority shall be approved by the Local Government Board.

By the same section, an urban authority may, with respect to any market belonging to them, make bye-laws for any of the purposes mentioned in section 42 of this Act, so far as those purposes relate to markets.

As to the construction of the incorporated provisions, see section 316 of the Public Health Act, 1875, *ante*, pp. 215, 216; by that section, the "undertakers" in the incorporated provisions, means the urban authority; and all penalties incurred under the incorporated provisions are to be recovered and applied in the same way as penalties incurred under that Act, as to which see sections 251—254 of that Act, *ante*, pp. 181—183.

By section 168 of the same Act, *ante*, p. 135, urban authorities are empowered to purchase the undertaking of a market company.

By section 3 of The Fairs Act, 1871, 34 & 35 Vict. c. 12, the Home Secretary may, on the representation of magistrates, and with the consent of the owner, order a fair to be abolished, and by section 6 of the Fairs Act, 1873, 36 & 37 Vict. c. 37, any Secretary of State can alter the days for holding fairs.

As to disturbance of an ancient market, see *Goldsmid* v. *Great Eastern Ry. Co.*, 25 Ch. D. 511, 53 L. J. Ch. 371, 47 L. T. N. S. 727, and 49 L. T. N. S. 717, C. A., 32 W. R. 341, where most of the cases on the subject are collected and referred to.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows: **Secs. 2, 3.**

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the construction or regulation of a market or fair, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the market or fair, and the works connected therewith, by the special Act authorised to be constructed or regulated; and the expression "the undertakers" (1) shall mean the persons authorised by the special Act to construct or regulate the market or fair. Interpretations in this Act. "special Act." "prescribed;" "the lands;" "the undertaking." "Undertakers."

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say), Interpretations in this and the special Act.

Words importing the singular number shall include the plural number (2), and words importing the plural number shall include also the singular number: Number.

Words importing the masculine gender shall include females: Gender.

The word "person" shall include a corporation, whether aggregate or sole: "Person."

The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure: "Lands."

The word "lease" shall include a missive of and an agreement for a lease: "Lease."

The expression "the market or fair" shall mean the market or fair, and the works connected therewith, by the special Act authorised to be constructed or regulated: "The market or fair."

The word "cart" shall include waggon, and also any carriage used wholly or chiefly for the conveyance of goods: "Cart."

The word "driver" shall include the carter or other person having the care of any cart: "Driver."

The word "cattle" shall include horse, ass, mule, ram, ewe, wether, lamb, goat, kid, or swine: "Cattle."

The expression "the collector" shall mean the person appointed by the undertakers to collect the stallages, rents, or tolls authorised by the special Act, shall include the assistants of the collector: "Collector."

The word "month" shall mean calendar month: "Month."

The expression "superior courts," when the matter submitted to the cognizance of the court arises in England or Ireland, shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster, and the Court of Pleas of the County of Durham; and when such matter arises in Scotland it shall mean the Court of Session: "Superior courts."

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: "Oath."

The word "county" shall include riding or other division of a county having a separate commission of the peace; and in Scotland, stewartry, and any ward or other division of a county or stewartry, having a separate sheriff; and it shall also include county of a city or county of a town: "County."

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and if such matter arise "Justice."

(1) In the provisions of this Act, incorporated with the Public Health Act, 1875, the "undertakers" means the urban authority, see note (1) on preceding page.

(2) Where a special Act, incorporating this Act, authorised "the erection of a market house," it was held that the company had authority to erect two distinct buildings or market-houses: *Richards* v. *Scarborough Public Market Co.*, 23 L. J. Ch. 110.

Secs. 3—7.

"Two justices."

in respect of lands situated not wholly in any one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorised or required to be done by two justices, the expression "two justices" (1) shall be understood to mean two or more justices assembled and acting together:

"Sheriff."

The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland and the steward depute of the stewartry in Scotland in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively:

"Quarter Sessions."

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the market or fair, or the principal office thereof for the county or place in which the market or fair is situate, or for some division of such county having a separate commission of the peace.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of this Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Markets and Fairs Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they shall be expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

And with respect to the construction of the market or fair, and the works connected therewith, be it enacted as follows:

Construction of markets or fairs to be subject the provisions of this Act, and one of the Lands Clauses Consolidation Acts, 1845.

6. Where by the special Act the undertakers shall be empowered, for the purpose of constructing the market or fair, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and in the Lands Clauses Consolidation Act, 1845, (2) when the special Act relates to England or Ireland, and to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation (Scotland) Act, 1845, when the special Act relates to Scotland; and the undertakers shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other persons by reason of the exercise, as to such lands, of the powers vested in the undertakers by this or the special Act, or any Act incorporated therewith; and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Acts respectively for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned Acts respectively shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof (3).

Errors and omissions in special Act, or schedules thereto, may be corrected by justices,

7. If any omission, mis-statement, or wrong description shall have beeen made of any lands, or of the owners, lessees, or occupiers of any lands, described or purporting to be described in the special Act, or in the schedule thereto, the undertakers, after giving ten days notice to the owners, lessees, and occupiers of the lands affected by such proposed

(1) By section 14 of 2 & 3 Vict. c. 71, one metropolitan police magistrate can do alone any act which by law is directed to be done by more than one justice; and by section 1 of 21 & 22 Vict. c. 73, the same power is extended to every stipendiary magistrate.

(2) See sections 16, *et seq.* of the Lands Clauses Act, 1845, *ante*, pp. 899, *et seq.*

(3) See sections 22—68 of the Lands Clauses Act, *ante*, pp. 904—934.

correction, may apply in England or Ireland to two justices, and in Scotland to the sheriff, for the correction thereof; and if it appear to such justices or sheriff that such omission, mis-statement, or wrong description arose from mistake, they or he shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited in England or Ireland with the clerk of the peace, and in Scotland with the sheriff clerk of the county in which the lands affected thereby shall be situated, or, where any such lands are situated in a royal burgh in Scotland, with the town clerk of such burgh; and such certificate shall be kept by such clerk of the peace, sheriff clerk, or town clerk with the other documents to which they relate, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate; and the undertakers may make the works in accordance with such certificate as if such omission, mis-statement, or wrong description had not been made.

&c., who shall certify the same.

Certificate to be deposited.

8. Copies of any such alteration or correction thereof, or extracts therefrom, certified by any such clerk of the peace, sheriff clerk, or town clerk in whose custody the same may be, which certificate such clerk shall give to all parties interested when required, shall be received in all courts of justice and elsewhere as evidence of the contents thereof.

Copies of alterations, &c. to be evidence.

9. The undertakers, in addition to the lands authorised to be taken compulsorily or to be appropriated by them for the purposes of the market or fair under the powers of this and the special Act, may appropriate any lands vested in them, or may contract with any person willing to sell the same for the purchase of any land within the limits of the special Act, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say,)

Additional land may be taken for extraordinary purposes.

For providing slaughter-houses, (if the undertakers shall be authorized by the special Act to provide slaughter-houses,) and houses and places for weighing carts:

For making convenient roads and approaches to the market or fair:

For any other purpose which may be necessary for the formation or convenient use of the market or fair.

10. Subject to the provisions in this and the special Act, and any Act incorporated therewith, the undertakers, for the purpose of constructing a place for holding the market or fair, may execute any of the following works; (that is to say,)

Undertakers, subject to provisions of this and the special Act, may execute the works herein named.

They may enter upon any lands described in the special Act, or the schedule thereto, and other lands purchased by them or belonging to them, and set out such parts as they think necessary for the purposes of the market or fair, and thereupon from time to time build and maintain such market places or places for fairs, and such stalls, sheds, pens, and other buildings or conveniences for the use of the persons frequenting the market or fair, and for weighing and measuring goods sold in the market or fair, and for weighing carts, as they may think necessary.

They may from time to time on such lands as aforesaid make and maintain all such roads and approaches as they may think necessary for the convenient use of the persons resorting to the market or fair.

11. Provided always, That in the exercise of the powers by this or the special Act granted the undertakers shall do as little damage as can be, and shall make full satisfaction in manner herein and by the special Act and any Act incorporated therewith provided to all parties interested for all damages sustained by them by reason of the exercise of such powers.

Undertakers to make satisfaction for damage done.

And with respect to the holding of the market or fair, and the protection thereof, (1) be it enacted as follows:

12. Before the market or fair shall be opened for public use the undertakers shall give not less than ten days notice of the time when the same will be opened, and such notice shall be given by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within those limits.

Before the market or fair shall be opened notice to be given by undertakers.

(1) These provisions with respect to the holding of the market or fair, and the protection thereof, in so far as they relate to markets, are incorporated with the Public Health Act, 1875, by section 167, *ante*, p. 135. As to the construction of the incorporated provisions and the recovery and application of penalties, see note, *ante*, p. 1050.

Secs. 13–16

Sales elsewhere than in markets prohibited under a penalty not exceeding 40*s*.

13. After the market place is opened for public use every person other than a licensed hawker (1) who shall sell or expose for sale in any place within the prescribed limits (2), except in his own dwelling place or shop (3), any articles (4) in respect of which tolls are by the special Act authorised to be taken in the market, shall for every such offence be liable to a penalty (5) not exceeding forty shillings (6).

Market days.

14. After the market place or place for fairs is opened for public use the undertakers shall hold markets and fairs therein on the prescribed days (if any), and on such other days as the undertakers shall appoint from time to time by any bye-law to be made in pursuance of this or the special Act.

Penalty for selling or exposing for sale unwholesome meat, &c.

Penalty on obstructing inspector.

15. Every person who shall sell or expose for sale any unwholesome meat or provisions in the market or fair shall be liable to a penalty (5) not exceeding five pounds for every such offence; and any inspector of provisions appointed by the undertakers may seize such unwholesome meat or provisions, and carry the same before a justice, and thereupon such proceedings shall be had as are hereinafter directed to be had in the case of any cattle or carcase seized in any slaughter-house and carried before a justice; and every person who shall obstruct or hinder the inspector of provisions from seizing or carrying away such unwholesome meat or provisions shall be liable to a penalty (5) not exceeding five pounds for every such offence.

Penalty for obstructing market or fair keeper.

16. Every person who shall assault or obstruct any person appointed by the undertakers to superintend the market or fair, or to keep order therein, whilst in the execution of his duty, shall for every such offence be liable to a penalty (5) not exceeding forty shillings.

And with respect to slaughter-houses (7), be it enacted as follows:

(1) A "licensed hawker" includes a pedlar holding a pedlar's certificate under the Pedlar's Act, 1871, 34 & 35 Vict. c. 96, and trading within the district for which it was granted, but using a horse and cart, and, therefore, not acting as a pedlar within section 3 of that Act: *Howard* v. *Lupton*, L. R. 10 Q. B. 598, 44 L. J. M. C. 150; See section 6 of the Pedlar's Act, 1871.

(2) "Prescribed limits," means the boundaries of the borough, and not the limits of the market: *Caswell* v. *Cook*, 11 C. B. N. S. 637, 31 L. J. M. C. 185. A sale of horses, by auction, by a licensed auctioneer in a yard attached to the dwelling-house of another person, within the district, is an offence against this section: *The Llandaff and Canton District Market Co.* v. *Lyndon*, 8 C. B. N. S. 515, 30 L. J. M. C. 105, 6 Jur. N. S. 1344, 8 W. R. 693. A sale of goods on a market day, "within the prescribed limits," is not within this section, unless the bulk of the goods sold is at the time of such sale substantially within those limits: *Newtownards Town Commissioners* v. *Woods*, 11 Ir. L. R. C. L. 506.

(3) Where the respondent had erected a building with a large open yard, the building and yard being the private property of the respondent, in his own occupation, and adjoining and communicating with his own dwelling-house, it was held that sales by public auction within this yard were not sales within the respondent's own shop: *Fearon* v. *Mitchell*, L. R. 7 Q. B. 690, 41 L. J. M. C. 170, 27 L. T. N. S. 33. See also, *McHole* v. *Davies*, 1 Q. B. D. 59, 45 L. J. M. C. 30, 33 L. T. N. S. 502, 40 J. P. 548. A covered and enclosed skittle ground, with a door leading into the street, hired for a short time for the sale of goods, is not a shop: *Hooper* v. *Kenshole*, 2 Q. B. D. 127, 46 L. J. M. C. 160, 36 L. T. N. S. 111, 25 W. R. 368; but a wooden shed affixed to a house, was held to be part of the dwelling-place or shop: *Ashworth* v. *Heyworth*, L. R. 4 Q. B. 316, 38 L. J. M. C. 91, 10 B. & S. 309. See also, *Wiltshire* v. *Baker*, 11 C. B. N. S. 237, 31 L J. M. C. 10 n, 5 L. T. N. S. 355, 10 W. R. 89; *Wiltshire* v. *Willett*, 11 C. B. N. S. 240, 31 L. J. M. C. 8, 5 L. T. N. S. 355, 10 W. R. 44; *Pope* v. *Whalley*, 34 L. J. M. C. 76, 6 B. & S. 303, 11 Jur. 444, 11 L. T. N. S. 769.

(4) A horse is an "article" within this section: *The Llandaff and Canton District Market Co.* v. *Lyndon*, *supra*.

(5) As to the recovery and application of these penalties, see note, *ante*, p. 1050.

(6) The sale of corn by sample in a place other than the person's own dwelling-house or shop, within a municipal boundary, the bulk of the corn being within such boundary, is within the section: *Mayor of Londonderry* v. *McElhinney*, Ir. R. 9 C. L. 61; but evidence of the sale of an article by sample, in a shop near to the corn market, of corn on a market day, is not *per se* evidence of an infringement of the market, 8 Jur. N. S. 461, 31 L. J. Ex, 368, 6 L. T. N. 293. See further *Black* v. *Sackett*, 10 B. & S. 639.

(7) Compare the provisions as to slaughter-houses in sections 125—131, of the Towns Improvement Clauses Act, 1847, *ante*, pp. 1014—1016, incorporated with the Public Health Act, 1875, by section 169, *ante*, p. 136.

Secs. 17–21.

17. Where by the special Act the undertakers shall be empowered to provide slaughter-houses they may from time to time erect, on any land purchased by them under the provisions of this or the special Act, or any Act incorporated therewith, any buildings, or set apart and improve any buildings belonging to them, for the slaughtering of cattle, and so soon as the same shall be ready for public use the undertakers shall give notice to that effect by the publication thereof in some newspaper circulating within the limits of the special Act, and by printed handbills posted on some conspicuous place within the said limits.

Power to erect slaughter-houses if authorised by the special Act.

18. Provided that nothing in this or the special Act, or any Act incorporated therewith, shall protect the undertakers from an indictment for nuisance, or from any other legal proceeding, in respect of any such slaughter-house as aforesaid.

Nothing to protect undertakers from an indictment for nuisance.

19. After the expiration of ten days from the publication and posting of such notice no person shall slaughter any cattle or dress any carcase for sale (1) as human food or food of man in any place within the limits of the special Act other than a slaughter-house which was in use as such before and at the time of the passing of the special Act, and has so continued ever since, or the slaughter-houses made in pursuance of this and the special Act; and every person who shall, after such notice as aforesaid, slaughter any such cattle or dress for sale any such carcase within the limits of the special Act in any place other than one of such slaughter-houses, shall be liable to a penalty not exceeding five pounds for every such offence (2).

Penalty on slaughtering cattle, &c., elsewhere than in an authorised slaughter-house.

20. The inspector of provisions, or any officer appointed by the undertakers for that purpose, may at all times of the day, with or without assistants, enter into and inspect all buildings erected or set apart by the undertakers for slaughtering cattle, and examine whether any cattle or the carcase of any cattle is deposited there; and in case such officer shall find any cattle, or the carcase or part of the carcase of any such cattle, which shall appear unfit for the food of man, he may seize and carry the same before a justice, and such justice shall forthwith order the same to be further inspected and examined by competent persons; and in case upon such inspection and examination such cattle, carcase, or part of a carcase, shall be found unfit for the food of man, such justice shall order the same to be immediately destroyed or otherwise disposed of in such way as to prevent the same being exposed for sale or used for the food of man; and every person who shall obstruct or hinder such inspector or other officer in the discharge of any of the duties aforesaid shall be liable to a penalty not exceeding five pounds for every such offence.

Inspector may enter and inspect slaughter-houses.

And with respect to weighing goods and carts (3), be it enacted as follows:

21. The undertakers shall provide sufficient and proper weighing houses or places for weighing or measuring the commodities sold in the market or fair, and shall keep therein proper weights, scales, and measures according to the standard weights and measures for the time being for weighing such commodities as aforesaid, and shall appoint proper persons to attend to the weighing or measuring such commodities at all times during which the market or fair is holden.

Undertakers to provide proper weights and measures for weighing commodities sold at markets and fairs.

(1) Upon similar provisions in a local Act, it was held that this enactment applies only to the slaughtering of beasts intended by the person slaughtering for sale as human food: *Elias* v. *Nightingale*, 8 E. & B. 698, 27 L. J. M. C. 151, 4 Jur. N. S. 166.

(2) See *Hughes* v. *Trew*, 36 L. T. N. S. 585.

(3) These provisions with respect to weighing goods and carts in so far as they relate to markets are incorporated with the Public Health Act, 1875, by section 167 of that Act, *ante*, p. 135. As to the construction of the incorporated provisions, see section 316 of that Act, *ante*, p. 215. By that section "the undertakers" means the urban authority, and by the same section, all penalties incurred under the incorporated provisions are to be recovered and applied in the same way as penalties incurred under that Act, as to which, see sections 251—254 of that Act, *ante*, pp. 181—183. The owners or managers of public markets are required to provide proper scales and balances, weights and measures, for the purpose of weighing or measuring all goods sold or offered for sale in the market; and clerks of markets can inspect and weigh goods sold or offered for sale, and if on being weighed they are found deficient the offender is liable on summary conviction to a fine not exceeding £5. See sections 6, 7 and 8 of 22 & 23 Vict. c. 56, repealed, but re-enacted as to these sections by 41 & 42 Vict. c. 49.

Secs. 22–28.

Articles to be weighed if requested by the buyer.

Penalty for refusal.

Penalty on persons appointed refusing to weigh.

Undertakers to keep proper machines for weighing carts laden with goods.

Carts to be weighed at one of the machines erected by the undertakers.

Penalty on drivers for refusing to take carts to be weighed, &c.

Penalties on drivers of carts, &c., committing frauds in weighing.

Penalty on buyers or sellers for committing frauds in weighing.

22. Every person selling or offering for sale any articles in the market or fair shall, if required so to do by the buyer, cause the same to be weighed or measured by the weights and scales or measures provided by the undertakers; and any such person who shall refuse, on demand, to cause such articles to be weighed or measured in manner aforesaid, shall be liable to a penalty (1) not exceeding forty shillings.

23. Every person appointed by the undertakers to weigh or measure any articles sold in the market or fair who shall refuse or neglect to weigh or measure the same when required shall be liable to a penalty (1) not exceeding forty shillings.

24. The undertakers shall provide sufficient and proper buildings or places for weighing carts in which goods are brought for sale within the market or fair or the prescribed limits, and shall keep therein machines and weights proper for that purpose, and shall from time to time appoint a person in every such building or place to afford the use of such machines to the public by weighing such carts with or without their loading, as may be required.

25. The driver of every such cart shall, at the request of the buyer or seller of such goods, or his agent, take such cart, with or without the loading thereof, to the nearest of the said weighing machines, and shall permit the same to be weighed; and if such cart be weighed with its load thereupon the driver shall, if required, take such cart after its load has been discharged to the weighing machine nearest to such place of discharge, and permit it to be re-weighed without such load; and if any such driver shall for the purposes aforesaid be required to take such cart a greater distance than half a mile, including the going to and returning from such machines respectively, the owner of the cart shall be paid for every horse which shall be used in drawing such cart twopence for the first half mile, and a like sum for every additional half mile; and such payment shall be made by the person requiring such cart to be weighed as aforesaid before the driver thereof shall be obliged to take it as aforesaid for the purpose of having it weighed.

26. The driver of any such cart who shall not, upon being so requested as aforesaid, and having such payment made or tendered as aforesaid, take the same to such weighing machine as hereinbefore directed, or who shall refuse to assist in the weighing of the same, shall forfeit to the person requiring such cart to be weighed a sum not exceeding twenty shillings.

27. Every driver of any such cart weighed at any weighing machine to be provided in pursuance of this or the special Act who shall commit any of the following offences shall be liable to a penalty (1) not exceeding five pounds for each offence; (that is to say,)

If he at the time of weighing any such cart knowingly have anything in or about the same other than the proper loading thereof:

If he alter any ticket denoting the weight of any such cart or the loading of the same:

If he make or use, or be privy to making or using, any ticket falsely stating the weight of any such cart or the loading thereof:

If he, after the weighing of any such cart with the loading thereof, remove any part of such loading, and afterwards dispose of or attempt to dispose of or represent the residue of such loading as being the full loading denoted by such ticket:

If he, between the time when the cart and the loading thereof have been so weighed and the time when such cart is weighed without such loading, change the wheels of such cart, or make any other change upon it after being required to allow such cart to be weighed without the loading thereof:

If he be guilty of any other fraudulent contrivance to misrepresent the weight of any such cart or of the loading thereof.

28. If the buyer or seller of any goods brought in any cart for sale within the market or fair, and which shall be required to be weighed as aforesaid, shall do anything to such cart or its loading whereby the true weight thereof respectively shall be altered before such weighing, he shall for every such offence be liable to a penalty (4) not exceeding five pounds.

(1) As to the recovery and application of these penalties, see note, *ante*, p. 1050.

Secs. 29–31.

Penalties for frauds committed by the machine keeper.

29. The person for the time being appointed to keep any weighing machine provided in pursuance of this or the special Act shall be liable to a penalty (1) not exceeding five pounds in any of the following cases; (that is to say,)

If he wilfully neglect, on application, duly to weigh any cart, with or without its loading, as the case may be, that is brought to the machine kept by him to be weighed:

If he do not fairly weigh every such cart, with or without loading, as the case may be:

If he do not deliver to the buyer or seller of any such loading, or to any person interested therein, on application, a ticket or account specifying the true weight of such cart, with or without such loading, as may be required:

If he give to the driver of any such cart a false ticket or account of the weight of such cart, with or without the loading thereof:

If he weigh any cart, with or without its loading, knowing that anything had been done to such cart or to the loading thereof to alter the true weight thereof respectively:

If he knowingly assist in or connive at any fraud concerning the weighing of any cart or the loading thereof, or make or connive at making any false representation of the weight of the same respectively.

Penalty on other parties committing frauds as to weighing.

30. Every person who shall knowingly act or assist in committing any fraud respecting the weighing or weight of any cart, or the loading thereof, in pursuance of this or the special Act, shall for every such offence be liable to a penalty (1) not exceeding five pounds.

And with respect to the stallages (2), rents, and tolls (3) to be taken by the undertakers (4), be it enacted as follows:

Tolls, &c., not to be demanded until market or fair completed.

31. Unless it be otherwise provided by the special Act, the undertakers shall not demand or receive (5) any stallage, rent, or toll until the market place or place for a fair or slaughter-house in respect of the use of which the same shall be demanded shall be completed and fit for the use of the persons resorting thereunto.

(1) As to the recovery and application of such penalties, see note to section 21, *ante*.

(2) Stallage is a payment due to the owner of a market in respect of the exclusive occupation of a portion of the soil: *Mayor of Yarmouth* v. *Groom*, 1 H. & C. 102, 22 L. J. Ex. 74. See further as to the right to recover stallage: *Swindon Central Market Co.* v. *Panting*, 27 L. T. N. S. 578.

(3) By the Local Taxation Returns Act, 1860, 23 & 24 Vict. c. 51, an annual return must be made to a Secretary of State of all tolls and dues levied under the authority of Parliament in respect of markets; but this provision does not extend to any tolls or dues taken by a joint-stock company as profits of their undertaking, or to any tolls or dues taken by prescription or otherwise as private property, and that Act, in so far as it relates to the receipts and expenditure of a municipal corporation, has been repealed by the Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, s. 5.

As to when the lessee of a market is rateable in respect of tolls, see *R.* v. *Casswell*, L. R. 7 Q. B. 328, 26 L. T. N. S. 574, 20 W. R. 624; *S. C.* nom. *Casswell* v. *Overseers of the Borough of Wolverhampton*, 41 L. J. M. C. 108. See also *Percy* v. *Ashford Union*, 34 L. T. N. S. 579; *Mayor of London* v. *Overseers of St. Sepulchre*, L. R. 7 Q. B. 333. From these cases it appears that "stallage" tolls are rateable, but "market" tolls are not.

(4) These provisions with respect to the stallages, rents, and tolls to be taken by the undertakers, in so far as the same relate to markets, are incorporated with the Public Health Act, 1875, by section 167 of that Act, *ante*, p. 135, provided that all tolls leviable by an urban authority in pursuance of this section shall be approved by the Local Government Board. As to the construction of the provisions so incorporated, see section 316 of that Act, *ante*, p. 215. By that section "the undertakers" in the incorporated provisions means the urban authority, and all penalties incurred are to be recovered and applied in the same way as penalties incurred under the Public Health Act, 1875, as to which see sections 251—254 of that Act, *ante*, pp. 181—183.

(5) The owners of a cattle market, having received toll from the plaintiffs, and invited them to come to the market with their cattle, it was held that a duty was imposed on them to keep the market in a safe condition: *Lax and Bainbridge* v. *Corporation of Darlington*, 5 Ex. D. 28, 49 L. J. Ex. 105, 41 L. T. N. S. 489, 28 W. R. 221.

Secs. 32–41.

Certificate of two justices to be evidence that market or fair is completed.

32. A certificate under the hand of any two justices shall be conclusive evidence that the same is completed and fit for public use as aforesaid; and any such justices shall sign such certificate on proof being adduced to them that the market place or place for a fair or slaughter-house is so completed and fit for public use.

Stallages, &c., when to be paid.

33. The several stallages, rents, or tolls payable in respect of the market or fair or slaughter-house shall be paid from time to time, on demand, to the undertakers or the collector, or other person authorised by the undertakers to receive the same.

Tolls to be paid to persons authorised before the same are weighed, &c.

34. The tolls payable in respect of weighing or measuring marketable commodities, or carts with or without goods, shall be paid to the person authorised by the undertakers to weigh or measure the same by the persons bringing such marketable commodities or carts to be weighed or measured, before the same are weighed or measured.

Tolls in respect of cattle market, when due.

35. The tolls in respect of cattle brought to the market for sale shall become due as soon as the cattle in respect whereof they are demandable are brought into the market place, and before the cattle are put into any pen, or tied up in such market place; and if the cattle be not removed within one hour after the close of the market, another toll shall become due in respect of the cattle so omitted to be removed.

Stallages, tolls, &c., may be varied from time to time.

36. The undertakers may from time to time change the stallages, rents, and tolls to be taken in respect of the market or fair, or for the slaughter-houses, or for weighing and measuring, provided that the stallages, rents, and tolls in no case exceed the amounts authorised by the special Act.

Penalty on taking a greater toll than authorised by this or the special Act.

37. Every person who shall demand or receive a greater toll than that authorised to be taken under the provisions of this or the special Act shall for every such offence be liable to a penalty (1) not exceeding forty shillings.

Recovery of tolls by distress, &c.

38. If any person liable to the payment of any stallage, rent, or toll authorised by this or the special Act to be taken do not pay the same when demanded, the undertakers or their lessee, or any person authorised by the undertakers or their lessee to collect the same, may levy the same in England or Ireland by distress, and in Scotland by poinding and sale, of all or any of the cattle or other articles in respect of which such stallage, rent, or toll is payable, or of any other cattle or other articles in the market belonging to the person liable to pay such stallage, rent, or toll, or under his charge, or such tolls may be recovered in any court having complete jurisdiction.

Disputes respecting tolls, how to be settled.

39. If any dispute arise concerning any such stallage, rent, or toll, such dispute shall be determined in England or Ireland by a justice, and in Scotland by the sheriff, and such justice or sheriff shall on application made to him, determine the same, and make such order therein, and award such costs to either party, as to him shall seem proper; and in default of payment, on demand, of the money which shall be so awarded, and of the costs, the same shall be forthwith levied in England or Ireland by distress, and in Scotland by poinding and sale, and the justice or sheriff shall issue his warrant accordingly.

Penalty for obstructing collector of rents, &c.

40. Every person who shall assault or obstruct any person authorised to collect any stallage, rent, or toll authorised by this or the special Act, shall for every such offence be liable to a penalty (1) not exceeding forty shillings.

List of tolls, &c., to be set up and placed in conspicuous places.

41. The undertakers or their lessee shall from time to time cause to be painted on boards, or to be printed and attached to boards, in large and legible characters, a list of the several stallages, rents, and tolls from time to time payable under this and the special Act, and shall cause a board containing such list to be conspicuously set up and continued in the market or fair, and in each weighing house and slaughter-house provided by the undertakers, to which each such list shall relate, and no stallage, rent, or toll shall be payable during the time such list is not so set up, or for anything not specified therein: Provided always, that if such list shall be destroyed, injured, or obliterated, the stallages, rents, and tolls shall continue to be payable during such time as shall be reasonably required for the restoration of such list, in the same manner as if such list had continued in the state required by this Act.

And with respect to the bye-laws to be made by the undertakers be it enacted as follows:

(1) As to the recovery and application of penalties, see note (4), *ante*, p. 1057.

42. The undertakers may from time to time make such bye-laws [1] as they think fit for all or any of the following purposes; (that is to say,)

Bye-laws may be made for all or any of the purposes herein named.

For regulating the use of the market place and fair and the buildings, stalls, pens, and standings therein, and for preventing nuisances or obstructions therein, or in the immediate approaches thereto:

For fixing the days, and the hours during each day, on which the market or fair shall be held:

For inspection of the slaughter-houses, and for keeping the same in a cleanly and proper state, and for removing filth and refuse at least once in every twenty-four hours, and for requiring that they be provided with a sufficient supply of water, and preventing the exercise of cruelty therein:

For regulating the carriers resorting to the market or fair, and fixing the rates for carrying articles carried therefrom within the limits of the special Act.

For regulating the use of the weighing machines provided by the undertakers, and for preventing the use of false or defective weights, scales, or measures:

For preventing the sale or exposure for sale of unwholesome provisions in the market or fair:

Bye-laws may be repealed or altered from time to time.

And the undertakers may from time to time, as they shall think fit, repeal or alter any such bye-laws; provided always, that such bye-laws shall not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act, or of any Act incorporated therewith; and such bye-laws shall be reduced to writing under the common seal of the undertakers if they be a body corporate, or the hands and seals of two of the undertakers if they be not a body corporate, and, if affecting other persons than the officers and servants of the undertakers, shall be printed and published as herein provided.

Bye-laws may be enforced by imposition of penalties.

43. The undertakers, by the bye-laws so to be made by them, may impose such reasonable penalties as they shall think fit, not exceeding five pounds for each breach of such bye-laws; provided that every such bye-law shall be so framed as to allow the justices or sheriff before whom any penalty imposed thereby shall be sought to be recovered to order the whole or part only of such penalty to be paid.

No bye-laws to come into operation until allowed in the manner prescribed and approved by Secretary of State.

44. No bye-laws made under the authority of this or the special Act (except such as may relate solely to the officers or servants of the undertakers) shall come into operation until the same shall be allowed in the manner prescribed by the special Act, or, if no manner be prescribed, until the same shall be allowed by the justices at quarter sessions if the market or fair be in England or Ireland, or the sheriff if the market or fair be situate in Scotland, and in either case approved under the hand of one of Her Majesty's principal secretaries of state; and it shall be incumbent on the justices at quarter sessions, or the sheriff as the case may be, on the request of the undertakers, to examine into the bye-laws which may be tendered to them for that purpose, and to allow of or disallow the same as to them may seem meet.

Notice of allowance of bye-laws to be given in one or more newspapers, &c.

45. Provided always, that no such bye-law shall be allowed in manner herein mentioned unless notice of the intention to apply for an allowance of the same shall have been given in one or more newspapers of the county in which the market or fair shall be situated, or, if there be no newspaper in such county, in one or more newspapers of the adjoining county, one month at least before the hearing of such application; and any party aggrieved by any such bye-law, on giving notice of the nature of his objection to the undertakers ten days before the hearing of the application for the allowance thereof, may, by himself or his counsel, attorney, or agent, be heard thereon, but not so as to allow more than one party to be heard upon the same matter of objection.

A copy of proposed bye-laws to be

46. For one month at least before any such application for allowance of any bye-law a copy of such proposed bye-laws shall be kept at the principal office of the undertakers, and

[1] As to the confirmation of bye-laws made under this section, see sections 2 and 3 of the Public Health (Confirmation of Bye-laws) Act, 1884, 47 Vict. c. 12, *post*, p. 1475. By section 167 of the Public Health Act, 1875, *ante*, p. 135, an urban authority may, with respect to any market belonging to them, make bye-laws for any of the purposes mentioned in this section, so far as those purposes relate to markets, and printed copies of any bye-laws so made shall be conspicuously exhibited in the market.

Secs. 46–51

open for inspection.

shall be put up in some conspicuous place in the market place or fair, and all persons at all reasonable times may inspect such copy without fee or reward, and the undertakers shall furnish every person who shall apply for the same with a copy thereof, or of any part thereof, on payment of sixpence for every one hundred words so to be copied.

Publication of bye-laws.

47. The said bye-laws shall be published in the prescribed manner, and when no manner of publication is prescribed they shall be printed, and the clerk of the undertakers shall give a printed copy thereof to every person applying for the same without charge and a copy thereof shall be painted or placed on boards, and put up in some conspicuous part of the principal office of the undertakers, and also in some conspicuous place in the market place or fair, and such boards, with the bye-laws thereon, shall be renewed from time to time as occasion shall require, and shall be open to inspection without fee or reward; and in case the said clerk shall not permit the same to be inspected at all reasonable times he shall for every such offence be liable to a penalty not exceeding five pounds.

Bye-laws to be binding on all parties.

48. All bye-laws made and confirmed according to the provisions of this and the special Act, when so published and put up, shall be binding upon and be observed by all parties, and shall be a sufficient warrant for all persons acting under the same.

Proof of publication of bye-laws.

49. The production of a written or printed copy of the bye-laws requiring confirmation by the court of quarter session or the sheriff, authenticated by the signature of the judge or of the chairman of the court or the sheriff who shall have approved of the same, and requiring approval under the hand of one of Her Majesty's principal secretaries of state, and a written or printed copy of the bye-laws not requiring such confirmation or approval, authenticated by the common seal of the undertakers if they be a body corporate, or under the hands of the undertakers if not incorporated, or any two of them, shall be evidence of the existence and making of such bye-laws in all cases of prosecution under the same, without proof of the signature of such judge, chairman, or sheriff, or such secretary of state, or the common seal or signature of the undertakers; and with respect to the proof of the publication of any such bye-laws, it shall be sufficient to prove that a painted board containing a copy thereof was put up and continued in manner by this Act directed, and in case of its afterwards being displaced or damaged, that such board was replaced or restored as soon as conveniently might be, unless proof be adduced by the party complained against that such painted board did not contain a copy of such bye-laws, or was not duly put up or continued as directed by this Act.

Annual account to be made up by the undertakers, and transmitted to the clerk of the peace in England or Ireland, or to the sheriff clerk, in Scotland, and to be open to inspection.

Penalty on omission to prepare such account.

50. And with respect to the receipts and expenditure of the undertakers, be it enacted, that the undertakers shall in every year cause an annual account in abstract to be prepared, showing the whole receipt and expenditure of all rents and other monies levied by virtue of this or the special Act for the year ending the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited or certified by the chairman of the undertakers, and by the auditors if any, and shall send a copy of the said account, free of charge, to the clerk of the peace in England and Ireland, and the sheriff clerk in Scotland, of the county in which the market or fair is situate, on or before the expiration of one month from the day on which such accounts shall end, which account shall be open to the inspection of the public at all seasonable hours, on payment of the sum of one shilling for every such inspection; and if the undertakers omit to prepare or send such account as aforesaid they shall forfeit for every such omission the sum of twenty pounds.

Tender of amends.

51. And with respect to the tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such person make tender of sufficient amends to the person injured, such last-mentioned person shall not recover in any such action; and if no such tender have been made the defendant may, by leave of the court where such action is pending, at any time before issue joined, pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matters referred to justices in England or Ireland, and to the sheriff or justices in Scotland, be it enacted as follows:

Railways Clauses Consolidation Acts, 1845, as to damages, &c., to be incorporated with this and the special Act.

52. If the market or fair be in England or Ireland the clauses [1] of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and if the market or fair be in Scotland the clauses of the Railways Clauses Consolidation (Scotland) Act, 1845, with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the market or fair and the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company."

In Ireland part of penalties to be paid to guardians of unions.

53. [2] *Provided always, that in Ireland, in the case of any penalty imposed by justices, where the application is not otherwise provided for, such justices may award not more than one half of such penalty to the informer, and shall award the remainder to the guardians of the poor of the union within which the offence shall have been committed, to be applied in aid of the poor rates of such union.*

Nothing in this or the special Act to affect the rights of the Crown.

54. And be it enacted, that nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to Her Majesty's duties of customs or excise, or any other revenue of the crown, or to extend to or affect any claim of Her Majesty in right of her crown, or otherwise howsoever, or any proceedings at law or in equity by or on behalf of Her Majesty, in any part of the United Kingdom of Great Britain and Ireland.

All things required to be done by two justices in England and Ireland may in certain cases be done by one and in Scotland by the sheriff, &c.

55. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices, may and shall be done in England and Ireland by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices [3], and in Scotland by the sheriff or steward of any county, stewartry, or ward, or his substitute.

Penalties, &c., imposed in respect of any offence committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

56. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled, "an Act for regulating the police courts in the metropolis;" and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses, as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

Penalty for giving false evidence.

57. Every person who upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

(1) These clauses are sections 140—161 of the Railways Clauses Act, 1845, 8 Vict. c. 20, *post*. pp. 1092—1095.

(2) This section has been repealed by section 1 of the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

(3) By section 14 of 2 & 3 Vict. c. 71, one metropolitan police magistrate can do alone any Act which by law is directed to be done by more than one justice; and by section 1 of 21 & 22 Vict. c. 73, the same power is extended to every stipendiary magistrate.

Secs. 58–60.

And with respect to access to the special Act, be it enacted as follows:

Copies of special Act to be kept by undertakers at their office, and deposited with the clerks of the peace, &c., and be open to inspection.

58. The undertakers shall at all times after the expiration of six months after the passing of the special Act keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty, or some of them, and shall also within the space of such six months deposit in the office of the clerk of the peace of the county in England or Ireland, and in the office of the sheriffs clerk of the county in Scotland, in which the undertaking is situate, a copy of such special Act so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her Majesty, intituled "an Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament."

7 W. 4 and 1 Vict. c. 83.

Penalty on undertakers failing to keep or deposit such copies.

59. If the undertakers fail to keep or deposit, as hereinbefore-mentioned, any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

60 (1). [Act may be amended, &c.]

(1) This section has been repealed by section 1 of the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

COMMISSIONERS CLAUSES ACT, 1847.

10 VICT. c. 16.

An Act for consolidating in one Act certain provisions usually contained in Acts with respect to the constitution and regulation of bodies of commissioners appointed for carrying on undertakings of a public nature (1). [23*rd April*, 1847.]

Secs. 1, 2.

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the execution of undertakings of a public nature by bodies of commissioners, trustees, or other persons, not being joint stock companies, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such undertakings or commissioners as shall be authorised or constituted by any Act of Parliament hereafter to be passed, which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the commissioners constituted by such Act and to the undertaking for carrying on which such commissioners shall be constituted, so far as the same shall be applicable thereto respectively; and such clauses, with the clauses of every other Act which shall be incorporated therewith, shall, save as aforesaid, form part of such Act, and be construed therewith, as forming one Act.

Extent of Act.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:

Interpretations in this Act:

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed, constituting a body of commissioners as hereinafter defined for the purpose of carrying on any undertaking, and with which this Act shall be incorporated; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed" the expression "prescribed for that

"the special Act:"

"prescribed:"

(1) The clauses of this Act with respect to mortgages to be executed by the commissioners (*i.e.*, sections 75—88) are incorporated with the Highway Act, 1864, by section 50 of that Act, *ante*, p. 873. In the construction of these clauses "the commissioners" shall mean the "highway board;" and by the same section, mortgages and transfers of mortgages shall be valid if made in the forms prescribed by this Act, or in the forms appearing in the second schedule annexed to that Act, or as near thereto as circumstances admit.

These clauses are also incorporated with the Artizans and Labourers Dwellings Improvement Act, 1875, by section 22 of that Act, *ante*, p. 600.

As to the construction of the incorporated provisions, see the same section. In the incorporated provisions "the commissioners" shall mean "the commissioners of sewers."

The same clauses are also incorporatod with the Labouring Classes Dwelling Houses Act, 1866, 29 & 30 Vict. c. 28, by section 6 of that Act.

See also the same section as to the construction of the incorporated provisions.

Secs. 2—5.

"the undertaking:" "the commissioners."

purpose in the special Act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature, which shall by the special Act be authorised to be executed or carried on; and the expression "the commissioners" shall mean the commissioners, trustees, undertakers, or other persons or body corporate constituted by the special Act, or thereby entrusted with powers for executing the undertaking.

Interpretations in this and the special Act:

3. The following words and expressions, both in this and the special Act and any Act incorporated therewith, shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)

Number: Words importing the singular number only shall include the plural number; and words importing the plural number only shall include the singular number:

Gender: Words importing the masculine gender only shall include females:

"Person:" The word "person" shall include a corporation, whether aggregate or sole:

"Lands:" The word "lands" shall extend to messuages, lands, tenements, and hereditaments or heritages of any tenure:

"Month:" The word "month" shall mean calendar month:

"Superior courts:" The expression "superior courts," where the matter submitted to the cognizance of the court arises in England or Ireland, shall mean Her Majesty's Superior Courts of Record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster and the Court of Pleas of the County of Durham, and where such matter arises in Scotland shall mean the Court of Session:

"Oath:" The word "oath" shall include affirmation in the case of quakers and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath:

"County:" The word "county" shall include riding or other division of a county having a a separate commission of the peace, and in Scotland stewartry, and any ward or other division of a county or stewartry having a separate sheriff, and it shall also include county of a city or county of a town:

"Justice:" The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter is authorised or required to be done by two justices, the expression "two justices" (1) shall be understood to mean two or more justices met and acting together:

"Two justices:"

"Sheriff:" The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland and the steward depute of the stewartry in Scotland in which any matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively:

"Quarter sessions:" The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined, it shall mean the general or quarter sessions of the peace which shall be held at the place nearest to the undertaking for the county or place in which the undertaking, or the principal office thereof, is situate, or for some division of such county having a separate commission of the peace:

"Clerk" The expression "the clerk" shall mean the clerk of the commissioners, and shall include the word "secretary:"

"the town." The expression "the town" shall mean the town or district named in the special Act within which the powers of the commissioners are to be exercised.

And with respect to citing this Act or any part thereof, be it enacted as follows:

Short title of his Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be sufficient to use the expression "The Commissioners Clauses Act, 1847."

Form in which portions of this Act may be incorporated

5. For the purpose of incorporating part only of this Act with any Act of Parliament hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter,

(1) By section 14 of 2 & 3 Vict., c. 71, any one metropolitan police magistrate can do any act which by law is required to be done by more than one justice; and by section 1 of 21 & 22 Vict. c. 73, the same power is extended to every stipendiary magistrate.

and to enact that the clauses so described, or that this Act with the exception of the clauses so described, shall be incorporated with such Act; and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

Secs. 5—12.

with other Acts.

With respect to the qualification of commissioners (1), be it enacted as follows:

Joint owners or occupiers when qualified eligible as commissioners.

6. Where by the special Act the qualification of the commissioners is made to depend upon their being rated in respect of property of a given amount then if two or more persons be jointly rated in respect of any property, each of such persons shall, subject to the provisions herein and in the special Act contained, be eligible to be chosen a commissioner, provided the property in respect of which such persons are rated be of a rateable yearly value, which, when divided by the number of persons so rated, will give to each a sufficient rateable yearly value, according to the provisions of this and the special Act.

Same property not to give two qualifications.

7. The same property shall not at the same time give a qualification as commissioner to one person as the owner, and to another as the occupier thereof.

No bankrupt or insolvent to be a commissioner.

8. No bankrupt or insolvent, or person not qualified as required by the special Act, shall be capable of being or continuing a commissioner.

No person holding office or concerned in a contract to be a commissioner.

9. Any person who at any time after his appointment (2) or election as a commissioner shall accept or continue to hold any office or place of profit under the special Act, or be concerned or participate in any manner in any contract (3), or in the profit thereof, or of any work to be done under the authority of such Act, shall thenceforth cease to be a commissioner, and his office shall thereupon become vacant (4).

Shareholders in companies established by Act of Parliament not disqualified by reason of contracts.

10. Provided always, that no person being a shareholder or member of any joint stock company established by Act of Parliament shall be prevented from acting as a commissioner by reason of any contract entered into between such company and the commissioners; but no such commissioner, being a member of such company, shall vote on any question relating to the execution of this or the special Act in which such company is interested.

Commissioner not incapable of acting as a justice.

11. A person shall not be incapable of acting as a justice of the peace in the execution of this or the special Act, with reference to the levying of any penalty thereunder, by reason of his being a commissioner.

Declaration to be made by commissioners before acting.

12. No person shall be capable of acting as a commissioner, except in administering the declaration hereinafter mentioned, until he shall have made and signed, before one of the commissioners, a declaration to the effect following:

"I *A. B.* do solemnly declare, that I will faithfully and impartially, according to the best of my skill and judgment, execute all the powers and authorities reposed in me as a commissioner, by virtue of the [*here name the special Act*], and also that I [*here set forth a statement of the possession of the qualification required by the special Act in the terms thereof*]."

(1) Where by a local Act it was enacted that twelve inhabitants, householders, rated to the relief or maintenance of the poor of the parish, by one or more rate or rates, to the amount of £10 per annum, shall be appointed commissioners of the harbour of Rye; it was held that the rateable annual value, and not the rates payable, conferred the qualification: *Easton* v. *Alice*, 7 H. & N. 452, 8 Jur. N. S. 156, 31 L. J. Ex. 115, 5 L. T. N. S. 323, 10 W. R. 110. As to the case of a person qualified at the time of the election, but not qualified when the last preceding rate was made, see *R.* v. *Eddowes*, 1 E. & E. 330, 5 Jur. N. S. 469, 28 L. J. Q. B. 84.

(2) A provision in the special Act that every person rated in a certain amount should be a commissioner, is an "appointment" within this section: *Nicholson* v. *Fields*, 7 H. & N. 810, 21 L. J. Ex. 233, 10 W. R. 304.

(3) As to the evidence from which a jury might infer that a person was interested in a contract, see *Nicholson* v. *Fields*, *supra*. An invoice in a person's handwriting, and addressed to the commissioners, is evidence against that person (*ib.*).

(4) A person who had contracted with former commissioners to sell a plot of land to be used for the purposes of the Act, was held not to be disqualified under the local Act, though the conveyance of the land had not been executed: *Wooley* v. *Kay*, 1 H. & N. 307; 25 L. J. Ex. 351.

Secs. 13–18.

False declaration a misdemeanor.

13. Any person who shall falsely or corruptly make and subscribe the declaration aforesaid, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor, or in Scotland shall be deemed guilty of perjury.

Declaration to be taken at the first meeting.

14. Every person elected or appointed a commissioner shall, at the meeting of commissioners at which he first attends as a commissioner, make and subscribe the declaration herein required, and any commissioner, whether he himself have made such declaration or not, may administer such declaration.

Penalty on commissioner, not being qualified, acting.

15. Every person who shall act as a commissioner, being incapacitated or not duly qualified to act (1), or before he has made or subscribed such declaration as aforesaid, or after having become disqualified, shall for every such offence be liable to a penalty of fifty pounds; and such penalty may be recovered by any person (2), with full costs of suit, in any of the superior courts; and in every such action the person sued shall prove that at the time of so acting he was qualified, and had made and subscribed the declaration aforesaid, or he shall pay the said penalty and costs without any other evidence (3) being required from the plaintiff than that such person had acted as a commissioner in the execution of this or the special Act; nevertheless all acts as a commissioner of any person incapacitated, or not duly qualified, or not having made or subscribed the declaration aforesaid, done previously to the recovery of the penalty, shall be as valid as if such person had been duly qualified.

Commissioner neglecting to act to cease to be one.

16. Every commissioner who for the space of six months after his appointment neglects to make and subscribe the declaration hereinbefore required, or who for six months in succession is absent from all meetings of the commissioners, and to act in the execution of this and the special Act, shall be deemed to have refused to act and shall cease to be a commissioner.

And with respect to the election and rotation of the commissioners, where the commissioners are to be elected by the ratepayers or other like class of electors, be it enacted as follows:

One third of commissioners elected by ratepayers and owners to go out of office every three years.

17. Where by the special Act it is provided that the commissioners shall be elected by the ratepayers within the town, or other like class of electors, the first body of commissioners, whether appointed by the special Act, or elected under the provisions of this and the special Act, shall go out of office according to the prescribed rotation and at the prescribed times, and where no rotation or time of going out office is prescribed they shall go out of office by rotation in the following manner; (that is to say,) on the first Thursday in the month of September in the year following that in which the special Act is passed, one third of such body of commissioners shall go out of office, and on the first Thursday in September of the following year another third of such body of commissioners shall go out of office, and on the first Thursday in September in the year following the remainder of such body of commissioners shall go out of office, and on the first Thursday in the month of September in every subsequent year one third of the commissioners, being those who have been longest in office, shall go out of office; and in each instance the places of the retiring commissioners shall be supplied by the election of a like number of commissioners in the manner herein or in the special Act provided: Provided always, that if the prescribed number of commissioners be some number not divisible by three, and the number of commissioners to retire be not prescribed, the commissioners shall in each case determine what number of commissioners, as nearly one third as may be, shall go out of office, so that no commissioner shall remain in office longer than three years without being re-elected.

Commissioners eligible to be re-elected.

18. Every commissioner going out of office by rotation, or otherwise ceasing to be a commissioner, may be re-elected, and after such re-election he shall, with reference to going out by rotation, be considered as a new commissioner.

(1) See *Gough* v. *Hardman*, 5 H. & N. 112.
(2) See *Hollis* v. *Marshall*, 2 H. & N. 755; 27 L. J. Ex. 235.
(3) As to the evidence required, see note (3) to sect. 9, *ante*. It is a settled rule that when a defendant in a penal action obtains a verdict, a new trial will not be granted on the ground that it was against evidence: *Gough* v. *Hardman*, 6 Jur. N. S. 402; *Hall* v. *Green*, 9 Exch. 247.

Mode of supplying occasional vacancies.

19. If any of the commissioners die or resign, or be disqualified or cease to be a commissioner from any other cause than that of going out of office by rotation, the remaining commissioners, if they think fit, may, within one month from the happening of such vacancy, elect another commissioner in his place; and every commissioner so elected shall continue in office only so long as the person in whose place he is elected would have been entitled to continue in office.

Manner of making the rotation list.

20. In order to determine the rotation by which such first body of commissioners shall go out of office, the commissioners shall within one month after the passing of the special Act (or after the first election of commissioners, as the case may be) meet at some convenient place for the purpose of forming a rotation list; and at such meeting the clerk, or some person to be then appointed for that purpose by the commissioners, shall write the names of all the commissioners on separate slips of paper, all as nearly as may be of equal size, and having folded them up in the same manner he shall put them into a balloting box, and shall, in the presence of the meeting, draw out such slips of paper in succession, and the names upon the slips so drawn shall be written by the clerk or other person in a list, in the order in which they are drawn, or where the commissioners are elected for wards or other electoral divisions of the town (and which electoral divisions are hereinafter called wards) in as many lists as there are wards or electoral divisions, and in the order aforesaid, each list containing the names of the commissioners for one such ward or electoral division only, and every such list shall be kept by the clerk among the papers of the commissioners, and the names therein shall be numbered consecutively, and the commissioners shall retire from office in the order in which their names appear on such list or lists as the case may be, in the proportions hereinbefore or in the special Act mentioned.

Annual meeting for election of commissioners.

21. For the purpose of electing commissioners from time to time in the place of those who go out by rotation, a meeting of the persons entitled to vote at such election shall be held at the prescribed place, and if no place be prescribed, at the principal office of the commissioners, on the prescribed day, or if no day be prescribed on the first Thursday in the month of September in the year following that in which the special Act is passed, and on the first Thursday in September in each succeeding year, or if the commissioners are to be elected for wards, a meeting of the persons entitled to vote in each ward shall on the same day be held at some place to be appointed by the commissioners, of which meetings, and the time and place of holding the same, public notice shall be given by the clerk by advertisement, and also by placards affixed on the principal doors of the parish churches or other public places in the town seven clear days at the least before the day of election, and at such meeting or meetings the election of commissioners shall take place as hereinafter mentioned.

Returning officer at elections.

22. Where the appointment of the returning officer to act at the election of commissioners is not provided for by the special Act, the chairman of the commissioners shall be the returning officer; and if the commissioners are to be elected for wards, the said chairman shall act as the presiding officer at the election for the ward for which he was elected a commissioner, and he shall appoint some other commissioner for each of the other wards to be the presiding officer at the election for such ward, and in case of the death of any such presiding officer, or of his declining or becoming incapable to act, the commissioners shall appoint another of their body to be the presiding officer in the place of the person so dying, or declining, or becoming incapable to act, and the clerk to the commissioners shall, two days at least (1) before each election, by advertisement, placards, or otherwise, give public notice of every such appointment.

Returning officer to appoint poll clerks.

23. At every such election of commissioners the commissioners shall cause to be printed a sufficient number of voting papers in blank, in the form given in the schedule (A.) to this Act annexed, or to the like effect, and shall furnish them to the returning officer for the use of the voters; and if it appear to the returning officer at any election expedient so to do, he may cause booths to be erected, or rooms to be hired and used as booths, for taking the poll at such election, and he shall in such case

(1) Where an act is required by statute to be done so many days *at least* before a given event, the time must be reckoned, excluding both the day of the act and that of the event: *R.* v. *Justices of Shropshire*, 8 A. & E. 173.

Secs. 23–28.

appoint a clerk to take the poll at each booth, and shall cause to be affixed on the most conspicuous part thereof the name of the ward or district for which such booth is provided; and public notice of every election, and of the situation of the different polling places, and of the place where voting papers may be procured by electors, shall be given by the returning officer two days at least (1) before the commencement of the poll.

Scale of votes of owners and occupiers.

24. Where by the special Act the owners of property and ratepayers are entitled to vote in the election of commissioners, and no scale of voting is prescribed, every such owner and ratepayer shall have respectively the same number and proportion of votes according to the scale following; (that is to say,)

If the property in respect of which he is entitled to vote be rated upon a rateable value of less than fifty pounds, he shall have one vote:

If such rateable value amount to fifty pounds and be less than one hundred pounds, he shall have two votes:

If it amount to one hundred pounds and be less than one hundred and fifty pounds, he shall have three votes:

If it amount to one hundred and fifty pounds and be less than two hundred pounds, he shall have four votes:

If it amount to two hundred pounds and be less than two hundred and fifty pounds, he shall have five votes:

And if it amount to or exceed two hundred and fifty pounds, he shall have six votes.

Electors to vote in ward where their property qualification is situate, but not to vote for more than one ward.

25. Where by the special Act the commissioners are directed to be elected for wards, every person entitled to vote in the election of commissioners shall vote for commissioners for that ward only wherein the property or part thereof in respect of which his name appears in the rate book is situate; and if any person be rated in respect of property situate in more than one ward he may vote for commissioners for any one of such wards, but having so voted he shall not afterwards, at the same election, vote for a commissioner for any other ward; and any vote so afterwards given by him shall be void.

Commissioners may cause alphabetical list of voters to be made, and may defray the expense out of the rates.

26. Before any such election of commissioners, the commissioners, if they shall think it necessary for enabling the returning officer to take the poll conveniently at such election, may cause an alphabetical list to be made out of the names of the persons entitled to vote at such election as they appear in the rates made for the purposes of the special Act, and they shall deliver to the returning officer for the time being a sufficient number of copies of the list so prepared to enable the returning officer to take the poll at the election, and they may defray the expense of making such list and copies out of the rates payable to them under the special Act.

Returning officer may summon rate collector, &c. to attend the election.

27. If the qualification of the electors of the commissioners depend upon the rates payable by such electors, the returning officer may summon the overseers or inspectors of the poor, collectors, and other officers employed in the assessment or collection of the rates, to attend the election in order to assist in ascertaining that the persons presenting themselves to vote, or who have voted, are or were duly qualified to vote at such election, and such overseers or inspectors, rate collectors, or other officers shall attend (2) with the rates and such other documents necessary for the purpose aforesaid as may be in their custody or power, at such places and at such times as the returning officer may direct, and shall answer all such questions as any presiding officer at the poll shall put to them respecting the title of any person to vote at the election; and any overseer or inspector, rate collector, or other officer who shall wilfully neglect or fail to perform the duties hereby imposed upon him, shall for such neglect or failure be liable to a penalty not exceeding twenty pounds (3).

Penalty on rate collector, &c. for neglect.

Mode of voting at elections.

28. At every such election of commissioners the voting shall commence at nine of the clock in the forenoon of the day fixed for the election as aforesaid, and shall finally close at four of the clock in the afternoon of the same day (unless in case of riot or

(1) See note to section 22.

(2) By section 35, overseers and other officers are to be paid a reasonable remuneration for such attendance.

(3) As to the recovery of such penalties, see section 106, *post*.

obstruction), and shall be conducted in manner following; (that is to say,) every person entitled to vote may vote for any number of persons having the prescribed qualification, (not exceeding the number of commissioners then to be chosen for the town, or where the commissioners are to be elected in wards not exceeding the number to be elected for the ward in which such person is entitled to vote) by delivering to the presiding officer at the poll a voting paper containing a description of his qualification to vote, in the form contained in Schedule (A.) to this Act annexed, or to the like effect, and also the names of the persons for whom he votes, such paper being previously signed with the name of the person voting, and the poll clerk shall thereupon openly record such vote in the poll book, and the voting paper shall be carefully preserved by the presiding officer; and the presiding officer shall, if he thinks fit, or if he be required so to do by any person entitled to vote at the said election, put to any voter at the time of his delivering in his voting paper, the following questions, or either of them:

1. Are you the person assessed as *A.B.* on the [ ] rate [*specifying the rate which confers the right to vote*] in respect of property described to be situated in [*here specify the street, &c., as described in the rate*]?

Or if the voter claim to vote as the owner of property,

Are you the person described as the owner of the property mentioned in [ ] rate [*specify the rate*] and described as being situated in [*here specify the street, &c., as described in the rate*]?

2. Have you already voted at the present election? [*or, if the town be divided into wards,*] Have you already voted for commissioners to be elected for this or any other ward at the present election?

And no person required to answer either of the said questions shall be permitted or qualified to vote until he has answered the same; and if any person wilfully make a false answer to either of the questions aforesaid, he shall be deemed guilty of a misdemeanor, or in Scotland shall be deemed guilty of perjury.

Poll may be closed if no voting paper be tendered for one hour.

29. The presiding officer, at any place of voting, may close the voting or poll at any time before four of the clock, if one hour have elapsed during which no voting paper has been tendered at such place of voting.

Returning officer to examine poll books and declare the poll.

30. After the close of the poll the returning officer, or where the commissioners are elected for wards the presiding officer in each ward, shall examine the poll books, and, if necessary, compare the entries therein with the rate book and with the voting papers so delivered as aforesaid, for the purpose of ascertaining the number of votes given for each person; and so many of such persons, being not more than the number of persons then to be chosen for the town, or for each ward, as the case may be, and having the prescribed qualification, as shall have the greatest number of votes, shall be deemed to be elected; and in case of an equality in the number of votes for any two or more such persons, the presiding officer shall, if necessary to prevent an excess in the number of commissioners, decide by lot which of such persons shall be elected; and the presiding officer shall, not later than two of the clock in the afternoon of the day next but one following the day of such election, unless such day be Sunday, and then on the day following, publish a list of the names of the persons so elected, and he shall also send a notice to each person so elected, informing him of his being elected a commissioner.

Voting papers to be open to inspection for six months after such election.

31. Within four days after every election the returning officer, or where the commissioners are elected for wards the presiding officer in each ward, shall cause the voting papers delivered as aforesaid to be arranged in alphabetical order, and numbered according to the names of the voters, and shall deliver them, together with the poll books, to the clerk to the commissioners; and such clerk shall, during six months at least after every such election, keep such voting papers and poll books at his office, and shall permit any person to inspect the same on payment of a fee of one shilling, and if such clerk shall refuse or fail to allow such inspection he shall for every such refusal or failure be liable to a penalty (p) of ten pounds.

Manner of proceeding if any person is

32. If any person be elected a commissioner in more than one ward, he shall, within three days after notice thereof, choose, or in default thereof the commissioners at their

(p) As to the recovery of such penalties, see section 100, post.

Secs. 32–38.

next meeting shall declare, for which one of the wards such commissioner shall serve, and he shall thereupon be held to be elected in that ward only in which he shall so choose or which the commissioners shall so declare, and shall cease to be a commissioner for any other ward.

elected a commissioner in more than one ward.

If no election on day appointed, it may be made on a subsequent day.

33. If from any cause no election take place on the day appointed for the same, either for the town or for any ward, the election shall stand adjourned until the same day of the following week, and the returning officer shall give not less than three days' previous notice thereof by advertisement, or by placards affixed in public places in the town; and in such case the commissioners who would on that day have retired from office by rotation shall continue in office until such adjourned election takes place.

Election not to be void for want of title in presiding officer.

34. No election of commissioners shall be liable to be questioned by reason only of any defect in the title, or any want of title, of the person by or before whom such election shall have been held; provided that such person have been actually appointed to preside, or have been acting in the office giving the right to preside at such election.

Expenses of presiding officer to be paid out of rates levied.

35. All expenses of or incident to any election incurred by the returning officer or presiding officer shall be repaid to them by the commissioners out of the monies arising from the rates authorised to be levied for the purposes of the special Act; and all overseers and other parochial officers or other persons shall be in like manner paid a reasonable remuneration for attendance at the election with rate books, and for any other services performed in relation to such election; and any dispute respecting the amount of such expenses and remuneration shall be determined by a justice, or by the sheriff, who shall have power also to fix the costs attending such determination, and to order by whom the same shall be paid ([1]).

And with respect to the meetings and other proceedings of the commissioners, and their liabilities, be it enacted as follows:

First meeting of the commissioners.

36. The commissioners shall hold their first meetings at the prescribed time and place, and if a time or place be not prescribed they shall hold their first meeting at some convenient place within the limits of the special Act on the third Wednesday next after the commencement thereof, or if the first body of commissioners be not named in the special Act, on the first Wednesday after the first election of commissioners, or as soon after such periods respectively as conveniently may be, at the hour of ten of the clock in the forenoon, and shall proceed to put this and the special Act into execution.

Election of chairman of meetings.

37. At the first meeting of the commissioners they shall by the majority of the votes of the commissioners present, elect one of their body to be their chairman until the next annual meeting of the commissioners, when, and at every subsequent annual meeting, the commissioners shall in like manner elect a chairman for the ensuing year; and in case the chairman die, or resign, or cease to be a commissioner, or otherwise become disqualified to act as such, the commissioners present at the meeting next after the occurrence of such vacancy shall choose some other of their body to fill such vacancy, and the chairman so elected shall continue in office so long only as the person in whose place he was elected would have been entitled to continue chairman; and if at any meeting of the commissioners the chairman be not present, one of the commissioners present shall be elected chairman of such meeting by the majority of the votes of the commissioners present at such meeting.

Manner of voting.

38. At all meetings of the commissioners the questions there considered shall be decided by the votes of the majority present, and if there be an equal division of votes upon any question the chairman or commissioner acting as chairman at such meeting shall, in addition to his own vote as a commissioner, have a second or casting vote: Provided always, that if at any such meeting there be an equality of votes in the election of the chairman, it shall be decided by lot which of the commissioners having an equal number of votes shall be the chairman: Provided also, that at every annual meeting the chairman going out of office at that meeting shall, if present and willing to act, be the chairman of such meeting.

([1]) As to the determination of such matters by a justice, or by the sheriff, see section 104, *post*.

Secs. 39–46.

Quorum of commissioners.

39. All powers vested in the commissioners under this or the special Act may be exercised by the prescribed number, and where no number is prescribed by any five or more of the commissioners present at any meeting holden in pursuance of this and the special Act, and no business shall be transacted at any meeting of the commissioners unless the said number of commissioners be present.

Commissioners to hold annual and monthly meetings.

40. The commissioners shall hold an annual meeting at the prescribed time and place, and if no time and place be prescribed then on the third Wednesday in the month of June in each year, at a place to be appointed by the commissioners, and the first of such annual meetings shall be held in the year after that in which the special Act is passed; and they shall also hold monthly meetings for the transaction of general business, and the said monthly meetings shall be held at the office of the commissioners, on such day and hour in each month as the commissioners shall from time to time appoint, and when any such appointment is made the clerk shall give notice (1) thereof to each of the commissioners, and they shall afterwards, until the time or place of such monthly meetings is changed, and notice of such change given to the commissioners, attend such monthly meetings without notice.

Meetings of commissioners may be adjourned from time to time.

41. The commissioners present at such first meeting, or at any annual or monthly meeting, or at any adjourned meeting, may from time to time adjourn such meeting to the same or any other place within the limits of the special Act, and if at any meeting of the commissioners there be not the prescribed number, or where no number is prescribed five commissioners, present within one half hour after the time appointed for such meeting, the commissioners present, or the major part of them, or any one commissioner if only one be present, or their clerk if no commissioner be present, may adjourn such meeting to another day at the same or any other place within the limits of the special Act.

Monthly meetings shall be held for transacting the ordinary business under this and the special Act.

42. The said monthly meetings of the commissioners shall be held for transacting the ordinary business of the commissioners under this or the special Act, and amongst the rest for appointing and removing the inferior officers of the commissioners, and superintending their conduct, and for inquiring into the conduct of the contractors or other persons employed by them to execute any works, and into the state and progress of such works, and generally for giving such directions from time to time as may be necessary for carrying into effect the purposes of this and the special Act.

No extraordinary business shall be transacted at monthly meetings unless notice be given.

43. Where any business other than ordinary business is required or intended to be transacted at any monthly meeting, the clerk shall give notice (1) thereof to each of the commissioners, and no such extraordinary business, nor any new rules or regulations, shall be adopted at the monthly meetings unless due notice thereof have been given at a prior meeting, and sent to each commissioner in the manner required for special meetings.

No resolution of commissioners to be revoked at a subsequent meeting unless under certain circumstances.

44. No resolution at any meeting of the commissioners shall be revoked or altered at any subsequent meeting unless notice (1) of the intention to propose such revocation or alteration be given by the clerk to each of the commissioners seven days at least before holding the meeting, nor unless such revocation or alteration be determined upon by a majority consisting of two thirds of the commissioners present at such subsequent meeting, if the number of commissioners present at such subsequent meeting be not greater than the number present when such resolution was come to, or by a majority if the number of commissioners present at such subsequent meeting be greater than the number present at such former meeting.

As to the holding of special meetings.

45. The commissioners may hold special meetings, and any five or more of the commissioners may require a special meeting to be held, but no such meeting shall be held unless two clear days notice (1) thereof at the least be given.

Notice to be given of things to be done by the commissioners by special order only.

46. Where by the special Act the commissioners are empowered to do anything by special order only, they shall not do such thing unless the resolution to do the same have been agreed to by the commissioners in some meeting whereof special notice (1) has been given, and have been confirmed in a subsequent meeting held not sooner than four weeks after the preceeding meeting, and which subsequent meeting has been advertised

(1) As to how this notice is to be given, see section 47, *post*.

Secs. 46–55.

once at least in each of the weeks intervening between the two meetings, and special notice [1] thereof given to each of the commissioners.

How notices of meetings of commissioners are to be given.

47. All notices of any meeting of the commissioners shall be in writing or in print, or partly in writing and partly in print, and shall be by the clerk delivered or sent by the post, or otherwise, to the usual place of abode or place of business, if any, within the limits of the special Act, of each of the commissioners two clear days at least previous to such meeting, and every such notice shall specify the time and place of meeting, and in case of a special meeting shall specify the object thereof, and no business shall be transacted at any special meeting except such as is stated in the notice thereof.

Expenses of meetings.

48. At all meetings of the commissioners they shall defray their own expenses, except what may be incurred for the use of the room in which the meeting is held, and for books, stationery, and fire.

Power to commissioners to appoint committees.

49. The commissioners may at any meeting from time to time appoint committees for any purposes which in the opinion of the commissioners would be better regulated and managed by means of such committee, and they may fix the quorum of any such committee, and may continue, alter, or discontinue such committee.

Quorum of committee.

50. Every committee so appointed may meet from time to time, and may adjourn from place to place, as they may think proper for carrying into effect the purposes of their appointment; but no business shall be transacted at any meeting of the committee unless the quorum of members, if any, fixed by the commissioners, and if no quorum be fixed, three members, be present, and at all meetings of the committee one of the members present shall be appointed chairman, and all questions shall be determined by a majority of the votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote in addition to his vote as a member of the committee.

Acts of the commissioners not to be invalidated by reason of vacancies.

51. No proceedings of the commissioners or of any committee shall be invalidated or be illegal in consequence only of there being any vacancy in the number of commissioners at the time of such proceeding.

Informalities in appointment of commissioners not to invalidate proceedings.

52. All proceedings of the commissioners, or of a committee of commissioners, or of any person acting as a commissioner, shall, notwithstanding it be afterwards discovered that there was some defect in the appointment of any such commissioners or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a commissioner.

Commissioners may provide public offices, &c.

53. The commissioners may from time to time provide and maintain fit and convenient public offices, together with all necessary and proper furniture for the same, for holding the meetings and transacting the business of the commissioners, and for the use of their officers, and for the holding of such public meetings and transacting such public business relating to the town as the commissioners shall, from time to time, under the powers of this or the special Act, or any Act incorporated therewith, direct or allow to be held or transacted therein, and for such purpose may purchase or hire any lands or buildings which the commissioners think necessary from any person willing to sell or let the same, or may cause any new building to be erected upon any land purchased or hired under the provisions of this or the special Act, or otherwise belonging to the commissioners.

Commissioners to provide daily attendance at their office to receive notices, &c.

54. The commissioners shall require their clerk, or some person duly authorised by them in that behalf, to attend at their office daily, Sundays, Christmas Days, and Good Fridays, and days appointed for general fasts or thanksgivings only excepted, for the purpose of receiving notices, and transacting the ordinary business of the commissioners, and due notice of the situation of the office of the commissioners, and of the hours during which attendance is given there, shall be published by the commissioners within the limits of the special Act, in such manner that the same may be fully and generally known.

Proceedings to be entered in a book, and, when signed, shall be received in evidence.

55. The commissioners shall cause entries of all the proceedings of the commissioners, and of every committee appointed by them, with the names of the commissioners who shall attend each meeting, to be duly made from time to time in books to be provided for the purpose, which shall be kept by the clerk under the superintendence of the commis-

[1] See section 47.

sioners, and every such entry shall be signed by the chairman of the meeting at which the proceedings took place, and such entry so signed shall be received as evidence in all courts and before all judges, justices, and others, without proof of such meeting having been duly convened or held, or of the persons attending such meeting having been or being commissioners or members of committees respectively, or of the signature of the chairman, or of the fact of his having been chairman, all of which last-mentioned matters shall be presumed until the contrary is proved; and such books shall at all reasonable times be open to the inspection of any of the commissioners, and of any mortgagee of the rates of property or the commissioners.

Such books to be open to inspection.

And with respect to the contracts to be entered into and the deeds to be executed by the commissioners (1), be it enacted as follows:

Power to commissioners to enter into contracts.

56. The commissioners may enter into contracts with any persons for the execution of any works directed or authorised by this and the special Act to be done by the commissioners, or for furnishing materials, or for any other things necessary for the purposes of this or the special Act, and every such contract for the execution of any work shall be in writing, and shall specify the work to be done, and the materials to be furnished and the price to be paid for the same, and the time or times within which the work is to be completed, and the penalties to be suffered in case of non-performance thereof, and the power hereby granted to the commissioners to enter into contracts may lawfully be exercised as follows; (that is to say,)

Any contract which if made between private persons would be by law required to be in writing and under seal, or in Scotland by a probate deed, the commissioners may make in writing and under their common seal, if they be incorporated, or if not incorporated under the hands and seals, or in Scotland under the hands of the commissioners or any two of them, acting by the direction and on behalf of the commissioners, and in the same manner may vary or discharge the same:

Any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith, the commissioners may make in writing, signed by the commissioners or any two of their number, acting by the direction and on behalf of the commissioners, and in the same manner may vary or discharge the same:

Any contract which if made between private persons would by law be valid, although made by parol only and not reduced into writing, the commissioners or any two of them, acting by the direction and on behalf of the commissioners, may make by parol only, without writing, and in the same manner may vary or discharge the same:

And all contracts made according to the provisions herein contained, being duly executed by the persons contracting to perform the works therein comprised respectively, shall be effectual in law, and shall be binding on the commissioners, and all other parties thereto, their successors, heirs, executors, or administrators, as the case may be, and in case of default in the execution of any such contract either by the commissioners (2) or by any other party thereto, such actions or suits may be maintained thereon, and damages and costs recovered by or against the commissioners or the other

(1) As to the powers of local authorities to make contracts under the Public Health Act, 1875, see sections 173, 174 of that Act, *ante* pp. 137—141. As to contracts made by a corporation, see note (1), *ante*, p. 137.

It would seem that the commissioners would not be justified in applying the funds to defray the expense of obtaining another Act of Parliament giving more extensive powers for carrying out the object of the existing Act: *Att.-Gen.* v. *Andrews*, 2 Mac. & G. 225, 14 Jur. 905, 20 L. J. Ch. 467.

(2) Commissioners appointed by statute to perform certain works for the benefit of the public, with power to levy tolls, but not for their own profit, are, nevertheless, liable to the same responsibilities for damage caused by the negligence of their servants, as absolute owners acting for their own profit: *The Mersey Docks Trustees* v. *Gibbs*, L. R. 1 H. L. 93, 12 Jur. N. S. 571, 35 L. J. Ex. 225, 14 L. T. N. S 679, 14 W. R. 872. See also, *Coe* v. *Wise*, 14 L. T. N. S. 891, 14 W. R. 865; *Ruck* v. *Williams*, 3 H. & N. 308, 27 L. J. Ex. 357; *Whitehouse* v. *Fellowes*, 10 C. B. N. S. 765, 30 L. J. C. P, 306, 4 L. T. N. S. 177, 9 W. R. 557; *Campbell* v. *Hornsby*, 7 Ir. R. C. 546; but see *Holliday* v. *St. Leonard's Vestry, Shoreditch*, 11 C. B. N. S. 192, 8 Jur. N. S. 79, 4 L. T. N. S. 406, 9 W. R. 694.

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parties failing in the execution thereof, as might have been maintained and recovered had the same contracts been made between private persons only.

Notice to be given of contracts to the amount of £100 or upwards.

57. Before any contract to the amount of one hundred pounds or upwards shall be entered into by the commissioners, ten days' notice at the least shall be given in some one of the newspapers circulating within the limits of the special Act, expressing the purpose of such contract, and inviting any person willing to undertake the same to make proposals for that purpose to the commissioners, and the commissioners shall accept the proposal which upon a view of all the circumstances shall appear to them to be most advantageous, and shall take security for the due and faithful performance of every such contract.

Commissioners may compound for breach of contract.

58. The commissioners may compound with any party who has entered into any such contract, or against whom any action or suit has been brought for any penalty contained in any such contract, or in any bond or other security for the performance thereof, or on account of any breach or non-performance of any such contract, bond, or security for such sums of money or other recompense as the commissioners may think proper.

As to the conveyance of lands by the commissioners.

59. Where by the special Act or any Act incorporated therewith, the commissioners are authorised or required to sell or convey any lands vested in them, and no other mode of conveyance is provided, they may convey such lands, or such interest as the commissioners have therein, by deed under the common seal of the commissioners if they be a corporation, or if not a corporation by deed executed by the commissioners, or any two of them acting by the authority of and on behalf of the commissioners; and a deed so executed, followed as to lands in Scotland by infeftment duly recorded, shall be effectual to vest the lands comprised therein or such interest as the commissioners have therein in the grantee or other person to whom the same shall be so conveyed; and a receipt under such common seal, or under the hands of two of the commissioners acting as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

Receipt under seal to be a sufficient discharge.

And with respect to the liabilities (1) of the commissioners, and to legal proceedings, by or against the commissioners, be it enacted as follows:

Commissioners not to be personally liable for acts done in the capacity of a commissioner.

60. No commissioner, by being party to or executing in his capacity of commissioner any contract or other instrument on behalf of the commissioners, or otherwise lawfully executing any of the powers given to the commissioners, shall be subject to be sued or prosecuted either individually or collectively, by any person whomsoever; and the bodies or goods or lands of the several commissioners shall not be liable to execution of any legal process by reason of any contract or other instrument so entered into, signed, or executed by them, or by reason of any other lawful act done by them, in the execution of any of their powers as commissioners; and the commissioners respectively, their heirs, executors, and administrators, shall be indemnified out of the rates and other moneys coming to the hands of the commissioners by virtue of this and the special Act for all payments made or liability incurred in respect of any acts done by them, and for all losses, costs, and damages which they may incur in the execution of the powers granted to them.

Commissioners to be indemnified for acts done in the execution of their office.

Actions or suits to be brought in the name of any two commissioners or their clerk.

61. In all actions and suits in respect of any matter or thing relating to the execution of this or the special Act, to be brought by or against the commissioners, it shall be sufficient, where such commissioners are not a body corporate, to state the names of any two of the commissioners, or the name of their clerk (2), as the party, plaintiff or defendant, representing the commissioners in any such action or suit, and no such action or suit shall abate or be discontinued, or require to be transferred, by reason of the death of any such commissioner, or by his ceasing to be a commissioner, or by the death, suspension, or removal of such clerk.

(1) With respect to the liability of the commissioners for injuries arising from negligence, see note (2) to section 56.

(2) A clerk to commissioners cannot sue as such to recover charges due to himself for drawing up a contract, of which the contractor was, by agreement, to pay the expense: *Curling* v. *Johnson*, 10 Bing. 89, 3 M. & Scott, 496.

62. Execution upon every judgment or decree against the commissioners in any such action or suit shall be levied on the goods, chattels, or personal effects belonging to the commissioners by virtue of their office, and shall not in any manner extend to charge or make liable the persons or private lands or goods of any of the commissioners, or the heirs, executors, or administrators of any of them.

Executions to be levied on the goods belonging to commissioners by virtue of their office only.

63. Every commissioner or clerk in whose name any such legal proceeding shall be carried on, either as plaintiff or defendant, on behalf of the commissioners, shall be reimbursed, out of the moneys which shall come into the hands of the treasurer of the commissioners by virtue of his office, all damages, costs, charges, and expenses to which any such commissioner or clerk may be put, or with which he may become chargeable, by reason of being so made plaintiff or defendant.

Commissioners and clerk to be reimbursed all damages, &c.

64. The commissioners may prefer a bill of indictment against any person who shall steal or wilfully injure any property or thing belonging to the commissioners or under their management, or institute any other proceeding which may appear to them necessary for the protection of such property, and in every such case it shall be sufficient to state generally the property or thing in respect of which such proceeding shall have been taken to be the property of the commissioners, as they shall be described in the special Act, without naming the individual commissioners.

How indictments to be preferred.

And with respect to the appointment and accountability of the officers of the commissioners, be it enacted as follows:

65 (1). The commissioners may from time to time appoint and employ a treasurer, clerk, collector, assessor, and all such other officers to assist in the execution of this and the special Act as they shall think necessary and proper, and from time to time remove any of such officers, and appoint others in the room of such as shall be so removed, or as may die, resign, or discontinue their offices, and may, out of the moneys to be raised for the purposes of this and the special Act, pay such salaries and allowances, to the said officers respectively as the commissioners shall think reasonable (2).

Power to commissioners to appoint clerk and other officers, and remove them from time to time.

66. The same person shall not be appointed to the office both of clerk and treasurer (3), and if any person being the clerk, or the partner of such clerk, or in the service of such clerk or of his partner, accept the office of treasurer, or if any person being the treasurer, or the partner of such treasurer, or in the service of such treasurer or of his partner, accept the office of clerk, he shall forfeit the sum of one hundred pounds, and any person may sue for such penalty by action of debt or on the case in any of the superior courts, and shall on recovery thereof be entitled to full costs of suit.

Offices of clerk and treasurer not to be held by the same person.

67. Every officer employed by the commissioners who shall exact or accept on account of anything done by virtue of his office, or in relation to the matters to be done under this or the special Act, any fee or reward whatsoever other than the salary or allowances allowed by the commissioners (4), or who shall be in anywise concerned or interested in (5) any bargain or contract made by the commissioners, shall be incapable of being afterwards employed by the commissioners, and shall forfeit the sum of fifty pounds, and any person may sue for such penalty by action of debt or on the case in any of the superior courts, and shall on recovery thereof be entitled to full costs of suit.

Officer taking fees other than those allowed to lose his office, and forfeit £50.

68. Before any person, whether treasurer, collector, or other officer, intrusted by the commissioners with the custody or control of moneys by virtue of his office, shall enter

Security to be taken from all officers intrusted with money.

(1) By sections 189 and 190 of the Public Health Act, 1875, *ante*, pp. 150 and 151, urban and rural authorities have similar powers to appoint officers. As to the appointment of officers by highway boards, see section 12 of the Highway Act, 1862, *ante*, p. 846.

(2) In *Bogg* v. *Pearse*, 10 C. B. 534, 2 L. M. & P. 21, it was held that when a local Act authorises commissioners to appoint officers at a salary to be paid out of the rates to be raised under the Act, *indebitatus assumpsit* will not lie against the commissioners for the salaries of such officers. The proper remedy is either by *mandamus* or action on the case. See also *Smart* v. *Guardians of West Ham Union*, 26 L. T. 285.

(3) There is a similar provision in section 192 of the Public Health Act, 1875, *ante*, p. 152, and in section 13 of the Highway Act, 1862, *ante*, p. 846.

(4) A similar provision is contained in section 193 of the Public Health Act, 1875, *ante*, p. 153.

(5) See *Wednesbury* v. *Stevenson*, 27 J. P. 741, cited in note (2), *ante*, p. 153.

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upon such office, the commissioners shall take sufficient security from him for the faithful execution thereof (1).

Collectors to pay over moneys within seven days to the treasurer.

69 (2). Every collector appointed or employed by the commissioners by virtue of this or the special Act to collect any rates shall, within seven days after he shall have received any moneys on account of any such rates, pay over the same to the treasurer of the commissioners to their account, and the receipt of such treasurer for the moneys so paid shall be a sufficient discharge to the collector, and every such collector shall, in such time and in such manner as the commissioners direct, deliver to them true and perfect accounts in writing under his hand of all moneys received by him and of all moneys paid by him to the said treasurer by virtue of this or the special Act, and also a list of the names of all persons who have neglected or refused to pay any rate or money owing by them, with a statement of the moneys due from them respectively.

Officers to account.

70 (2). Every collector and other officer appointed or employed by the commissioners by virtue of this or the special Act shall, from time to time when required by the commissioners make out and deliver to them, or to any person appointed by them for that purpose a true and perfect account in writing under his hand of all moneys received by him on behalf of the commissioners, and such account shall state how and to whom and for what purpose such moneys have been disposed of, and together with such account such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the commissioners, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts.

Summary recovery against parties failing to account.

71 (3). If any such collector or other officer fail to render such accounts as aforesaid, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof when thereunto required, or if for five days after being thereunto required he fail to deliver up to the commissioners, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the commissioners, then, on complaint thereof being made to a justice, or to the sheriff, such justice or sheriff shall summon such officer to appear before two or more justices, or before such sheriff, according as the summons may have been issued by a justice or by the sheriff, at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or upon proof that such summons was personally served upon him, or left at his last known place of abode, such justice or sheriff may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any moneys of the commissioners are in the hands of such officer, or owing by him to the commissioners, such justices or sheriff may order such officer to pay the same, and if he fail to pay the amount it shall be lawful for such justices or sheriff to grant a warrant to levy the same by distress, or by poinding and sale, or in default thereof to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

Officers refusing to make out account and deliver up documents, &c., may be committed to prison.

72 (3). If any such officer summoned as aforesaid refuse to make out such account in writing, or to produce and deliver to the justices or sheriff the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the commissioners, such justice or sheriff may commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts in his possession or power relating to such accounts, and all the books, papers, writings, property, effects, matters, and things, in his possession or power, belonging to the commissioners.

(1) See section 194 of the Public Health Act, 1875, and notes thereto, *ante*, p. 153.

(2) Similar provisions are contained in section 195 of the Public Health Act, 1875, *ante*, p. 153; and see section 31 of the Highway Act, 1862, *ante*, p. 849.

(3) Similar provisions as to summary proceedings against defaulting officers are contained in section 196 of the Public Health Act, 1875, *ante*, pp. 153, 154, and in section 31 of the Highway Act, 1862, *ante*, p. 849.

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73. Provided always, that if any commissioner, or other person acting on behalf of the commissioners, shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and that he does believe that it is the intention of any such officer as aforesaid to abscond, the justice or the sheriff before whom the complaint is made may, instead of issuing his summons, issue his warrant for bringing such officer before such two justices as aforesaid if the warrant be issued by a justice, or before such sheriff if the warrant be issued by him; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours without bringing him before some justice or the sheriff, according as he may be summoned before the one or the other; and the justice or sheriff before whom such officer may be brought may either discharge such officer, if he think there is no sufficient ground for his detention, or order such officer to be detained in custody so as to be brought before two justices at a time and place to be named in such order, unless such officer give bail to the satisfaction of such justice for his appearance before such justices to answer the complaint of the commissioners.

Where officer about to abscond, a warrant may be issued in the first instance.

74 (1). No such proceeding against or dealing with any such officer as aforesaid shall deprive the commissioners of any remedy which they might otherwise have against any surety of such officer.

Proceedings against officers not to discharge sureties.

And with respect to the mortgages to be executed by the commissioners (2), be it enacted as follows:

75. Every mortgage or assignation in security of rates or other property authorised to be made under the provisions of this or the special Act shall be by deed duly stamped, in which the consideration shall be duly stated; and every such deed shall be under the common seal of the commissioners if they be a body corporate, or if they be not a body corporate shall be executed by the commissioners or any five of them, and may be according to the form in the Schedule (B.) to this Act annexed or to the like effect; and the respective mortgagees or assignees in security shall be entitled one with another to their respective proportions of the rates and assessments or other property comprised in such mortgages or assignations respectively, according to the respective sums in such mortgages or assignations mentioned to be advanced by such mortgagees or assignees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another by reason of the priority of advancing such moneys, or of the dates of any such mortgages or assignations respectively (3).

Form of mortgages.

76 (4). A register of mortgages or assignations in security shall be kept by the clerk to the commissioners, and where by the special Act the commissioners are authorised or required to raise separate sums on separate rates or other property, a separate register shall be kept for each class of mortgages or assignations in security, and within fourteen days

Register of mortgages to be kept and to be open to inspection.

(1) There is a similar provision in section 196 of the Public Health Act, 1875, *ante*, p. 154, and at the end of section 38 of the Highway Act, 1835, *ante*, p. 787.

(2) These provisions with respect to the mortgages to be executed by the commissioners are incorporated with the Highway Act, 1864, by section 50 of that Act, *ante*, p. 873. In the construction of the incorporated clauses, "the commissioners" shall mean "the highway board;" and by the same section, mortgages and transfers of mortgages shall be valid, if made in the forms prescribed by this Act, or in the forms appearing in the second schedule annexed to that Act, or as near thereto as circumstances admit.

The same provisions are also incorporated with the Artizans and Labourers Dwellings Improvement Act, 1875, by section 22 of that Act, *ante*, p. 600. As to the construction of the incorporated provisions, see the same section. In the incorporated provisions "the commissioners" means "the Commissioners of Sewers." And they are also incorporated with the Labouring Classes Dwelling Houses Act, 1866, 29 & 30 Vict. c. 28, by section 6 of that Act. See also the same section as to the construction of the incorporated provisions.

See as to borrowing powers under the Public Health Act, 1875, ss. 233—244 of that Act, *ante*, pp. 173—177; see also section 47 of the Highway Act, 1864, *ante*, p. 872; and section 8 of the Highways and Locomotives (Amendment) Act, 1878, *ante*, p. 881.

(3) By section 50 of the Highway Act, 1864, *ante*, p. 874, mortgages may be made either in the form given in the schedule to this Act, or in the form given in the second schedule of the Highway Act, 1864, as to which see *ante*, p. 876; for form under the Public Health Act, 1875, see *ante*, p. 249.

(4) See section 237 of the Public Health Act, 1875, *ante*, p. 175.

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after the date of any mortgage or assignation in security an entry or memorial of the number and date thereof, and of the names of the parties thereto, with their proper additions, shall be made in the proper register, and every such register may be perused at all reasonable times by any person interested in any such mortgage or assignation in security without fee or reward.

Transfers of mortgages.

77. Any person entitled to any such mortgage or assignation may transfer (1) his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form (2) in the Schedule (C.) to this Act annexed, or to the like effect.

Register of transfers to be kept.

78 (3). Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the clerk to the commissioners, and thereupon such clerk shall cause an entry or memorial thereof to be made, in the same manner as in the case of the original mortgage or assignation in security, and for such entry the clerk may demand a sum not exceeding five shillings; and after such entry every such transfer shall entitle the transferee, his executors, administrators, or assigns, to the full benefit of the original mortgage or assignation in security, and the principal and interest thereby secured; and such transferee may in like manner assign or transfer the same again, *toties quoties;* and it shall not be in the power of any person, except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, to make void, release, or discharge the mortgage or assignation so transferred, or any money thereby secured.

Interest on mortgages to be paid half-yearly.

79. Unless otherwise provided by any mortgage or assignation in security, the interest of the money borrowed thereupon shall be paid half-yearly to the several parties entitled thereto.

Power to borrow money at a lower rate of interest to pay off securities at a higher rate.

80. If the commissioners can at any time borrow or take up any sum of money at a lower rate of interest than any securities given by them and then be in force shall bear, they may borrow such sum at such lower rate as aforesaid, in order to pay off and discharge the securities bearing such higher rate of interest, and may charge the rates and other property which they may be authorised to mortgage or assign in security under this or the special Act, or any part thereof, with payment of such sum and such lower rate of interest, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed on mortgage or assignation in security.

Repayment of money borrowed at a time and place agreed upon.

81. The commissioners may, if they think proper, fix a period for the repayment of all principal moneys borrowed under the provisions of this or the special Act, with the interest thereof, and in such case the commissioners shall cause such period to be inserted in the mortgage deed or assignation in security; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to receive such principal money and interest, and if no other place of payment be inserted in such deed such principal and interest shall be payable at the office of the commissioners.

Repayment of money borrowed when no time or place has been agreed upon.

82. If no time be fixed in the mortgage deed or assignation in security for the repayment of the money so borrowed, the party entitled to receive such money may, at the expiration, or at any time after the expiration of twelve months from the date of such deed, demand payment of the principal money thereby secured with all arrears of interest, upon giving six months previous notice for that purpose, and in the like case the commissioners may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or creditor shall be delivered to the clerk or left at the office of the commissioners, and if

(1) There is a similar provision in section 238 of the Public Health Act, 1875, *ante*, p. 175.

(2) By section 50 of the Highway Act, 1864, *ante*, p. 874, transfers of mortgages may be made either in the form in the schedule of this Act, or in the form given in the second schedule of the Highway Act, 1864, as to which, see *ante*, p. 876; for the form of the transfer of a mortgage under the Public Health Act, 1875, see *ante*, p. 250.

(3) See also section 237 of the Public Health Act, 1875, *ante*, p. 175.

statement and account, shall be produced at the annual meeting of the commissioners, or at some adjournment thereof, at which meeting all creditors and ratepayers and other persons interested may be present, and the accounts shall be then finally examined and settled by the commissioners, and if the same be found just and true they shall be allowed by the commissioners, and certified accordingly under the hand of the chairman of such meeting; and after such accounts have been so allowed and signed by such chairman, and also by the auditors, as hereinafter provided, the same shall be final in regard to all persons whomsoever, unless an appeal be prosecuted against such accounts as hereinafter provided.

settled at the annual meeting.

92 (2). Except in the cases where by the special Act provision is made for the appointment of a permanent auditor, and such auditor shall have been appointed accordingly, the ratepayers present at the said annual meeting may appoint two or more persons not being commissioners to be auditors of the accounts of the commissioners; and if no other person present at such meeting propose the names of two persons to be appointed auditors by such meeting, it shall be the duty of the chairman of the meeting to propose the names of two persons to be so appointed; and the persons so to be appointed auditors shall have the like qualification, and shall be subject to the like disqualification or disability, as the commissioners (2); and before entering on their office they shall make and sign before a justice or the sheriff a solemn declaration of the like purport and effect to that hereby required to be signed by the commissioners; and the auditors so appointed shall receive a reasonable remuneration for their time and trouble, not exceeding two guineas each for every day they shall be fully employed on such audit, and all such expenses as they shall be put unto attending the auditing of the said accounts; and if any dispute arise as to the amount of the remuneration and expenses to be paid to such auditors, it shall in England or Ireland be settled by two justices, and in Scotland by the sheriff.

Auditors to be appointed.

Qualification of auditors.

93 (1). The auditors so nominated, or the said permanent auditor if any shall have been appointed as aforesaid, shall attend as soon as conveniently may be after the said annual meeting at the office of the commissioners, or at some other convenient place to be appointed by the commissioners, and from time to time shall, in the presence of the clerk to the commissioners, if he desire to be present, proceed to audit the accounts of the commissioners for the year preceding the said annual meeting; and the commissioners shall by their clerk produce and lay before such auditors the accounts so allowed and certified as aforesaid, together with the statement and account hereinbefore mentioned, accompanied with proper vouchers in support of the same, and all books, papers, and writings in their custody or power relating thereto; and any person interested in the said account, either as a creditor of the commissioners or as a ratepayer, may be present at the audit of the said accounts, by himself or his agent, and may make any objection to any part of such account; and if the said accounts be found correct such auditors shall sign the same in token of their allowance thereof, but if such auditors think there is a just cause to disapprove of any part of the said accounts, they or any other person interested in the said accounts as aforesaid may appeal against any such part of the said accounts as shall be so disapproved of to one of the two next quarter sessions in England or Ireland, and to the sheriff in Scotland, notice in writing of such appeal being given to the clerk of the commissioners fourteen days at the least before the hearing of such appeal.

Auditors to inspect accounts, and may appeal against part of the same if they think fit.

94. Upon the hearing of any such appeal the justices or the sheriff may make such order as they or he think fit respecting the payment of the costs of the appellant out of the moneys coming to the hands of the commissioners under the special Act or otherwise, as they or he think fit, and such order shall be final.

The court may order payment of the costs of the appeal.

95. The commissioners shall every year cause an annual account in abstract to be prepared, showing the total receipt and expenditure of all funds levied by virtue of this and the special Act, and any Act incorporated therewith, for the year ending on the day

Annual account to be made up and transmitted to

(1) Compare the provisions as to auditing accounts under the Public Health Act, 1875, in section 247 of that Act, *ante*, p. 178.

(2) See sections, 6, *et seq.*, *ante*.

Secs. 88–91.

cation such justices or sheriff may, by order in writing, after hearing the parties, appoint some person to receive the whole or a competent part of the rates or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the rates or sums aforesaid, be fully paid; and upon such appointment being made all such rates and sums of money as aforesaid, or such part thereof as may be ordered by the said justices or sheriff, shall be paid to the person so to be appointed, and the money so paid shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed, and after such interest and costs, or such principal, interest, and costs have been so received, the power of such receiver shall cease.

Account books to be open to the inspection of mortgagees.

88. The books of account of the commissioners shall be open at all seasonable times to the inspection of the respective mortgagees or assignees in security of the commissioners, with liberty to take extracts therefrom, without fee or reward.

And with respect to the accounts to be kept by the commissioners (1), be it enacted as follows:

Accounts to be kept of receipts and disbursements, which shall be open for inspection.

89. The commissioners shall cause books to be provided and kept, and true and regular accounts to be entered therein of all sums of money received and paid for and on account of this and the special Act, and of the several purposes for which such sums of money shall have been received and paid, which books shall at all reasonable times be open to the inspection of any of the commissioners, and any mortgagee, assignee, in security, or other creditor of the commissioners, without fee or reward, and the commissioners and persons aforesaid, or any of them, may take copies of or extracts from the said books, without paying anything for the same; and any clerk or other person having the custody of the said books who shall not, on any reasonable demand of any commissioner, mortgagee, or creditor as aforesaid, permit him to inspect the said books, or to take such copies or extracts as aforesaid, shall be liable to a penalty of five pounds for every such offence.

Penalty for refusal.

Statement of accounts to be prepared, and to be open for inspection.

90. The commissioners shall cause their accounts to be balanced in each year to a period not less than one month before the annual general meeting at which they are to be produced, as after mentioned; and fourteen days at the least before such meeting the commissioners shall cause a full and true statement and account to be drawn out of the amount of all rates or assessments made, and of all contracts entered into, and of all moneys received and expended by virtue of this or the special Act during the preceding year, and also of all debts then owing by the commissioners, and they shall cause such statement and account to be printed, and shall allow the same to remain for inspection at the office of the commissioners; and every creditor on the rates and assessments by this or the special Act, or any Act incorporated therewith, authorised to be made, and every person paying any such rate or assessment, or any person acting on behalf of any such creditor or ratepayer, may at all reasonable times inspect such statement and account, and compare the same with the books and documents relating thereto in the possession of the commissioners; and the clerk shall, on demand, furnish a printed copy of the said statement and account to every such creditor and ratepayer, without fee; and fourteen days at the least before to the meeting for examining and settling such account the commissioners shall give public notice of such intended meeting, stating in such notice that the said statement and account are printed, and lie at the office of the commissioners ready for the inspection of the creditors and ratepayers or other parties interested.

Copies of such statement to be furnished.

Accounts to be examined and

91. The accounts of the commissioners, so balanced as aforesaid, together with the said

(1) As to accounts and the audit of accounts under the Public Health Act, 1875, see sections 245—250 of that Act, *ante*, pp, 178—181. The duty to keep accounts of receipts and expenditure is imposed on all surveyors of highways, by section 40 of the Highway Act, 1835, *ante*, p. 787. As to the audit of accounts of highway districts and parishes, see section 9 of the Highways and Locomotives (Amendment) Act, 1878, and notes thereto, *ante*, p. 881.

statement and account, shall be produced at the annual meeting of the commissioners, or at some adjournment thereof, at which meeting all creditors and ratepayers and other persons interested may be present, and the accounts shall be then finally examined and settled by the commissioners, and if the same be found just and true they shall be allowed by the commissioners, and certified accordingly under the hand of the chairman of such meeting; and after such accounts have been so allowed and signed by such chairman, and also by the auditors, as hereinafter provided, the same shall be final in regard to all persons whomsoever, unless an appeal be prosecuted against such accounts as hereinafter provided.

settled at the annual meeting.

92 (2). Except in the cases where by the special Act provision is made for the appointment of a permanent auditor, and such auditor shall have been appointed accordingly, the ratepayers present at the said annual meeting may appoint two or more persons not being commissioners to be auditors of the accounts of the commissioners; and if no other person present at such meeting propose the names of two persons to be appointed auditors by such meeting, it shall be the duty of the chairman of the meeting to propose the names of two persons to be so appointed; and the persons so to be appointed auditors shall have the like qualification, and shall be subject to the like disqualification or disability, as the commissioners (2); and before entering on their office they shall make and sign before a justice or the sheriff a solemn declaration of the like purport and effect to that hereby required to be signed by the commissioners; and the auditors so appointed shall receive a reasonable remuneration for their time and trouble, not exceeding two guineas each for every day they shall be fully employed on such audit, and all such expenses as they shall be put unto attending the auditing of the said accounts; and if any dispute arise as to the amount of the remuneration and expenses to be paid to such auditors, it shall in England or Ireland be settled by two justices, and in Scotland by the sheriff.

Auditors to be appointed.

Qualification of auditors.

93 (1). The auditors so nominated, or the said permanent auditor if any shall have been appointed as aforesaid, shall attend as soon as conveniently may be after the said annual meeting at the office of the commissioners, or at some other convenient place to be appointed by the commissioners, and from time to time shall, in the presence of the clerk to the commissioners, if he desire to be present, proceed to audit the accounts of the commissioners for the year preceding the said annual meeting; and the commissioners shall by their clerk produce and lay before such auditors the accounts so allowed and certified as aforesaid, together with the statement and account hereinbefore mentioned, accompanied with proper vouchers in support of the same, and all books, papers, and writings in their custody or power relating thereto; and any person interested in the said account, either as a creditor of the commissioners or as a ratepayer, may be present at the audit of the said accounts, by himself or his agent, and may make any objection to any part of such account; and if the said accounts be found correct such auditors shall sign the same in token of their allowance thereof, but if such auditors think there is a just cause to disapprove of any part of the said accounts, they or any other person interested in the said accounts as aforesaid may appeal against any such part of the said accounts as shall be so disapproved of to one of the two next quarter sessions in England or Ireland, and to the sheriff in Scotland, notice in writing of such appeal being given to the clerk of the commissioners fourteen days at the least before the hearing of such appeal.

Auditors to inspect accounts, and may appeal against part of the same if they think fit.

94. Upon the hearing of any such appeal the justices or the sheriff may make such order as they or he think fit respecting the payment of the costs of the appellant out of the moneys coming to the hands of the commissioners under the special Act or otherwise, as they or he think fit, and such order shall be final.

The court may order payment of the costs of the appeal.

95. The commissioners shall every year cause an annual account in abstract to be prepared, showing the total receipt and expenditure of all funds levied by virtue of this and the special Act, and any Act incorporated therewith, for the year ending on the day

Annual account to be made up and transmitted to

(1) Compare the provisions as to auditing accounts under the Public Health Act, 1875, in section 247 of that Act, *ante*, p. 178.

(2) See sections, 6, *et seq.*, *ante*.

Secs. 95—102.

down to which their accounts shall have been made up for the said annual meeting, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the commissioners, and also by the auditors thereof, and shall, if the undertaking is situated in England or Ireland, send a copy of the said account free of charge to the clerk of the peace for the county where the undertaking is situate, and if the undertaking is situated in Scotland, shall send such copy to the sheriff clerk of such county, on or before the thirty-first day of January then next, or within one month after the same has been duly audited, which account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the commissioners shall omit to prepare and transmit such account as aforesaid, they shall be liable for every such omission to a penalty of twenty pounds.

the clerk of the peace in England or Ireland or to the sheriff clerk in Scotland and to be open to inspection.

And with respect to the making of bye-laws (1), be it enacted as follows:

Power to make bye-laws for regulating the conduct of the officers, &c. of the commissioners.

96. The commissioners may from time to time make such bye-laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the commissioners, and for providing for the due management of the affairs of the commissioners, and may from time to time alter or repeal any such bye-laws, and make others, provided such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act; and such bye-laws shall be reduced into writing, and shall have affixed thereto the common seal of the commissioners, where the commissioners are a body corporate, or shall be signed by the commissioners or any two of them, where they are not a body corporate; and a copy of such bye-laws shall be given to every officer and servant of the commissioners affected thereby.

Fines for breach of such bye-laws.

97. The commissioners may by such bye-laws impose such reasonable penalties upon all persons, being officers or servants of the commissioners, offending against such bye-laws, as the commissioners think fit, not exceeding five pounds for any one offence.

Bye-laws to be so framed as that penalties may be mitigated.

98. All the bye-laws to be made by the commissioners shall be so framed as to allow the justice or the sheriff before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid, if such justice or sheriff think fit.

And with respect to giving notices and orders (2) be it enacted as follows:

Service of notices upon commissioners.

99. Any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the commissioners, may be served by the same being left at or sent through the post-office, directed to the commissioners, at their principal office, or one of their principal offices where there shall be more than one, or by being given personally to the clerk, or in case there be no clerk, then by being given to any one commissioner.

Notices by advertisement.

100. All notices required by this or the special Act, or any Act incorporated therewith, to be given by advertisement, shall be advertised in the prescribed newspaper, or if no newspaper be prescribed, or if the prescribed newspaper cease to be published, in a newspaper circulating in the district within which the undertaking shall be situated.

Authentication of notices and orders.

101 (3). Every order, summons, notice, or other such document requiring authentication by the commissioners shall be sufficiently authenticated if signed by two commissioners, or by the clerk of the commissioners, and it need not be under the common seal of the commissioners, although they be incorporated, and the same may be in writing or in print, or partly in writing and partly in print.

Proof of debts in bankruptcy.

102 (4). And with respect to the proof of debts in bankruptcy *or insolvency*, be it enacted, that if any person against whom the commissioners have any claim or demand become bankrupt, *or take the benefit of any Act for the relief of insolvent debtors*, the clerk

(1) As to the general requisites to the validity of bye-laws, see note (3), *ante*, p. 147. For forms of bye-laws, see *post*.

(2) As to the service of notices under the Public Health Act, 1875, see sections 266, 267 of that Act, *ante*, pp. 191, 192.

(3) By section 266 of the Public Health Act, 1875, *ante*, p. 191, the signature by the clerk to the local authority or their surveyor or inspector of nuisances shall be a sufficient authentication by the local authority.

(4) The words in italics in this section have been repealed by section 1 of the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

or treasurer of the commissioners, in all proceedings against the estate of such bankrupt *or insolvent*, or under any fiat, sequestration, *or act of insolvency* against such bankrupt *or insolvent*, may represent the commissioners, and act in their behalf, in all respects as if such claim or demand had been the claim or demand of such secretary or treasurer, and not of the commissioners.

Tender of amends.

103. And with respect to tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender have been made, the defendant, by leave of the court where such action is pending, may, at any time before issue joined, pay into court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

Railways Clauses Consolidation Acts, 1845, as to damages, &c., to be incorporated with this and the special Act.

104. If the undertaking be situate in England or Ireland the clauses (1) of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and if the undertaking be situate in Scotland the clauses of the Railways Clauses Consolidation Act (Scotland), 1845, with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the undertaking, and to the commissioners respectively, and shall be construed as if the word "commissioners" had been inserted therein instead of the word "company."

All things required to be done by two justices in England and Ireland may, in certain cases, be done by one, and in Scotland by the sheriff, &c.

105. All things herein or in the special Act, or any Act incorporated herewith, authorised or required to be done by two justices (2), may and shall be done in England and Ireland by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in Scotland by the sheriff or steward of any county or stewartry or ward, or his substitute.

Penalties, &c. imposed in respect of any offence committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

106. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis" (3), and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

107 (4). *In Ireland part of penalties to be paid to guardians of unions.*

(1) See sections 140—161 of the Railways Clauses Act, 1845, 8 Vict. c. 20, *post*, pp. 1092—1095.

(2) See note (1) to section 3, *ante*.

(3) As to the recovery of penalties and forfeitures under 2 & 3 Vict. c. 71, see section 45 of that Act.

(4) This section has been repealed by section 1 of the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

Secs. 108—112.

Persons giving false evidence liable to penalties of perjury.

108. Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

Nothing in this or the special Act to affect the rights of the Crown.

109. And be it enacted, that nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to Her Majesty's duties of customs or excise, or any other revenue of the crown, or to extend to or affect any claim of Her Majesty in right of her crown, or otherwise, howsoever, or any proceedings at law or in equity by or on behalf of Her Majesty, in any part of the United Kingdom of Great Britain and Ireland.

And with respect to access to the special Act, be it enacted as follows:

Copies of special Act to be kept by commissioners at their office and deposited with the clerks of the peace, &c., and be open to inspection.

110. The commissioners shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to Her Majesty or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situate, a copy of such special Act so printed as aforesaid; and the said clerk of the peace and sheriff clerk respectively shall receive, and they and the commissioners respectively shall keep, the said copies of the special Act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of Her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

7 Will. 4 & 1 Vict. c. 83.

Penalty on commissioners failing to keep or deposit such copies.

111. If the commissioners fail to keep or deposit as hereinbefore mentioned any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

112 (1). Act may be amended, &c.

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

Schedule A.

SCHEDULE (A.) Sect. 23.

Voting Paper.

Town of
[*or*
District of]
Voting Paper for the Town [*or* District] of
[*or if divided into Wards,*
Voting Paper for Ward, in the Town [*or*
District] of]

Name of the Persons voted for as Commissioners.	Christian Name and Surname of Voter.	Description of Property.	Number of Votes.	
			As Owner.	As Occupier.

I vote for the Persons named in the above List as Commissioners for this Town [*or* District, *or* Ward, *as the case may be*].

(Signed)
Here the name of the Voter should be written.

(1) This section has been repealed by section 1 of the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

SCHEDULE (B.) Sect. 75.

Schedule B.

Form of Mortgage.

By virtue of [*here name the special Act*], *we* [*here name the corporation if the commissioners be incorporated, or if not incorporated, five of the commissioners,*] appointed in pursuance of the said Act, in consideration of the sum of paid to the treasurer to the said commissioners by *A.B.* of for the purposes of the said Act, do grant and assign unto the said *A.B.*, his executors, administrators, and assigns, such proportion of the rates, rents, profits, and other moneys arising or accruing by virtue of the said Act from [*here describe the rates or other property proposed to be mortgaged*] as the said sum of doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, rents, profits, or moneys to hold to the said *A.B.*, his executors, administrators, and assigns, from this day until the said sum of with interest at per centum per annum for the same, shall be fully paid and satisfied (the principal sum to be repaid at the end of years from the date hereof [*in case any period be agreed upon for that purpose*]). Given under our corporate seal [*or* in witness whereof we have hereunto set our hands and seals, *or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland, as the case may be*], this day of One thousand eight hundred and .

SCHEDULE (C.) Sect. 77.

Schedule C.

Form of Transfer of Mortgage.

I *A. B.* of in consideration of the sum of paid to me by *C.D.* of do hereby transfer to the said *C.D.*, his executors, administrators, and assigns, a certain mortgage, [*or, if the deed be granted in Scotland*, a certain assignation in security], number made by "the commissioners for executing the [*here name the special Act*] to bearing date the day of for securing the sum of and interest [*or, if such transfer be by indorsement*, the within security], and all my right, estate, and interest in and to the money thereby secured, and in and to the rates, rents, profits or other moneys thereby assigned. In witness whereof I have hereunto set my hand and seal [*or, if the deed be granted in Scotland, insert the testing clause required by the law of Scotland*], this day of One thousand eight hundred and .

SCHEDULE (D.) Sect.

Schedule D.

Form of Conviction.

} Be it remembered, that on this day of in the year of
to wit. } our Lord *A.B.* is convicted before us, two of her Majesty's justices of the peace for the county of [*or*, before me the sheriff of the county of] [*here describe the offence generally and the time and place when and where committed*], contrary to [*here name the special Act*]. Given under our hands and seals [*or if by the sheriff*, under my hand], the day and year first above written.

C.
D.

RAILWAYS' CLAUSES CONSOLIDATION ACT, 1845.

8 VICT. c. 20.

An Act for consolidating in one Act certain provisions usually inserted in Acts authorising the making of Railways. [*8th May*, 1845.]

Secs. 16, 46.

Works to be executed.

16. Subject to the provisions and restrictions in this and the special Act, and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works; (that is to say,)

Inclined planes, &c.

They may make or construct in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers, canals, brooks, streams, or other waters, within the lands described in the said plans or mentioned in the said books of reference or any correction thereof, such temporary or permanent inclined planes, tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper:

Alteration of course of rivers, &c.

They may alter the course of any rivers not navigable, brooks, streams, or water-courses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently, the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads, streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper;

Drains, &c.

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway;

Warehouses, &c.

They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences as they think proper;

Alterations and repairs.

They may from time to time alter, repair, or discontinue the before-mentioned works or any of them, and substitute others in their stead; and

General power.

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway:

Proviso as to damages.

Provided always, that in the exercise of the powers by this or the special Act granted the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the special Act, and any Act incorporated therewith, provided, to all parties interested for all damage by them sustained by reason of the exercise of such powers.

And with respect to the crossing of roads or other interference therewith, be it enacted as follows:

Crossing of roads.

46. If the line of the railway cross any turnpike road or public highway, then (except where otherwise provided by the special Act) either such road shall be carried over the railway, or the railway shall be carried over such road by means of a bridge, of the height and width and with the ascent or descent by this or the special Act in that behalf provided; and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at

the expense of the company [1]: Provided always, that, with the consent of two or more justices in petty sessions, as after mentioned, it shall be lawful for the company to carry the railway across any highway, other than a public carriage road, on the level [2].

Provision in cases where roads are crossed on a level.

47. If the railway cross any turnpike road or public carriage road on a level, the company shall erect and at all times maintain good and sufficient gates across such road, on each side of the railway where the same shall communicate therewith, and shall employ proper persons to open and shut such gates; and such gates shall be kept constantly closed across such road on both sides of the railway, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross such railway; and such gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway; and the person intrusted with the care of such gates shall cause the same to be closed as soon as such horses, cattle, carts, or carriages shall have passed through the same, under a penalty of forty shillings for every default therein: Provided always, that it shall be lawful for the Board of Trade, in any case in which they are satisfied that it will be more conducive to the public safety that the gates on any level crossing over any such road should be kept closed across the railway, to order that such gates shall be kept so closed instead of across the road, and in such case such gates shall be kept constantly closed across the railway, except when engines or carriages passing along the railway shall have occasion to cross such road, in the same manner and under the like penalty as above directed with respect to the gates being kept closed across the road.

As to crossing of turnpike roads adjoining stations.

48. Where the railway crosses any turnpike road on a level adjoining to a station, all trains on the railway shall be made to slacken their speed before arriving at such turnpike road, and shall not cross the same at any greater rate of speed than four miles an hour; and the company shall be subject to all such rules and regulations with regard to such crossings as may from time to time be made by the Board of Trade [3].

Construction of bridges over roads.

49. Every bridge to be erected for the purpose of carrying the railway over any road shall (except where otherwise provided by the special Act) be built in conformity with the following regulations; (that is to say,)

The width of the arch shall be such as to leave thereunder a clear space of not less than thirty-five feet if the arch be over a turnpike road, and of twenty-five feet if over a public carriage road, and of twelve feet if over a private road [4]:

The clear height of the arch from the surface of the road shall not be less than sixteen feet for a space of twelve feet if the arch be over a turnpike road, and fifteen feet for a space of ten feet if over a public carriage road; and in each of such cases the clear height at the springing of the arch shall not be less than twelve feet:

The clear height of the arch for a space of nine feet shall not be less than fourteen feet over a private carriage road:

The descent made in the road in order to carry the same under the bridge shall not be more than one foot in thirty feet if the bridge be over a turnpike road, one foot in twenty feet if over a public carriage road, and one foot in sixteen feet if over a private carriage road not being a tramroad or railroad, or if the same be a tramroad or railroad the descent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act.

Construction of bridges over railway.

50. Every bridge erected for carrying any road over the railway shall (except as otherwise provided by the special Act) be built in conformity with the following regulations; (that is to say,)

There shall be a good and sufficient fence on each side of the bridge of not less height than four feet, and on each side of the immediate approaches of such bridge of not less than three feet:

(1) See *Newcastle and Leek Turnpike Trustees* v. *N. Staffordshire Ry.*, 5 H. & N. 160, 29 L. J. Ex. 239. *S. C.* nom. *Leech* v. *N. Staffordshire Ry.*, 1 L. T. N. S. 332; *N. Staffordshire Ry.* v. *Dale*, 8 E. & B. 836, 27 L. J. M. C. 147, 4 Jur. N. S. 631; *London and N. W. Ry.* v. *Skerton*, 5 B. & S. 559, 33 L. J. M. C. 158, 10 L. T. N. S. 648. As to *mandamus* to compel repair, see *R.* v. *S. E. Ry.*, 32 L. T. N. S. 858, 40 J. P. 200.

(2) See sections 59 and 60, *post*.

(3) See the Railways Clauses Act, 1863, 26 & 27 Vict. c. 92, s. 5, *post*.

(4) See *R.* v. *Rigby*, 14 Q. B. 687, 19 L. J. Q. B. 153.

Secs. 50–55.

The road over the bridge shall have a clear space between the fences thereof of thirty-five feet if the road be a turnpike road, and twenty-five feet if a public carriage road, and twelve feet if a private road:

The ascent shall not be more than one foot in thirty feet if the road be a turnpike road, one foot in twenty feet if a public carriage road, and one foot in sixteen feet if a private carriage road, not being a tramroad or railroad, or if the same be a tramroad or railroad the ascent shall not be greater than the prescribed rate of inclination, and if no rate be prescribed the same shall not be greater than as it existed at the passing of the special Act (1).

The width of the bridges need not exceed the width of the road in certain cases.

51. Provided always, that in all cases where the average available width for the passage of carriages of any existing roads within fifty yards of the points of crossing the same is less than the width hereinbefore prescribed for bridges over or under the railway, the width of such bridges need not be greater than such average available width of such roads, but so nevertheless that such bridges be not of less width in the case of a turnpike road or public carriage road than twenty feet: Provided also, that if at any time after the construction of the railway the average available width of any such road shall be increased beyond the width of such bridge on either side thereof, the company shall be bound, at their own expense, to increase the width of the said bridge to such extent as they may be required by the trustees or surveyors of such road, not exceeding the width of such road as so widened, or the maximum width herein or in the special Act prescribed for a bridge in the like case over or under the railway (2).

Existing inclinations of roads crossed or diverted need not be improved.

52. Provided also, that if the mesne inclination of any road within two hundred and fifty yards of the point of crossing the same, or the inclination of such portion of any road as may require to be altered, or for which another road shall be substituted, shall be steeper than the inclination hereinbefore required to be preserved by the company, then the company may carry any such road over or under the railway, or may construct such altered or substituted road at an inclination not steeper than the said mesne inclination of the road so to be crossed, or of the road so requiring to be altered, or for which another road shall be substituted.

Before roads interfered with others to to be substituted.

53. If, in the exercise of the powers by this or the special Act granted, it be found necessary to cross, cut through, raise, sink, or use any part of any road, whether carriage road, horse road, tramroad, or railway, either public or private, so as to render it impassable for or dangerous or extraordinarily inconvenient to passengers or carriages, or to the persons entitled to the use thereof, the company shall, before the commencement of any such operations, cause a sufficient road to be made instead of the road to be interfered with, and shall at their own expense maintain such substituted road in a state as convenient for passengers and carriages as the road so interfered with, or as nearly so as may be (1).

Penalty for not substituting a road.

54. If the company do not cause another sufficient road to be so made before they interfere with any such existing road as aforesaid, they shall forfeit twenty pounds for every day during which such substituted road shall not be made after the existing road shall have been interrupted; and such penalty shall be paid to the trustees, commissioners, surveyor, or other person having the management of such road, if a public road, and shall be applied for the purposes thereof, or in case of a private road the same shall be paid to the owner thereof, and every such penalty shall be recoverable with costs by action in any of the superior courts.

Party suffering damage from interruption of road to recover in an action on the case.

55. If any party entitled to a right of way over any road so interfered with by the company shall suffer any special damage by reason that the company shall fail to cause another sufficient road to be made before they interfere with the existing road, it shall be lawful for such party to recover the amount of such special damage from the company, with costs, by action on the case in any of the superior courts, and that

(1) See *R.* v. *E. and W. India Docks, &c., Ry.*, 2 E. & B. 466, 22 L. J. Q. B. 380, 17 Jur. 1181.

(2) See *R.* v. *Rigby* on preceding page.

(1) See *Tanner* v. *S. Wales Ry.*, 5 E. & B. 618, 25 L. J. Q. B. 7, 1 Jur. N. S. 1215, and *A.-G.* v. *Ely, &c., Ry.* L. R. 4 Ch. 194, 38 L. J. Ch. 259, 20 L. T. N. S. 1.

whether any party shall have sued for such penalty as aforesaid or not, and without prejudice to the right of any party to sue for the same.

Period for restoration of roads interferred with.

56. If the road so interfered with can be restored compatibly with the formation and use of the railway, the same shall be restored to as good a condition as the same was in at the time when the same was first interfered with by the company, or as near thereto as may be; and if such road cannot be restored compatibly with the formation and use of the railway, the company shall cause the new or substituted road, or some other sufficient substituted road, to be put into a permanently substantial condition, equally convenient as the former road, or as near thereto as circumstances will allow, and the former road shall be restored, or the substituted road put into such condition as aforesaid, as the case may be, within the following periods after the first operation on the former road shall have been commenced, unless the trustees or parties having the management of the road to be restored by writing under their hands consent to an extension of the period, and in such case within such extended period; (that is to say,) if the road be a turnpike road, within six months, and if the road be not a turnpike road, within twelve months.

Penalty for failing to restore road.

57. If any such road be not so restored, or the substituted road so completed as aforesaid, within the periods herein or in the special Act fixed for that purpose, the company shall forfeit to the trustees, commissioners, surveyor, or other person having the management of the road (1) interfered with by the company, if a public road, or if a private road to the owner thereof, five pounds for every day after the expiration of such periods respectively during which such road shall not be so restored or the substituted road completed; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Company to repair roads used by them.

58. If in the course of making the railway the company shall use or interfere with any road they shall from time to time make good all damage done by them to such road; and if any question shall arise as to the damage done to any such road by the company, or as to the repair thereof by them, such question shall be referred to the determination of two justices; and such justices (2) may direct such repairs to be made in the state of such road, in respect of the damage done by the company, and within such period as they think reasonable, and may impose on the company, for not carrying into effect such repairs, any penalty not exceeding five pounds per day as to such justices shall seem just; and such penalty shall be paid to the surveyor or other person having the management of the road interfered with by the company, if a public road, and be applied for the purposes of such road, or if a private road the same shall be paid to the owner thereof: Provided always, that in determining any such question with regard to a turnpike road the said justices shall have regard to and shall make full allowance for any tolls that may have been paid by the company on such road in the course of the using thereof.

Proceedings on application to justices to consent to level crossings of bridleways and footways.

59. When the company shall intend to apply for the consent of two justices, as herein-before provided, so as to authorise them to carry the railway across any highway other than a public carriage road on the level, they shall, fourteen days at least previous to the holding of the petty sessions at which such application is intended to be made, cause notice of such intended application to be given in some newspaper circulating in the county, and also to be affixed upon the door of the parish church of the parish in which such crossing is intended to be made, or if there be no such church some other place to which notices are usually affixed; and if it appear to any two or more justices acting for the district in which such highway at the proposed crossing thereof is situate, and assembled in petty sessions, after such notice as aforesaid, that the railway can, consistently with a due regard to the public safety and convenience, be carried across such highway on the level, it shall be lawful for such justices to consent that the same may be so carried accordingly.

Appeal against the determination of the justices.

60. If either party shall feel aggrieved by the determination of such justices upon any such application as aforesaid, it shall be lawful for such party, in like manner and

(1) *R.* v. *Wilson*, 18 Q. B. 348, 21 L. J. Q. B. 281, 16 Jur. 973.
(2) *R.* v. *Rawson and Horton*, 15 L. T. N. S. 179.

Secs. 60–65.

subject to the like conditions as are herein-after provided in the case of appeals in respect of penalties and forfeitures, to appeal to the quarter sessions of the county or place in which the cause of appeal shall have arisen; and it shall be lawful for the justices in such quarter sessions, upon the hearing of such appeal, either to confirm or quash the determination, or to make such other order in regard to the method of carrying the railway across such highway as aforesaid, as to them shall seem fit, and to make such order concerning the costs both of the original application and of the appeal as to them shall seem reasonable.

Company to make sufficient approaches and fences to bridleways and footways crossing on the level.

61. If the railway shall cross any highway other than a public carriageway on the level, the company shall at their own expense make and at all times maintain convenient ascents and descents and other convenient approaches, with handrails or other fences, and shall if such highway be a bridleway, erect and at all times maintain good and sufficient gates, and if the same shall be a footway, good and sufficient gates or stiles, on each side of the railway where the highway shall communicate therewith.

Justices to have power to order approaches and fences to be made to highways crossing on the level.

62. If, where the railway shall cross any highway on the level, the company fail to make convenient ascents and descents or other convenient approaches, and such handrails, fence, gates, and stiles as they are herein-before required to make, it shall be lawful for two justices, on the application of the surveyor of roads, or of any two householders within the parish or district where such crossing shall be situate, after not less than ten days notice to the company, to order the company to make such ascent and descent or other approach, or such handrails, fences, gates, or stiles as aforesaid, within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such person as they think fit, in executing the work in respect whereof such penalty was incurred.

Screen for roads to be made, if required by the Board of Trade.

63. If the commissioners or trustees of any turnpike road, or the surveyor of any highway, apprehend danger to the passengers on such road in consequence of horses being frightened by the sight of the engines or carriages travelling upon the railway, it shall be lawful for such commissioners, or trustees, or surveyor, after giving fourteen days notice to the company, to apply to the Board of Trade with respect thereto; and if it shall appear to the said Board that such danger might be obviated or lessened by the construction of any works in the nature of a screen near to or adjoining the side of such road, it shall be lawful for them, if they shall think fit, to certify the works necessary or proper to be executed by the company for the purpose of obviating or lessening such danger, and by such certificate to require the company to execute such works within a certain time after the service of such certificate, to be appointed by the said board.

Penalty for failing to construct.

64. Where by any such certificate as aforesaid the company shall have been required to execute any such work in the nature of a screen, they shall execute and complete the same within the period appointed for that purpose in such certificate; and if they fail so to do they shall forfeit to the said commissioners, or trustees, or surveyor, five pounds for every day during which such works shall remain uncompleted beyond the period so appointed for their completion; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be laid out in executing the work in respect whereof such penalty was incurred.

Justices to have power to order repair of bridges, &c.

65. Where, under the provisions of this or the special Act, or any Act incorporated therewith, the company are required to maintain or keep in repair any bridge, fence, approach, gate, or other work executed by them, it shall be lawful for two justices, on the application of the surveyor of roads or of any two householders of the parish or district where such work may be situate, complaining that any such work is out of repair, after not less than ten days notice to the company, to order the company to put such work into complete repair within a period to be limited for that purpose by such justices; and if the company fail to comply with such order they shall forfeit five pounds for every day that they fail so to do; and it shall be lawful for the justices by whom any such penalty is imposed to order the whole or any part thereof to be applied, in such manner and by such persons as they think fit, in putting such work into repair.

Board of Trade empowered to modify the construction of certain roads, bridges, &c. where a strict compliance with the Act is impossible or inconvenient.

66. And whereas expense might frequently be avoided, and public convenience promoted, by a reference to the Board of Trade upon the construction of public works of an engineering nature connected with the railway, where a strict compliance with the provision of this or the special Act might be impossible, or attended with inconvenience to the company, and without adequate advantage to the public; Be it enacted, That in case any difference in regard to the construction, alteration, or restoration of any road or bridge, or other public work of an engineering nature required by the provisions of this or the special Act, shall arise between the company and any trustees, commissioners, surveyors, or other persons having the control of or being authorised by law to enforce the construction of such road, bridge, or work, it shall be lawful for either party, after giving fourteen days notice in writing of their intention so to do to the other party, to apply to the Board of Trade to decide upon the proper manner of constructing, altering, or restoring such road, bridge, or other work; and it shall be lawful for the Board of Trade, if they shall think fit, to decide the same accordingly, and to authorise, by certificate in writing, any arrangement or mode of construction in regard to any such road, bridge, or other work which shall appear to them either to be in substantial compliance with the provisions of this and the special Act, or to be calculated to afford equal or greater accommodation to the public using such road, bridge or other work; and after any such certificate shall have been given by the Board of Trade, the road, bridge, or other work therein mentioned shall be constructed by the company in conformity with the terms of such certificate, and being so constructed shall be deemed to be constructed in conformity with the provisions of this and the special Act: Provided always, that no such certificate shall be granted by the Board of Trade unless they shall be satisfied that existing private rights or interests will not be injuriously affected thereby.

Authentication of certificates of the Board of Trade, service of notices, &c.

67. And be it enacted, that all regulations, certificates, notices, and other documents in writing purporting to be made or issued by or by the authority of the Board of Trade, and signed by some officer appointed for that purpose by the Board of Trade, shall for the purposes of this and the special Act, and any Act incorporated therewith, be deemed to have been so made and issued, and that without proof of the authority of the person signing the same, or of the signature thereto, which matters shall be presumed until the contrary be proved; and service of any such document, by leaving the same at one of the principal offices of the railway company, or by sending the same by post addressed to the secretary at such office, shall be deemed good service upon the company; and all notices and other documents required by this or the special Act to be given to or laid before the Board of Trade shall be delivered at, or sent by post addressed to, the office of the Board of Trade in London (1).

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows:

68. The company shall make and at all times thereafter maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway; (that is to say,)

Gates, bridges, &c:

Such and so many convenient gates, bridges, arches, culverts, and passages over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

Fences:

Also sufficient posts, rails, hedges, ditches, mounds, or other fences for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles; and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

(1) See now 31 & 32 Vict. c. 37, s. 2, and 45 & 46 Vict. c. 9, s. 2.

Secs. 68—141.

Drains:

Also all necessary arches, tunnels, culverts, drains, or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed:

Watering places.

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places; and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary water-courses and drains for the purpose of conveying water to the said watering places:

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

Differences as to accommodation works to be settled by justices.

69. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices; and such justices shall also appoint the time within which such works shall be commenced and executed by the company.

Railway to be free on payment of tolls.

92. It shall not be lawful for the company at any time to demand or take a greater amount of toll, or make any greater charge for the carriage of passengers or goods, than they are by this and the special Act authorised to demand; and upon payment of the tolls from time to time demandable all companies and persons shall be entitled to use the railway, with engines and carriages properly constructed as by this and the special Act directed, subject nevertheless to the provisions and restrictions of the said Act of the sixth year of Her [present Majesty, intituled "An Act for the better Regulation of Railways, and for the Conveyance of Troops," and to the regulations to be from time to time made by the company by virtue of the powers in that behalf hereby and by the special Act conferred upon them (1).

5 & 6 Vict. c. 55.

And with respect to the engines and carriages to be brought on the railway, be it enacted as follows:

Engines to consume their smoke.

114. Every locomotive steam engine to be used on the railway shall, if it use coal or other similar fuel emitting smoke, be constructed on the principle of consuming and so as to consume its own smoke; and if any engine be not so constructed the company or party using such engine shall forfeit five pounds for every day during which such engine shall be used on the railway.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

Provision for damages not otherwise provided for.

140. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly.

Distress against the treasurer.

141. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, and expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the

(1) See *R.* v. *Severn Ry.*, 2 B. & Ald. 646.

goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Secs. 141—147.

142. Where in this or the special Act any question of compensation, expenses, charges, or damages, or other matter, is referred to the determination of any one justice or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties, or any of them, and their witnesses, on oath; and the cost of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of proceeding before justices in questions of damages, &c.

143. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Publication of penalties.

144. If any person pull down or injure any board put up or affixed as required by this or the special Act for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalty for defacing boards used for such publication.

145. Every penalty or forfeiture imposed by this or the special Act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and on complaint being made to any justice he shall issue a summons, requiring the party complained against to appear before two justices at a time and place to be named in such summons, and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit.

Penalties to be summarily recovered before two justices.

146. If forthwith upon any such adjudication as aforesaid the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices, or either of them, shall issue their or his warrant of distress accordingly.

Penalties to be levied by distress.

147. It shall be lawful for any such justice to order any offender so convicted as aforesaid, to be detained and kept in safe custody until return can be conveniently made to the warrant of distress to be issued for levying such penalty or forfeiture and costs, unless the offender give sufficient security, by way of recognizance or otherwise, to the satisfaction of the justice, for his appearance before him on the day appointed for such return, such day not being more than eight days from the time of taking such security;

Imprisonment in default of distress.

Secs. 147—154.

but if before issuing such warrant of distress it shall appear to the justice, by the admission of the offender or otherwise, that no sufficient distress can be had within the jurisdiction of such justice whereon to levy such penalty, or forfeiture and costs, he may, if he thinks fit, refrain from issuing such warrant of distress; and in such case, or if such warrant shall have been issued, and upon the return thereof such insufficiency as aforesaid shall be made to appear to the justice, then such justice shall by warrant cause such offender to be committed to gaol, there to remain without bail for any term not exceeding three months, unless such penalty, or forfeiture and costs be sooner paid and satisfied.

Distress how to be levied.

148. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

149. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

150. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish [or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or, if there shall not be any poor's rate therein, in aid of the poor's rate of any adjoining parish or district] (1).

Penalties to be sued for within six months.

151. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence.

Damage to be made good in addition to penalty.

152. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted; and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Penalty on witnesses making default.

153. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath, or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence.

Transient offenders.

154. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch,

(1) The part within brackets is repealed by the Statute Law Revision Act, 1875.

before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Form of conviction.

155. The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the Form in the Schedule to this Act annexed.

Proceedings not to be quashed for want of form, &c.

156. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

Parties allowed to appeal to quarter sessions on giving security.

157. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon.

Court to make such order as they think reasonable.

158. At the quarter sessions, for which such notice shall be given, the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant or levied by distress upon his goods to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Receiver of metropolitan police district to receive penalties incurred within his district.

159. Provided always, and be it enacted, that notwithstanding anything herein or in the special Act, or any Act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of Her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis;" and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction, and appeal had been made in suance of the provisions of the said last-mentioned Act.

2 & 3 Vict. c. 71.

Persons giving false evidence liable to penalties of perjury.

160. And be it enacted, that every person who, upon any examination upon oath, under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

161. [Money paid into the Bank of Ireland to be exempt from ushers poundage, 1 & 2 Vict. c. 117.]

RAILWAYS CLAUSES ACT, 1863.

26 & 27 Vict. c. 92.

An Act for consolidating in one Act certain provisions frequently inserted in Acts relating to Railways. [28*th July*, 1863.]

Level Crossings.

Secs. 5—8.

Trains not to be shunted over level crossings.

5. Where the company is authorised by the special Act to carry the railway across a turnpike road or public carriage road on a level, it shall not be lawful for the company in shunting trains to pass any train over the level crossing, or at any time to allow any train, engine, carriage, or truck to stand across the same.

Company to erect lodge at point of crossing.

6. For the greater convenience and security of the public, the company shall erect and permanently maintain a lodge at the point where the railway crosses on the level the turnpike road or public carriage road; and the company shall be subject to and shall abide by all such regulations with regard to the crossing thereof on the level, or with regard to the speed at which trains may pass the level crossing, as may from time to time be made by the Board of Trade.

If the company fails to erect, or to maintain, such lodge, or to appoint or keep a proper person to watch or superintend the level crossing, or to observe or abide by any such regulation as aforesaid, they shall for every such offence be liable to a penalty not exceeding twenty pounds, and also to a penalty of ten pounds for every day during which the offence continues after the penalty of twenty pounds is incurred (1).

Board of Trade may require bridge instead of level crossing.

7. The Board of Trade may, if it appears to them necessary for the public safety, at any time after the passing of the special Act, require the company, within such time as the Board of Trade directs, and at the expense of the company, to carry the turnpike road or public carriage road either under or over the railway by means of a bridge or arch, instead of crossing the same on the level, or to execute such other works as, under the circumstances of the case, may appear to the Board of Trade best adapted for removing or diminishing the danger arising from the level crossing.

Where the road is so carried either under or over the railway, it shall not be necessary for the company to erect or maintain a lodge at the point where the road is crossed, or to appoint a person to watch or superintend the crossing thereat, nor shall they be liable to any penalty for failure so to do.

Power to company to take additional land for such work.

8. If the Board of Trade certifies that the public safety requires that additional lands be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may, subject to the provisions of the Lands Clauses Consolidation Act, 1845, or the Lands Clauses Consolidation (Scotland) Act, 1845, as the case may require, enter upon, take, and use, all or any part of the lands specified in the certificate of the Board of Trade as being necessary for the purpose of the work; and the Board of Trade before issuing the certificate shall cause at least three months notice to be given to any person who may be entitled to claim under the last-mentioned Acts, or otherwise, compensation in respect of the taking of such lands or in respect of such work.

(1) See the Railways Clauses Consolidation Act, 1845, ss. 61, 62, *ante*, p. 1090.

Section 16.

Access to the shore under or across the railway.

16. Where the railway cuts off access between the land and a tidal water or tidal lands, then and in every such case the company shall, during the construction of the railway, and from time to time thereafter, make, and shall permanently maintain, and allow to be used by all persons, at all times free of toll or other charge, all such footways and carriageways over, under, or across the railway, or on a level therewith, as the Board of Trade from time to time directs or approves: Provided always, as follows:

(1.) The company shall not be obliged to make a footway or carriageway over lands for the use of an owner or occupier who has agreed to receive and has been paid compensation for the severance thereof from the tidal water or tidal lands:

(2.) The company shall not be obliged to make or to allow to be made a footway or carriageway in such manner as would interfere with the working or using of the railway:

(3.) The expense of the making and maintenance of a footway or carriageway required to be made after the construction of the railway shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

Where the footway or carriageway is made across the railway on the level, then the manner of the making and watching of the level crossing shall be subject to the approval of the Board of Trade; and where the level crossing is made after the construction of the railway, then all expenses attending the watching thereof shall be defrayed by the persons or body interested in the tidal water or tidal lands for whose benefit or convenience the same is required.

TRAMWAYS ACT, 1870.

33 & 34 VICT. c. 78.

An Act to facilitate the construction and to regulate the working of Tramways.

[*9th August*, 1870.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Secs. 1—4.

Short title.

1. This Act may be cited for all purposes as "The Tramways Act, 1870."

Limitation of Act.

2. This Act shall not extend to Ireland.

Interpretation of terms.

3. For the purposes of this Act the terms hereinafter mentioned shall have the meanings hereinafter assigned to them; that is to say,

The terms "local authority" and "local rate" shall mean respectively the bodies of persons and rate named in the table in Part I. of the schedule (A.) to this Act annexed:

The term "road" shall mean any carriageway being a public highway, and the carriageway of any bridge forming part of or leading to the same:

The term "road authority" shall mean, in the districts specified in the table in Part II. of the schedule (A.) to this Act annexed, the bodies of persons named in the same table, and elsewhere any local authority, board, town council, body corporate, commissioners, trustees, vestry, or other body or persons in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road:

The term "district," in relation to a local authority or road authority, shall mean the area within the jurisdiction of such local authority or road authority:

The term "prescribed" shall mean prescribed by any rules made in pursuance of this Act:

The term "the Lands Clauses Acts" means, so far as the Provisional Order in which that term is used relates to England, The Lands Clauses Consolidation Act, 1845; and, so far as the same relates to Scotland, The Lands Clauses Consolidation (Scotland) Act, 1845; together with, in each case, The Lands Clauses Consolidation Acts Amendment Act, 1860:

The term "two justices" shall, in addition to its ordinary signification, mean one stipendiary or police magistrate acting in any police court for the district.

Part I.

Provisional Orders authorising the Construction of Tramways.

By whom Provisional Orders autho-

4. Provisional Orders authorising the construction of tramways (1) in any district may be obtained by—

(1) Section 2 of the Railway Company Securities Act, 1866, makes the term "railway" include a tramway which is authorised by Act of Parliament, which Act incorporates the Companies Clauses Consolidation Act, 1845, but no other tramway; see also the Railway (Extension of Time) Act, 1868, s. 2, and the interpretation clause in the Regulation of

(1.) The local authority of such district: or by—

(2.) Any person, persons, corporation, or company, with the consent of the local authority of such district; or of the road authority of such district where such district is or forms part of a highway district formed under the provisions of "The Highway Acts:"

rising the construction of tramways may be obtained.

And any such local authority, person, persons, corporation, or company shall be deemed to be promoters of a tramway, and are in this Act referred to as "the promoters."

Application for a Provisional Order shall not be made by any local authority until such application shall be approved in the manner prescribed in Part III. of the schedule A. to this Act annexed.

Where in any district there is a road authority distinct from the local authority, the consent of such road authority shall also be necessary in any case where power is sought to break up any road subject to the jurisdiction of such road authority, before any Provisional Order can be obtained.

The Board of Trade may in certain cases dispense with consent of local or road authority.

5. Where it is proposed to lay down a tramway in two or more districts, and any local or road authority having jurisdiction in any of such districts does not consent thereto, the Board of Trade may, nevertheless, make a Provisional Order authorising the construction of such tramway if they are satisfied, after inquiry, that two-thirds of the length of such tramway is proposed to be laid in a district or in districts the local and road authority or the local and road authorities of which district or districts do consent thereto; and in such case they shall make a special report stating the grounds upon which they have made such order.

Notices and deposit of documents by promoters as in schedule.

6. The promoters intending to make an application for a Provisional Order shall proceed as follows:—

(1.) In the months of October and November next before their application, or in one of those months, they shall publish notice of their intention to make such application by advertisement; and they shall, on or before the fifteenth day of the following month of December, serve notice of such intention, in accordance with the standing orders (if any) of both Houses of Parliament for the time being in force with respect to bills for the construction of tramways:

(2.) On or before the thirtieth day of the same month of November they shall deposit the documents described in Part II. of the same schedule, according to the regulations therein contained:

(3.) On or before the twenty-third day of December in the same year they shall deposit the documents described in Part III. of the same schedule, according to the regulations therein contained:

All maps, plans, and documents required by this Act to be deposited for the purposes of any Provisional Order may be deposited with the persons and in the manner directed by the Act of the session of Parliament held in the seventh year of the reign of His late Majesty King William the Fourth and the first year of her present Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament;" and all the provisions of that Act shall apply accordingly.

Power for Board of Trade to determine on application and on objection.

7. The Board of Trade shall consider the application, and may, if they think fit, direct an inquiry in the district to which the same relates, or may otherwise inquire as to the propriety of proceeding upon such application, and they shall consider any objection thereto that may be lodged with them on or before such day as they from time to time appoint, and shall determine whether or not the promoters may proceed with the application.

Power for Board of Trade to make Provisional Order.

8. Where it appears to the Board of Trade expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Board of Trade may settle and make a Provisional Order accordingly.

Railways Acts, 1868 and 1871. But an unregistered tramways company is not a railway company within section 199 of the Companies Act, 1862: *Re Brentford and Isleworth Tramways Co.*, 50 L. T. N. S. 580.

Secs. 8—14.

Form and contents of Provisional Order.

Every such Provisional Order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions as (subject to the requirements of this Act) the Board of Trade, according to the nature of the application and the facts and circumstances of each case, think fit to submit to Parliament for confirmation in manner provided by this Act; but so that any such Provisional Order shall not contain any provision for empowering the promoters or any other person to acquire lands otherwise than by agreement, or to acquire any lands, even by agreement, except to an extent therein limited, or to construct a tramway elsewhere than along or across a road, or upon land taken by agreement.

Regulations as to construction of tramways in towns.

9. Every tramway in a town (1) which is hereafter authorised by Provisional Order shall be constructed and maintained as nearly as may be in the middle of the road; and no tramway shall be authorised by any Provisional Order to be so laid that for a distance of thirty feet or upwards a less (2) space than nine feet and six inches shall intervene between the outside of the footpath on either side of the road and the nearest rail of the tramway if one-third of the owners or one-third of the occupiers of the houses, shops, or warehouses abutting (3) upon the part of the road where such less space shall intervene as aforesaid shall in the prescribed manner and at the prescribed time express their dissent from any tramway being so laid.

Nature of traffic on tramway and tolls to be specified in Provisional Order.

10. Every such Provisional Order shall specify the nature of the traffic for which such tramway is to be used, and the tolls and charges which may be demanded and taken by the promoters in respect of the same, and shall contain such regulations relating to such traffic and such tolls and charges as the Board of Trade shall deem necessary and proper.

Costs of order.

11. The costs of and connected with the preparation and making of each Provisional Order shall be paid by the promoters, and the Board of Trade may require the promoters to give security for such costs before they proceed with the Provisional Order (4).

Promoters to deposit 4*l.* per cent. on estimate in prescribed bank.

12. After a Provisional Order is ready, and before the same is delivered by the Board of Trade, the promoters, unless they are a local authority, shall within the prescribed time and in the prescribed manner, and subject to the prescribed conditions as to interest, repayment, or forfeiture, pay, as a deposit, into the prescribed bank, the sum of money prescribed, which shall not be less than four pounds per centum on the amount of the estimate by the promoters of the expense of the construction of the tramway, or deposit in such bank any security of the prescribed nature the then value of which is not less than such sum of money (5).

Publication of Provisional Order as in schedule.

13. When a Provisional Order has been made as aforesaid and delivered to the promoters, the promoters shall forthwith publish the same by deposit and advertisement, according to the regulations contained in Part IV. of the schedule (B.) to this Act.

Confirmation of Provisional Order by Act of Parliament.

14. On proof to the satisfaction of the Board of Trade of the completion of such publication as aforesaid, the Board of Trade shall, as soon as they conveniently can after the expiration of seven days from the completion of such publication, procure a bill to be introduced into either House of Parliament in relation to any Provisional Order which shall have been published as aforesaid not later than the twenty-fifth of April in any year, for an Act to confirm the Provisional Order, which shall be set out at length in the

(1) As to the meaning of the word "town," see *London & South Western Ry. Co.* v. *Blackmore*, L. R. 4 H. L. 610, 39 L. J. Ch. 713, 23 L. T. N. S. 504, 19 W. R. 305; *R.* v. *Cottle*, 16 Q. B. 412; *Lord Carington* v. *Wycombe Ry. Co.*, L. R. 3 Ch. 377, 37 L. J. Ch. 213, 18 L. T. N. S. 96, 16 W. R. 494; *Commissioners of Milton* v. *Faversham District Highway Board*, 10 B. & S. 548.

(2) See *Edinburgh Street Tramways Co.* v. *Black*, L. R. 2 Sc. App. 336.

(3) For meaning of the word "abutting," see *Great Eastern Ry. Co.* v. *Hackney Board of Works*, 8 App. Cas. 687, 52 L. J. M. C. 105, 49 L. T. N. S. 509, 31 W. R. 769; reversing *Hackney Board of Works* v. *Great Eastern Ry. Co.*, 9 Q. B. D. 412, 51 L. J. M. C. 57, 46 L. T. N. S. 679, 30 W. R. 765.

(4) These costs are to be taxed on the Chancery and not on the Parliamentary scale: *In re Morley*, L. R. 20 Eq. 17, 32 L. T. N. S. 524, 23 W. R. 532.

(5) As to the application of this deposit, see *In re Bradford Tramways Co.*, 4 Ch. D. 18, 46 L. J. Ch. 89, 25 W. R. 88; *In re Lowestoft, Yarmouth, and Southwold Tramways Co.*, 6 Ch. D. 484, 46 L. J. Ch. 393, 36 L. T. N. S. 578, 25 W. R. 525; *In re Tynemouth Borough Tramways Co.*, 33 L. T. N. S. 8; *In re London and County Tramways Co.*, W. N. (1875), p. 49.

schedule to the bill; and until confirmation, with or without amendment, by Act of Parliament, a Provisional Order under this Act shall not have any operation.

If while any such bill is pending in either House of Parliament a petition is presented against any Provisional Order comprised therein, the bill, so far as it relates to the order petitioned against may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a bill for a special Act.

The Act of Parliament confirming a Provisional Order under this Act shall be deemed a public general Act.

Incorporation of general acts in Provisional Order.

15. The provisions of the Lands Clauses Acts shall be incorporated with every Provisional Order under this Act, save where the same are expressly varied or excepted by any such Provisional Order, and except as to the following provisions, namely,—

(1.) With respect to the purchase and taking of lands otherwise than by agreement:

(2.) With respect to the entry upon lands by the promoters of the undertaking.

For the purposes of such incorporation a Provisional Order under this Act shall be deemed the special Act.

Power of Board of Trade to revoke, amend, extend, or vary Provisional Order.

16. The Board of Trade on the application of any promoters empowered by a Provisional Order may from time to time revoke, amend, extend, or vary such Provisional Order by a further Provisional Order.

Every application for such further Provisional Order shall be made in like manner and subject to the like conditions as the application for the former Provisional Order.

Every such further Provisional Order shall be made and confirmed in like manner in every respect as the former Provisional Order, and until such confirmation such further Provisional Order shall not have any operation.

Power to authorise joint work.

17. Subject and according to the provisions of this Act, the Board of Trade may, on a joint application, or on two or more separate applications, settle and make a Provisional Order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of such tramway as last aforesaid; and the form of the Provisional Order may be adapted to the circumstances of the case.

Cesser of powers at expiration of prescribed time.

18. If the promoters, empowered by any Provisional Order under this Act to make a tramway, do not, within two years from the date of the same, or within any shorter period prescribed therein, complete the tramway and open it for public traffic; or,

If within one year from the date of the Provisional Order, or within such shorter time as is prescribed in the same, the works are not substantially commenced; or,

If the works having been commenced are suspended without a reason sufficient in the opinion of the Board of Trade to warrant such suspension;

the powers given by the Provisional Order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the same as is then completed, unless the time be prolonged by the special direction of the Board of Trade; and as to so much of the same as is then completed the Board of Trade may allow the said powers to continue and to be exercised if they shall think fit, but failing such permission the same shall cease to be exercised, and where such permission is withheld then so much of the said tramway as is then completed shall be deemed to be a tramway to which all the provisions of this Act relating to the discontinuance of tramways after proof of such discontinuance shall apply, and may be dealt with accordingly.

A notice purporting to be published by the Board of Trade in the *London* or *Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland, to the effect that a tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement, or suspension.

Local authority may lease or take tolls.

19. When a tramway has been completed under the authority of a Provisional Order by any local authority, or where any local authority has under the provisions of this Act acquired possession of any tramway, such authority may, with the consent of the Board of Trade, and subject to the provisions of this Act, by lease, to be approved of by the

Secs. 19, 20. Board of Trade, demise to any person, persons, corporation, or company the right of user by such person, persons, corporation, or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorised; or such authority may leave such tramway open to be used by the public, and may in respect of such user demand and take the tolls and charges authorised; but nothing in this Act contained shall authorise any local authority to place or run carriages upon such tramway, and to demand and take tolls and charges in respect of the use of such carriages.

Notice of the intention to make such lease shall be published by the local authority by advertisement, and a copy of such lease shall be deposited according to the regulations contained in Part I. of the schedule (C.) to this Act annexed; and unless such notice is given, and such copy deposited, such lease shall not be approved of by the Board of Trade.

Every such lease shall be made for a term or for terms not exceeding in the whole twenty-one years.

On the determination of any lease made under this Act, the local authority may from time to time, with the consent of the Board of Trade, by lease demise such rights for such further term or terms, not exceeding in any case twenty-one years, as the said Board may approve.

Every such lease shall imply a condition of re-entry if at any time after the making of the same the lessees discontinue the working of the tramway leased, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such lessees, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control).

The person, persons, corporation, or company to whom any such lease may be made are in this Act referred to as "lessees."

How expenses to be defrayed.

20. Where the local authority in any district are the promoters of any tramway, they shall pay all expenses incurred by them in applying for and obtaining a Provisional Order, and carrying into effect the purposes of such Provisional Order, out of the local rate, and any such expenses shall be deemed to be purposes for which such local rate may be made, and to which the same may be applied.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such expenses, the Board of Trade may, by the Provisional Order, extend the limit of such local rate to such amount as they shall think fit, and prescribed for the payment of such expenses.

Such local authority may, for the purposes of such Provisional Order, borrow and take up at interest, on the credit of such local rate, any sums of money necessary for defraying any such expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, such local authority may mortgage to the persons by or on behalf of whom such sums are advanced such local rate; but the exercise of the above mentioned power shall be subject to the following regulations:

(1.) The money so borrowed shall not exceed such sum as may be sanctioned by the Board of Trade:

(2.) The money may be borrowed for such time, not exceeding thirty years, as such local authority, with the sanction of the Board of Trade, shall determine; and, subject as aforesaid to the repayment within thirty years, such local authority may either pay off the moneys so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the local authority may determine.

The provisions of "The Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners [1], shall apply to any mortgage executed under the foregoing provisions of this section, and for the purposes of such application the said provisions shall be incorporated with this Act.

[1] These provisions are contained in sections 75—88 of the Act, 10 & 11 Vict., c. 16.

For the purposes of such incorporation, the terms "the special Act," and "the commissioners," shall be construed to mean respectively a Provisional Order under this Act, and the local authority.

Such local authority shall keep separate accounts of all moneys paid by them in applying for, obtaining, and carrying into effect any such Provisional Order, and in the repayment of moneys borrowed, and of all moneys received by them by way of rent or tolls in respect of the tramway authorised thereby.

When, after payment of all charges incurred under the authority of this Act, and necessary for giving effect to such Provisional Order there shall be remaining in the hands of such local authority any of the moneys received by them by way of rent or tolls in respect of the tramway authorised by such Provisional Order, such moneys shall be applied by them to the purposes for which the local rate may be by them applied.

Metropolitan Board may, for carrying Provisional Order into effect, create stock under Loans Act of 1869.

21. The Metropolitan Board of Works may, in order to raise money for the purpose of carrying into effect the purposes of any Provisional Order obtained by them, create additional stock, not exceeding in the whole three hundred thousand pounds, under "The Metropolitan Board of Works (Loans) Act, 1869," in like manner, and with the like sanction, in and with which they may create stock in order to raise money for the purposes of the Acts mentioned in the first schedule to that Act; and all the provisions of that Act shall apply as if that money were raised and that stock were created for the purposes of the last-mentioned Acts, with the exception that the money required for the purposes of any such Provisional Order may be borrowed by them in addition to the sum limited by section thirty-eight of "The Metropolitan Board of Works (Loans) Act, 1869."

PART II.

Construction of Tramways.

As to incorporation of Parts II. and III. of this Act with Provisional Order and special Acts.

22. Part II. and Part III. of this Act shall apply to every tramway which is hereafter authorised by any Provisional Order or Act of Parliament, and shall be incorporated with such Provisional Order or Act, and all the said provisions of this Act, save so far as they shall be expressly varied or excepted by any such Provisional Order or Act, shall apply to the undertaking authorised thereby, so far as the same shall be applicable to such undertaking, and shall, with the provisions of every other Act or part of any Act which shall be incorporated therewith, form part of the said Provisional Order or Act, and be construed therewith as forming one Provisional Order or Act, as the case may be.

"Special Act."

23. In Part II. and Part III. of this Act, the term "special Act" shall be construed to mean any Act of Parliament which shall be hereafter passed or any Provisional Order authorising the construction of a tramway, and with which the said parts of this Act shall be incorporated as aforesaid.

"Promoters."

24. The term "the promoters" shall mean any person, persons, corporation, company, or local authority authorised by special Act to construct a tramway.

Mode of formation of tramways.

25. Every tramway which is hereafter authorised by special Act shall be constructed on such gauge as may be prescribed by such special Act, and if no gauge is thereby prescribed, on such gauge as will admit of the use upon such tramways of carriages constructed for use upon railways of a gauge of four feet eight inches and half an inch, and shall be laid and maintained in such manner that the uppermost surface of the rail shall be on a level with the surface of the road, and shall not be opened for public traffic until the same has been inspected and certified to be fit for such traffic, in the prescribed manner.

Power to break up streets, &c.

26. The promoters from time to time, for the purpose of making, forming, laying down, maintaining, and renewing any tramway duly authorised [1], or any part or parts

[1] A person making a tramway without the authority of Parliament, even with the concurrence of and by virtue of a contract with the vestry of a parish, may be indicted for a public nuisance: *R.* v. *Train*, 2 B. & S. 640, 3 F. & F. 22, 9 Cox, C. C. 180, 8 Jur. N. S. 1151, 31 L. J. M. C. 169, 6 L. T. N. S. 380, 10 W. R. 539. In such a case it is no defence that the tramway might be for the convenience of the public generally (*ib.*) Compare *R.* v. *Longton Gas Company* (*Limited*), 6 Jur. N. S. 601, 29 L. J. M. C. 118, and *Att.-Gen.* v. *Cambridge Consumers Gas Co.*, L. R. 4 Ch. 71, 38 L. J. Ch. 94, 19 L. T. N. S. 508, 17 W. R. 145.

Secs. 26, 27.

thereof respectively, may open and break up any road, subject to the following regulations:

(1.) They shall give to the road authority notice of their intention, specifying the time at which they will begin to do so, and the portion of road proposed to be opened or broken up, such notice to be given seven days at least before the commencement of the work:

(2.) They shall not open, or break up, or alter the level of any road, except under the superintendence and to the reasonable satisfaction of the road authority, unless that authority refuses or neglects to give such superintendence at the time specified in the notice, or discontinues the same during the work:

(3.) They shall pay all reasonable expenses to which the road authority is put on account of such superintendence [1]:

(4.) They shall not, without the consent of the road authority, open or break up at any one time a greater length than one hundred yards of any road which does not exceed a quarter of a mile in length, and in the case of any road exceeding a quarter of a mile in length the promoters shall leave an interval of at least a quarter of a mile between any two places at which they may open or break up the road, and they shall not open or break up at any such place a greater length than one hundred yards.

Where the carriageway over any bridge forms part of or is a road within the jurisdiction of a road authority, but such bridge is vested in some person or persons, corporation, or company, distinct from such road authority, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with the structural works of such bridge, shall be constructed under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of such person, persons, corporation, or company, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Where the carriageway in or upon which any tramway is proposed to be formed or laid down is crossed by any railway or tramway on the level, any work which the promoters may be empowered to construct, and which affects or in anywise interferes with such railway or tramway, or the traffic thereon, shall be constructed and maintained under the superintendence (at the cost of the promoters) and to the reasonable satisfaction of the person, corporation, or company owning such railway or tramway, unless after notice to be given by the promoters seven days at least before the commencement of such work such superintendence is refused or withheld.

Completion of work and reinstatement of road.

27. When the promoters have opened or broken up any portion of any road, they shall be under the following further obligations; namely,

(1.) They shall, with all convenient speed, and in all cases within four weeks at the most (unless the road authority otherwise consents in writing) complete the work on account of which they opened or broke up the same, and (subject to the formation, maintenance, or renewal of the tramway) fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road to as good condition as that in which it was before it was opened or broken up, and clear away all surplus paving or metalling material or rubbish occasioned thereby:

(2.) They shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night:

(3.) They shall bear or pay all reasonable expenses of the repair of the road for six months after the same is restored, as far as those expenses are increased by the opening or breaking up.

If the promoters aforesaid fail to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act or to any other remedy against

[1] If the work done by the promoters be merely repairing the road and maintaining it in good order, then section 28, and not this section, applies, and the promoters are not bond to pay the expenses of superintendence: *Vestry of St. Luke* v. *North Metropolitan Tramways Co.*, 1 Q. B. D. 760, 35 L. T. N. S. 329.

them) be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds for each day during which any such failure continues after the first day on which such penalty is incurred.

Repair of part of road where tramway is laid.

28. The promoters shall, at their own expense, at all times maintain and keep in good condition and repair (1), with such materials and in such manner as the road authority shall direct, and to their satisfaction, so much of any road whereon any tramway belonging to them is laid as lies between the rails of the tramway and (where two tramways are laid by the same promoters in any road at a distance of not more than four feet from each other) the portion of the road between the tramways, and in every case so much of the road as extends eighteen inches beyond the rails of and on each side of any such tramway. If the promoters abandon their undertaking, or any part of the same, and take up any tramway or any part of any tramway belonging to them, they shall with all convenient speed, and in all cases within six weeks at the most (unless the road authority otherwise consents in writing), fill in the ground and make good the surface, and, to the satisfaction of the road authority, restore the portion of the road upon which such tramway was laid to as good a condition as that in which it was before such tramway was laid thereon, and clear away all surplus paving or metalling material or rubbish occasioned by such work; and they shall in the meantime cause the place where the road is opened or broken up to be fenced and watched, and to be properly lighted at night (2): Provided always, that if the promoters fail to comply with the provisions of this section, the road authority, if they think fit, may themselves at any time, after seven days notice to the promoters, open and break up the road, and do the works necessary for the repair and maintenance or restoration of the road, to the extent in this section above mentioned, and the expense incurred by the road authority in so doing shall be repaid to them by the promoters.

Road authority and promoters may contract for paving roads on which tramways are laid.

29. The road authority on the one hand and the promoters on the other hand may from time to time enter into and carry into effect, and from time to time alter, renew, or vary, contracts, agreements, or arrangements with respect to the paving and keeping in repair of the whole or any portion of the roadway of any road on which the promoters shall lay any tramway, and the proportion to be paid by either of them of the expense of such paving and keeping in repair (3).

Provision as to gas and water companies.

30. For the purpose of making, forming, laying down, maintaining, repairing, or renewing any of their tramways, the promoters may from time to time, where and as far as it is necessary, or may appear expedient for the purpose of preventing frequent interruption of the traffic by repairs or works in connection with the same, alter the position of any mains or pipes for the supply of gas or water, or any tube, wires, or apparatus for telegraphic or other purposes, subject to the provisions of this Act, and also subject to the following restrictions; (that is to say,)

(1.) Before laying down a tramway in a road in which any mains or pipes, tubes, wires, or apparatus may be laid, the promoters shall, whether they contemplate altering the position of any such mains or pipes, wires, or apparatus, or not, give seven days notice to the company, persons or person to whom such mains or pipes, tubes, wires, or apparatus may belong or by whom they are controlled, of their intention to lay down or alter the tramway, and shall at the same time deliver a plan and section of the proposed work. If it should appear to any such company or person that the construction of the tramway as proposed would endanger any such main or pipe, tube, wire, or apparatus, or interfere with or impede the supply of water or gas or the telegraphic or other communication, such company or person (as the case may be) may give notice to the promoters to lower or otherwise alter the

(1) See *Vestry of St. Luke* v. *North Metropolitan Tramways Co.*, cited in note (1) to section 26, *ante*.

(2) See *Howitt* v. *Nottingham Tramways Co.*, cited in note to next section.

(3) Where a tramways company enters into a contract with a road authority under this section, whereby the road authority undertakes the repair of the portion of the road upon which the tramway is laid, the liability for damage caused by the non-repair of that part of the road, which would but for such contract be cast, by section 28, upon the tramway company, is transferred to the road authority: *Howitt* v. *Nottingham Tramways Co.*, 12 Q. B. D. 16, 53 L. J. Q. B. 21, 50 L. T. N. S. 99, 32 W. R. 248.

Secs. 30, 31.

position of the said mains or pipes, tubes, wires, or apparatus in such manner as may be considered necessary, and any difference as to the necessity of any such lowering or alteration shall be settled in manner provided by this Act for the settlement of differences between the promoters and other companies or persons, and all alterations to be made under this section shall be made with as little detriment and inconvenience to the company or person to whom such mains or pipes, tubes, wires, or apparatus may belong, or by whom the same are controlled, or to the inhabitants of the district, as the circumstances will admit, and under the superintendence of such company or person or of their surveyor or engineer if they or he think fit to attend, after receiving not less than forty-eight hours notice for that purpose, which notice the promoters are hereby required to give :

(2.) The promoters shall not remove or displace any of the mains or pipes, valves, syphons, plugs, tubes, wires, or apparatus, or other works belonging to or controlled by any such company or person, or do anything to impede the passage of water or gas or the telegraphic or other communication into or through such mains or pipes, without the consent of such company or person, or in any other manner than such company or person shall approve, until good and sufficient mains, pipes, valves, syphons, plugs, and other works necessary or proper for continuing the supply of water or gas or telegraphic or other communication, as sufficiently as the same was supplied by the mains or pipes, tubes, wires, or apparatus proposed to be removed or displaced, shall at the expense of the promoters have been first made and laid down in lieu thereof and ready for use, and to the satisfaction of the surveyor or engineer of such water or gas or other company, or of such person, or, in case of disagreement between such surveyor or engineer and the promoters, as an engineer appointed by the Board of Trade shall direct :

(3.) The promoters shall not lay down any such pipes contrary to the regulations of any Act of Parliament relating to such water or gas or other company, or relating to telegraphs:

(4.) The promoters shall make good all damage done by them to property belonging to or controlled by any such company or person, and shall make full compensation to all parties for any loss or damage which they may sustain by reason of any interference with such property, or with the private service pipes of any person supplied by any such company or person with water or gas.

(5.) If by any such operations as aforesaid the promoters interrupt the supply of water or gas in or through any main or main pipe they shall be liable to a penalty not exceeding twenty pounds for every day upon which such supply shall be so interrupted :

For protection of sewers, &c.

31. Where in any district any tramway or any work connected therewith interferes with any sewer, drain, watercourse, subway, defence, or work in such district, or in any way affects the sewerage or drainage of such district, the promoters shall not commence any tramway or work until they shall have given to the proper authority fourteen days previous notice in writing of their intention to commence the same, by leaving such notice at the principal office of such authority with all necessary particulars relating thereto, nor until such authority shall have signified their approval of the same, unless such authority do not signify their approval, disapproval, or other directions within fourteen days after service of the said notice and particulars as aforesaid, and the promoters shall comply with and conform to all reasonable directions and regulations of the said authority in the execution of the said works, and shall provide by new, altered, or substituted works, in such manner as such authority shall reasonably require, for the proper protection of and for preventing injury or impediment to the sewers and works hereinbefore referred to, by or by reason of the tramways, and shall save harmless the said authority against all and every the expense to be occasioned thereby; and all such works shall be done under the direction, superintendence, and control of the engineer or other officer or officers of the said authority, at the reasonable costs, charges, and expenses in all respects of the promoters; and when any new, altered, or substituted work as aforesaid, or any works or defence connected therewith, shall be completed by or at the costs, charges, or expenses of the promoters, under the

provisions of this Act, the same shall thereafter be as fully and completely under the direction, jurisdiction, and control of the said authority and be maintained by them as any sewers or works.

Rights of authorities and companies, &c. to open roads.

32. Nothing in this Act shall take away or abridge any power to open or break up any road along or across which any tramway is laid, or any other power vested in any local authority or road authority for any of the purposes for which such authority is respectively constituted, or in any company, body, or person for the purpose of laying down, repairing, altering, or removing any pipe for the supply of gas or water, or any tubes, wires, or apparatus for telegraphic or other purposes, but in the exercise of such power every such local authority, road authority, company, body, or person shall be subject to the following restrictions; (that is to say,)

(1.) They shall cause as little detriment or inconvenience to the promoters and lessees as circumstances admit:

(2.) Before they commence any work whereby the traffic on the tramway will be interrupted they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters and lessees, if there be any, notice of their intention to commence such work, specifying the time at which they will begin to do so, such notice to be given eighteen hours at least before the commencement of the work:

(3.) They shall not be liable to pay to the promoters or lessees any compensation for injury done to the tramway by the execution of such work, or for loss of traffic occasioned thereby, or for the reasonable exercise of the powers so vested in them as as aforesaid:

(4.) Whenever for the purpose of enabling them to execute such work the local authority or the road authority shall so require, the promoters or lessees shall either stop traffic on the tramway to which the notice shall refer, where it would otherwise interfere with such work, or shore up and secure the same at their own risk and cost during the execution of the work there: Provided that such work shall always be completed by the local authority or the road authority, as the case may be, with all reasonable expedition:

(5.) Any company, body, or person shall not execute such work so far as it immediately affects the tramway except under the superintendence of the promoters, unless they refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work or discontinue the same during the progress of the work; and they shall execute such work at their own expense, and to the reasonable satisfaction of the promoters: Provided that any additional expense imposed upon them by reason of the existence of the tramway in any road or place where any such mains, pipes, tubes, wires, or apparatus shall have been laid before the construction of such tramway shall be borne by the promoters.

Difference between promoters and road authority, &c.

33. If any difference arises between the promoters or lessees on the one hand and any local authority or road authority, or any gas or water company, or any company, body, or person to whom any sewer, drain, tube, wires, or apparatus for telegraphic or other purposes may belong, or any other company, on the other hand, with respect to any interference or control exercised, or claimed to be exercised, by them or him, or on their or his behalf, or by the promoters or lessees by virtue of this Act, in relation to any tramway or work, or in relation to any work or proceeding of the local authority, road authority, body, company, or person, or with respect to the propriety of or the mode of execution of any work relating to any tramway, or with respect to the amount of any compensation to be made by or to the promoters or lessees, or on the question whether any work is such as ought reasonably to satisfy the local authority, road authority, body, company, or person concerned, or with respect to any other subject or thing regulated by or comprised in this Act, the matter in difference shall (unless otherwise specially provided by this Act) be settled by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference shall be borne and paid as the referee directs.

PART III.

General Provisions.

Carriages.

Power for promoters to use tramways with flange-wheeled carriages, &c.

34. The promoters of tramways authorised by special Act and their lessees may use on their tramways carriages with flange wheels or wheels suitable only to run on the rail prescribed by such Act; and, subject to the provisions of such special Act and of this Act, the promoters and their lessees shall have the exclusive use of their tramways for carriages with flange wheels or other wheels suitable only to run on the prescribed rail (1).

All carriages used on any tramway shall be moved by the power prescribed by the special Act, and where no such power is prescribed, by animal power only.

No carriage used on any tramway which is hereafter authorised by special Act shall extend beyond the outer edge of the wheels of such carriage more than eleven inches on each side.

Licenses to use Tramways.

Licenses to use the tramway may in certain events be granted to third parties by the Board of Trade.

35. If at any time after any tramway or part of any tramway shall have been for three years opened for public traffic in any district it shall be represented in writing to the Board of Trade by the local authority of such district, or by twenty inhabitant ratepayers of such district, or by the road authority of any road in which such tramway or part of a tramway is laid, that the public are deprived of the full benefit of the tramway, the Board of Trade may (if they consider that, *primâ facie*, the case is one for inquiry) direct an inquiry by a referee under this Act into the truth of the representation, and if the referee report that the truth of the representation has been proved to his satisfaction, the Board may from time to time grant licenses to any company or person to use such tramway in addition to the promoters or their lessees, for such traffic as is authorised by the special Act, with carriages to be approved by the Board, subject to the following provisions, conditions, and restrictions; (that is to say,)

(1.) The license shall be for any period not less than one year nor more than three years from the date of the license, but shall be renewable by the Board, if they upon inquiry think fit:

(2.) The license shall be to use the whole of such tramway for the time being opened for public traffic, or such part or parts of such tramway as the Board, having reference to the cause for granting the license, shall think right:

(3.) The license shall direct the number of carriages which the licensee or licensees shall run upon such tramway, and the mode in which and times at which such carriages shall be run:

(4.) The licenses shall specify the tolls to be paid to the promoters or to their lessees by the licensee or licensees for the use of the tramways:

(5.) The licensee or licensees, and their officers and servants, shall permit one person duly authorised for that purpose by the promoters, or by their lessees, to ride free of charge in or upon each carriage of the licensee or licensees run upon the tramways for the whole or any part of the journey:

(6.) The Board of Trade may at any time after the granting of any license revoke, alter, or modify the same for good cause shown to them.

In default of payment of tolls licensee's carriages may be detained and sold.

36. If on demand any licensee fail to pay the tolls due in respect of any passengers carried in any carriage it shall be lawful for the promoters or their lessees, to whom the same are payable, to detain and sell such carriage, or if the same shall have been removed from the tramway or premises of such promoters or lessees, to detain and sell any other carriages on such tramway or premises belonging to such licensee, and out of the moneys arising from such sale to retain the tolls payable as aforesaid, and all charges and

(1) See *Cottam* v. *Guest*, 6 Q. B. D. 70, 50 L. J. Q. B. 174, 29 W. R. 305, 45 J. P. 95; *Liverpool Tramways Co.* v. *Liverpool Omnibus Co.*, W. N. (1870), p. 126.

expenses of such detention and sale, rendering the overplus (if any) of such moneys and such of the carriages as shall remain unsold to the person entitled thereto.

Licensees to give account of passengers carried by them.

37. Every licensee shall on demand give to an officer or servant authorised in that behalf by the promoters or their lessees entitled to be paid tolls by such licensee, an exact account in writing signed by such licensee of the number of passengers conveyed by any and every carriage used by him on the tramways.

Licensees not giving account of passengers carried liable to penalty.

38. If any such licensee fails to give such account to such officer or servant demanding the same as aforesaid, or if any such licensee with intent to avoid the payment of any tolls gives a false account, he shall for every such offence forfeit to the promoters, or to their lessees entitled to be paid tolls by such licensee, a sum not exceeding five pounds, and such penalty shall be in addition to any tolls payable in respect of the passengers carried by any such carriage.

Disputes as to amount toll to be settled by justice.

39. If any dispute arise concerning the amount of the tolls due to the promoters or to their lessees from any licensee, or concerning the charges occasioned by any detention or sale of any carriage under the provisions herein contained, the same shall be settled in England by two justices, and in Scotland by the sheriff or two justices, and it shall be lawful for the promoters or their lessees in the meanwhile to detain the carriage, or (if the case so require) the proceeds of the sale thereof.

Owners of carriages liable for damage done by their servants.

40. Every licensee shall be answerable for any trespass or damage done by his carriages or horses, or by any of the servants or persons employed by him, to or upon the tramway, or to or upon the property of any other person, and, without prejudice to the right of action against the licensee or any other person, every such servant or other person may lawfully be convicted of such trespass or damage in England before two justices, and in Scotland before the sheriff or two justices, either by the confession of the party offending or by the oath of some credible witness; and upon such conviction every such licensee shall pay to the promoters, lessees, or persons injured, as the case may be, the damage, to be ascertained by such justices, so that the same do not exceed fifty pounds.

Discontinuance of Tramways.

Tramways to be removed in certain cases.

41. If at any time after the opening of any tramway in any district for traffic the promoters discontinue the working of such tramway, or of any part thereof, for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Board of Trade, the said Board, if they think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall, from the date of such order, be at an end, and thereupon the said powers of the promoters shall cease and determine, unless the same are purchased by the local authority in manner by this Act provided. Where any such order has been made, the road authority of such district may at any time after the expiration of two months from the date of such order, under the authority of a certificate to that effect by the Board of Trade, remove (1) the tramway or part of the tramway so discontinued, and the promoters shall pay to the road authority the cost of such removal and of the making good of the road by the road authority, such cost to be certified by the clerk for the time being, or by some other authorised officer of the road authority, whose certificate shall be final and conclusive; and if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, the road authority may, without any previous notice to the promoters (but without prejudice to any other remedy which they may have for the recovery of the amount), sell and dispose of the materials of the tramway or part of tramway removed, either by public auction or private sale, and for such sum or sums, and to such person or persons, as the road authority may think fit, and may out of the proceeds of such sale pay and reimburse themselves the amount of the cost certified as aforesaid and of the cost of sale, and the

(1) As to the removal of a tramway when the Act of Parliament gives the local board the right of determining that such tramway should be discontinued and removed, see *Liverpool Tramways Co.* v. *Local Board of Health of Toxteth Park*, W. N. (1876), p. 145.

Secs. 41–43.

balance (if any) of the proceeds of the sale shall be paid over by the road authority to the promoters.

Insolvency of Promoters.

Proceedings in case of insolvency of promoters.

42. If at any time after the opening of any tramway in any district for traffic, it appears to the local authority or the road authority of such district that the promoters of such tramway are insolvent, so that they are unable to maintain such tramway, or work the same with advantage to the public, and such road authority makes a representation to that effect to the Board of Trade, the Board of Trade may direct an inquiry by a referee into the truth of the representation, and if the referee shall find that the promoters are so insolvent as aforesaid, the Board of Trade may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end, and the powers of the promoters shall cease and determine at the expiration of the said period, unless the same are purchased by the local authority in manner by this Act provided; and thereupon such road authority may remove the tramway in like manner and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for recovery of such costs, in every respect as in cases of removal under the next preceding section.

Purchase of Tramways.

Future purchase of undertaking by local authority.

43. Where the promoters of a tramway in any district are not the local authority, the local authority, if, by resolution passed at a special meeting of the members constituting such local authority, they so decide, may within six months after the expiration of a period of twenty-one years from the time when such promoters were empowered to construct such tramway, and within six months after the expiration of every subsequent period of seven years, or within three months after any order made by the Board of Trade under either of the two next preceding sections, with the approval of the Board of Trade, by notice in writing require such promoters to sell, and thereupon such promoters shall sell to them their undertaking, or so much of the same as is within such district, upon terms of paying the then value (exclusive of any allowance for past or future profits of the undertaking, or any compensation for compulsory sale, or other consideration whatsoever) of the tramway, and all lands, buildings, works, materials, and plant of the promoters suitable to and used by them for the purposes of their undertaking within such district, such value to be in case of difference determined by an engineer or other fit person nominated as referee by the Board of Trade on the application of either party, and the expenses of the reference to be borne and paid as the referee directs. And when any such sale has been made, all the rights, powers, and authorities of such promoters in respect to the undertaking sold, or where any order has been made by the Board of Trade under either of the next preceding sections, all the rights, powers, and authorities of such promoters previous to the making of such order in respect to the undertaking sold, shall be transferred to, vested in, and may be exercised by the authority to whom the same has been sold, in like manner as if such tramway was constructed by such authority under the powers conferred upon them by a Provisional Order under this Act, and in reference to the same they shall be deemed to be the promoters.

No such resolution shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given, nor unless two-thirds of the members constituting such local authority are present and vote at the meeting, and a majority of those present and voting concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two-thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two-thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter; and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from time to time.

The local authority in any district may pay the purchase money and all expenses incurred by them in the purchase of any undertaking under the authority of this section

out of the like rate, and shall have the like powers to borrow on the security of the same as if such expenses were incurred in applying for, obtaining, and carrying into effect any Provisional Order obtained by them under this Act. Secs. 43–46.

Where the local rate is limited by law to a certain amount, and is by reason of such limitation insufficient for the payment of such purchase money and expenses, the Board of Trade may by Provisional Order extend the limit of such local rate to such amount as they shall think fit and prescribe for the payment of such purchase money and expenses.

Every such Provisional Order shall be confirmed in like manner as a Provisional Order under the authority of Part I. of this Act, and until such confirmation such Provisional Order shall not have any operation.

Subject and according to the preceding provisions of this section two or more local authorities may jointly purchase any undertaking or so much of the same as is within their districts.

Power of sale.

44. Where any tramway in any district has been opened for traffic for a period of six months the promoters may, with the consent of the Board of Trade, sell their undertaking to any person, persons, corporation, or company, or to the local authority of such district; and when any such sale has been made all the rights, powers, authorities, obligations, and liabilities of such promoters in respect to the undertaking sold shall be transferred to, vested in, and may be exercised by, and shall attach to the person, persons, corporation, company, or local authority to whom the same has been sold, in like manner as if such tramway was constructed by such person, persons, corporation, company, or local authority under the powers conferred upon them by special Act, and in reference to the same they shall be deemed to be the promoters.

Provided always, that a local authority shall not purchase any undertaking under the provisions of this section unless they shall decide to make such purchase by resolution passed at a special meeting of the members constituting such local authority, which resolution shall be made in the same manner and shall be subject to the same conditions as to validity as resolutions made in regard to the purchases by the next preceding section authorised.

Where any purchase is made by any local authority under the provisions of this section, such local authority may pay the purchase money and all expenses incurred by them in making such purchase out of the like funds, and for such purposes shall have all and the like powers and be subject to all the like conditions as if such purchase were made under the authority of the next preceding section.

Tolls.

Tolls, &c.

45. The promoters or lessees of a tramway authorised by special Act may demand (1) and take, in respect of such tramway, tolls and charges (2) not exceeding the sums specified in such special Act, subject and according to the regulations therein specified. A list of all the tolls and charges authorised to be taken shall be exhibited in a conspicuous place inside and outside each of the carriages used upon the tramways.

Bye-laws.

Bye-laws by local authority.

46. Subject to the provisions of the special Act authorising any tramway and this Act.

The local authority of any district in which the same is laid down may, from time to time, make regulations as to the following matters:

The rate of speed to be observed in travelling upon the tramway:

(1) Where a bye-law of a tramway company provided "that every passenger shall upon demand pay the fare legally demandable for the journey," it was held that the bye-law was reasonable, and that the passenger was liable to pay the fare whenever it was demanded of him by the conductor: *Egginton* v. *Pearl*, 33 L. T. N. S. 428.

(2) Where a company had obtained legislative authority to substitute omnibusses on certain routes in lieu of the tramways, and to charge a higher fare on these routes, it was held that the company had no power to increase the fare of passengers using the tramways only: *Edinburgh Street Tramways Co.* v. *Torbain*, L. R. 3 App. Cas. 58, 37 L. T. N. S. 288.

Secs. 46–50.

The distances at which carriages using the tramway shall be allowed to follow one after the other:

The stopping of carriages using the tramway:

The traffic on the road in which the tramway is laid:

Promoters may make certain regulations.

The promoters of any tramway and their lessees may from time to time make regulations,—

For preventing the commission of any nuisance in or upon any carriage, or in or against any premises belonging to them.

For regulating the travelling in or upon any carriage belonging to them.

And for better enforcing the observance of all or any of such regulations, it shall be lawful for such local authority and promoters respectively to make bye-laws for all or any of the aforesaid purposes, and from time to time repeal or alter such bye-laws, and make new bye-laws, provided that such bye-laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect (1).

Notice of the making of any bye-law under the provisions of this Act shall be published by the local authority or the promoters making the same by advertisement, according to the regulations contained in Part II. of the Schedule (C.) to this Act annexed, and unless such notice is published in manner aforesaid such bye-law shall be disallowed by the Board of Trade.

No such bye-law shall have any force or effect which shall be disallowed by the Board of Trade within two calendar months after a true copy of such bye-law shall have been laid before the Board, and a true copy of every such proposed bye-law shall, not less than two calendar months before such bye-law shall come into operation, be sent to the Board of Trade, and shall be delivered to the promoters of such tramway if the same was made by the local authority, and to such local authority if made by the promoters.

Penalties may be imposed in bye-laws.

47. Any such bye-law may impose reasonable penalties for offences against the same, not exceeding forty shillings for each offence, with or without further penalties for continuing offences, not exceeding for any continuing offence ten shillings for every day during which the offence continues; but all bye-laws shall be so framed as to allow in every case part only of the maximum penalty being ordered to be paid (2).

Power to local authority to license drivers, conductors, &c.

48. The local authority shall have the like power of making and enforcing rules and regulations, and of granting licenses with respect to all carriages using the tramways, and to all drivers, conductors, and other persons having charge of or using the same, and to the standings for the same, as they are for the time being entitled to make, enforce, and grant with respect to hackney carriages, and the drivers and other persons having the charge thereof, and to the standings for the same in the streets and district of or under the control of the local authority: Provided always, that in any district in which any of the powers aforesaid in relation to hackney carriages and the matters aforesaid in connection therewith are vested in any authority other than the local authority of such district, such authority shall have and may exercise the powers by this section conferred upon the local authority (3).

Offences.

Penalty for obstruction of promoters in laying out tramway.

49. If any person wilfully obstructs any person acting under the authority of any promoters in the lawful exercise of their powers in setting out or making, forming, laying down, repairing, or renewing a tramway, or defaces or destroys any mark made for the purposes of setting out the line of the tramway, or damages or destroys any property of any promoters, lessees, or licensees, he shall for every such offence be liable to a penalty not exceeding five pounds.

Penalties for wilful injury or obstruction to tramways, &c.

50. If any person, without lawful excuse (the proof whereof shall lie on him), wilfully does any of the following things; (namely,)

Interferes with, removes, or alters any part of a tramway or of the works connected therewith;

(1) As to the validity of bye-laws made under this section, see *Egginton* v. *Pearl*, 33 L. T. N. S. 428.

(2) As to the validity of bye-laws, see the cases cited in the note to section 51, *post*.

(3) As to the confirmation of these rules and regulations, see the Public Health (Confirmation of Bye-laws) Act, 1884, 47 Vict., c. 12, s. 3, *post*.

Places or throws any stones, dirt, wood, refuse, or other material on any part of a tramway;

Does or causes to be done anything in such manner as to obstruct any carriage using a tramway, or to endanger the lives of persons therein or thereon;

Or knowingly aids or assists in the doing of any such thing;

he shall for every such offence be liable (in addition to any proceedings by way of indictment or otherwise to which he may be subject) to a penalty not exceeding five pounds.

Penalty on passengers practising frauds on the promoters.

51. If any person travelling or having travelled in any carriage on any tramway avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding forty shillings (1)

Transient offenders.

52. It shall be lawful for any officer or servant of the promoters or lessees of any tramway, and all persons called by him to his assistance, to seize and detain any person discovered either in or after committing or attempting to commit any such offence as in the next preceding section is mentioned, and whose name or residence is unknown to such officer or servant until such person can be conveniently taken before a justice, or until he be otherwise discharged by due course of law.

Penalty for bringing dangerous goods on the tramway.

53. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding twenty pounds for every such offence, and it shall be lawful for such promoters or lessees to refuse to take any parcel that they may suspect to contain goods of a dangerous nature, or require the same to be opened to ascertain the fact (2).

Penalty for persons using tramways with carriages with flange wheels, &c.

54. If any person (except under a lease from or by agreement with the promoters, or under license from the Board of Trade, as by this Act provided), uses a tramway or any part thereof with carriages having flange wheels or other wheels suitable only to run on the rail of such tramway, such person shall for every such offence be liable to a penalty not exceeding twenty pounds (3).

Miscellaneous.

Promoters or lessees to be responsible for all damages.

55. The promoters or lessees, as the case may be, shall be answerable for all accident, damages, and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and shall save harmless all road and other authorities, companies, or bodies, collectively and individually, and their officers and servants, from all damages and costs in respect of such accidents, damages, and injuries.

Recovery of tolls, penalties, &c.

56. All tolls, penalties, and charges under this Act, or under any bye-law made in pursuance of this Act, may be recovered and enforced as fol ows (4); in England before

(1) Compare *Dyson* v. *London & North Western Ry. Co.*, 7 Q. B. D. 32, 50 L. J. M. C. 78, 44 L. T. N. S. 609, 29 W. R. 565; *London & Brighton Ry. Co.* v. *Watson*, 4 C. P. D. 118, 48 L. J. C. P. 316, 40 L. T. N. S. 183, 27 W. R. 614; *Langdon* v. *Howells*, 4 Q. B. D. 337, 48 L. J. M. C. 113, 40 L. T. N. S. 880, 27 W. R. 657; *Saunders* v. *South Eastern Ry. Co.*, 5 Q. B. D. 456, 49 L. J. Q. B. 761, 43 L. T. N. S. 281, 29 W. R. 56, 44 J. P. 781; *Dearden* v. *Townsend*, L. R. 1 Q. B. 10, 35 L. J. M. C. 50, 13 L. T. N. S. 323, 14 W. R. 52; *Bentham* v. *Hoyle*, 3 Q. B. D. 289, 47 L. J. M. C. 51, 37 L. T. N. S. 750, 26 W. R. 314; *Gillingham* v. *Walker*, 44 L. T. N. S. 715, 29 W. R. 896, 45 J. P. 470.

(2) See *Hearne* v. *Garton*, 2 E. & E. 66.

(3) As to what carriages come within the prohibition of this section, see *Cottam* v. *Guest*, cited in the note to section 34, *ante;* and *Liverpool Tramways Co.* v. *Liverpool Omnibus Co.*, W. N. (1870), p. 126.

(4) See the Summary Jurisdiction Act, 1879, 42 & 43 Vict. c. 49, and as to the recovery of penalties, see *R.* v. *Paget*, 8 Q. B. D. 151, 51 L. J. M. C. 9, 45 L. T. N. S.

Secs. 56–63.

two justices of the peace in manner directed by the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Act amending the same, and in Scotland before the sheriff or two justices as penalties under the Railways Clauses Consolidation (Scotland) Act, 1845.

Right of user only.

57. Notwithstanding anything in this Act contained the promoters of any tramway shall not acquire or be deemed to acquire any right other than that of user of any road along or across which they lay any tramway, nor shall anything contained in this Act exempt the promoters of any tramway laid along any turnpike road, or any other person using such tramway, from the payment of such tolls as may be levied in respect of the use of such road by the trustees thereof.

Arrangements between turnpike road trustees and promoters.

58. The trustees of any turnpike road and the promoters of any tramway proposed to be laid or laid along the same way, with the approval of the Board of Trade, enter into agreements with each other for the payment of a composition to such trustees in respect of the user of such road for such tramway and the conveyance of traffic thereon, and may with the same approval alter such agreements from time to time.

Reservation of rights of owners, &c. of mines.

59. Nothing in this Act shall limit or interfere with the rights of any owner, lessee, or occupier of any mines or minerals lying under or adjacent to any road along or across which any tramway shall be laid to work such mines and minerals, nor shall any such owner, lessee, or occupier be liable to make good or pay compensation for any damage which may be occasioned to such tramway by the working in the usual and ordinary course of their mines or minerals.

Reserving powers of street authorities to widen, &c. roads.

60. Nothing in this Act shall take away or affect any power which any road authority, or the owners, commissioners, undertakers, or lessees of any railway, tramway, or inland navigation, may have by law to widen, alter, divert, or improve any road, railway, tramway, or inland navigation.

Power for local or police authorities to regulate traffic in roads.

61. Nothing in this Act shall limit the powers of the local authority or police in any district to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters or of lessees as to the traffic of other persons.

Reservation of right of public to use roads.

62. Nothing in this Act or in any bye-law made under this Act shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway.

Regulating inquiries before referee appointed by the Board of Trade.

63. Every inquiry which by this Act the Board of Trade are empowered to make or direct shall be made in accordance with the following provisions:

(1.) The inquiry shall be held in public before an officer to be appointed in that behalf by the Board, hereinafter called the referee, and whose appointment shall be by writing, which shall specify all the matters referred to him:

(2.) Ten days notice at the least shall be given by the referee to the parties upon whose representation the Board of Trade shall have directed the inquiry, of the time and place at which the inquiry is to be commenced:

(3.) The inquiry shall be commenced at the time and place so appointed, and the referee may adjourn the inquiry from time to time as may be necessary to such time and place as he may think fit:

(4.) The referee by summons shall, on the application of any party interested in the inquiry, require the attendance before himself, at a place and time to be mentioned in the summons, of any person to be examined as a witness before him, and every person summoned shall attend the referee, and answer all questions

794, 30 W. R. 336, 46 J. P. 151. It would seem that a person guilty of disobedience to bye-laws is guilty of a criminal offence, so that the Court of Appeal would have no jurisdiction to hear the appeal from the High Court in such a case: *Mellor* v. *Denham*, 5 Q. B. D. 467, 49 L. J. M. C. 89, 42 L. T. N. S. 493, 44 J. P. 472. Compare *Hearne* v. *Garton*, 2 E. & E. 66, 5 Jur. N. S. 648, 28 L. J. M. C. 16, 33 L. T. 256.

touching the matter to be inquired into, and any person who wilfully disobeys any such summons or refuses to answer any question put to him by such referee for the purposes of the said inquiry shall be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him, and no person shall be required in any case in obedience to any such summons to travel more than ten miles from his place of abode:

(5.) The referee may and shall administer an oath, or an affirmation where an affirmation in lieu of an oath would be admitted in a court of justice, to any person tendered or summoned as a witness on the inquiry:

(6.) Any person who upon oath or affirmation wilfully gives false evidence before the referee shall be deemed guilty of perjury:

(7.) The referee shall make his report to the Board of Trade in writing, and shall deliver copies of the report upon request to all or any of the parties to the inquiry.

Rules for carrying Act into effect.

64. The Board of Trade may from time to time make, and, when made, may rescind, annul, or add to, rules with respect to the following matters:

(1.) The proceedings to be had before the Board under this Act:

(2.) The payment of money or lodgment of securities by way of deposits, the repayment and forfeiture of the same, the investment of the same, the amount and payment of interest or dividends from time to time accruing due on such deposits:

(3.) The plans and sections of any works to be deposited by promoters under this Act:

(4.) As to any other matter or thing in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

Any rules made in pursuance of this section shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if enacted in this Act, and shall be judicially noticed.

Any rules made in pursuance of this section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting within three weeks after the beginning of the then next session of Parliament.

Schedule A.

SCHEDULES.

SCHEDULE A.

Part I.

Districts of Local Authorities.	Description of Local Authority of District set opposite its Name.	The Local Rate.
	England and Wales.	
The city of London and the liberties thereof.	The Mayor, Aldermen, and Commons of the City of London.	The consolidated sewers rate.
The metropolis (1.) . .	The Metropolitan Board of Works.	The metropolitan consolidated rate.
Boroughs (2.) . . .	The mayor, aldermen, and burgesses, acting by the council.	The borough fund or other property applicable to the purposes of a borough rate, or the borough rate.
Any place not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any Local Act with powers of improving, cleansing, or paving any town.	The commissioners, trustees, or other persons intrusted by the Local Act, with powers of improving, cleansing, or paving the town.	Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.
Any place not included in the above descriptions, and within the jurisdiction of local board constituted in pursuance of the Public Health Act, 1848, and the Local Government Act, 1858, or one of such Acts.	The local board . . .	General district rate.
Any place or parish not within the above descriptions, and in which a rate is levied for the maintenance of the poor.	The vestry, select vestry, or other body of persons, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	The poor rate.

Notes.

(1.) "The metropolis" shall include all parishes and places in which the Metropolitan Board of Works have power to levy a main drainage rate, except the city of London and the liberties thereof.

(2.) "Borough" shall mean any place for the time being subject to an Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of "Municipal Corporations in England and Wales."

Schedule A.

PART II.

Districts of Road Authorities.	Description of Road Authority of Districts set opposite its Name.
Parishes within the metropolis (1.) mentioned in Schedule (A.) to the Metropolis Management Act, 1855.	The vestries appointed for the purposes of the Metropolis Management Act, 1855.
Districts within the metropolis (1.) formed by the union of the parishes mentioned in Schedule (B.) to the Metropolis Management Act, 1855.	The Board of Works for the district appointed for the purpose of the Metropolis Management Act, 1855.

Note. (1.)—The term "Metropolis" has in this Part the same meaning as in Part I. of this schedule.

PART III.

Approval of Application by Local Authority for a Provisional Order.

The approval of any intended application for a Provisional Order by a local authority shall be in manner following; (that is to say,)

A resolution approving of the intention to make such application shall be passed at a special meeting of the members constituting such local authority.

Such special meeting shall not be held unless a month's previous notice of the same, and of the purpose thereof, has been given in manner in which notices of meetings of such local authority are usually given.

Such resolution shall not be passed unless two thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting, concur in the resolution; provided that if in Scotland the local authority be the road trustees, it shall not be necessary that two thirds of such trustees shall be present at the meeting, but the resolution shall not be valid unless two thirds of the members present vote in favour of such resolution, and unless the said resolution is confirmed in like manner at another meeting called as aforesaid and held not less than three weeks and not more than six weeks thereafter. Where any such resolution relating to the metropolis as the same is defined in Part I. of this schedule, or to any district in Scotland of which road trustees are the local authority, has been passed in manner aforesaid, the intended application to which such resolution relates shall be deemed to be approved.

Schedule B.

SCHEDULE B.

PROVISIONAL ORDERS.

PART I.

Advertisement in October or November of intended application.

(1.) Every advertisement is to contain the following particulars:

1. The objects of the intended application.
2. A general description of the nature of the proposed works, if any.
3. The names of the townlands, parishes, townships, and extra-parochial places in which the proposed works, if any, will be made.
4. The times and places at which the deposit under Part II. of this schedule will be made.
5. An office, either in London or at the place to which the intended application relates, at which printed copies of the draft Provisional Order, when deposited, and of the Provisional Order, when made, will be obtainable as hereinafter provided.

(2.) The whole notice is to be included in one advertisement, which is to be headed with a short title descriptive of the undertaking.

(3.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed undertaking, where the proposed works (if any) will be made; or if there be no such

Schedule B. newspaper, then in some one and the same newspaper published in the county in which every such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(4.) The advertisement is also, in every case, to be inserted once at least in the *London* or *Edinburgh Gazette*, accordingly as the district is situate in England or Scotland.

PART II.

Deposit on or before 30th November.

(1.) The promoters are to deposit—

1. A copy of the advertisement published by them.
2. A proper plan and section of the proposed works, if any, such plan and section to be prepared according to such regulations as may from time to time be made by the Board of Trade in that behalf.

(2.) The documents aforesaid are to be deposited for public inspection—

In England, in the office of the clerk of the peace for every county, riding, or division, and of the parish clerk of every parish and the office of the local authority of every district in or through which any such undertaking is proposed to be made; in Scotland, in the office of the principal sheriff clerk for every county, district, or division which will be affected by the proposed undertaking, or in which any proposed new work will be made.

(3). The documents aforesaid are also to be deposited at the office of the Board of Trade.

PART III.

Deposit on or before 23rd December.

(1.) The promoters are to deposit at the office of the Board of Trade—

1. A memorial signed by the promoters, headed with a short title descriptive of the undertaking (corresponding with that at the head of the advertisement), addressed to the Board of Trade, and praying for a Provisional Order.
2. A printed draft of the Provisional Order as proposed by the promoters, with any schedule referred to therein.
3. An estimate of the expense of the proposed works, if any, signed by the persons making the same.

(2.) They are also to deposit a sufficient number of such printed copies at the office named in that behalf in the advertisement; such copies to be there furnished to all persons applying for them at the price of not more than one shilling each.

(3.) The memorial of the promoters (to be written on foolscap paper, bookwise, with quarter margin) is to be in the following form, with such variations as circumstances require:

[*Short title of undertaking.*]

To the Board of Trade,

The memorial of the promoters of [*short title of undertaking*]:

Showeth as follows;

1. Your memorialists have published in accordance with the requirements of the Tramways Act, 1870, the following advertisement:

[*Here advertisement to be set out verbatim.*]

2. Your memorialists have also deposited, in accordance with the requirements of the said Act, copies of the said advertisement and [*here state deposit of the several matters required by Act.*]

Your memorialists, therefore, pray that a Provisional Order may be made in the terms of the draft proposed by your memorialists, or in such other terms as may seem meet.

A. B.
C. D.
Promoters.

PART IV.

Deposit and advertisement of Provisional Order when made.

(1.) The promoters are to deposit printed copies of the Provisional Order, when settled and made for public inspection in the offices of clerks of the peace and sheriff clerks, where the documents required to be deposited by them under Part II. of this schedule were deposited.

(2.) They are also to deposit a sufficient number of such printed copies at the office

named in that behalf in the advertisement, such copies to be there furnished to all persons applying for them at the price of not more than each. Schedule B.

(3.) They are also to publish the Provisional Order as an advertisement once in the local newspaper in which the original advertisement of the intended application was published, or, in case the same shall no longer be published, in some other newspaper published in the district.

SCHEDULE C.

Schedule C.

PART I.

Notice and Deposit of Lease by Local Authority.

One month before any lease is submitted to the Board of Trade, notice of the intention to make such lease shall be given by advertisement.

(1.) Every advertisement is to contain—

1. The term of the lease.
2. The rent reserved.
3. A general description of the covenants and conditions contained therein.
4. The place where the same is deposited for public inspection.

(2.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by the proposed lease; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(3.) The advertisement is also, in every case, to be inserted once at least in the *London* or *Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland.

Deposit.

A copy of such lease shall be deposited for public inspection during office hours at the office of the local authority or at some other convenient place within the district to which such lease relates.

PART II.

Notice of Bye-laws.

Within one month after the making of any bye-law notice of the making of the same, and a copy of such bye-law, shall be published by advertisement in manner following:

(1.) The advertisement is to be inserted once at least in each of two successive weeks in some one and the same newspaper published in the district affected by such bye-law; or if there be no such newspaper, then in some one and the same newspaper published in the county in which such district, or some part thereof, is situate; or if there be none, then in some one and the same newspaper published in some adjoining or neighbouring county.

(2.) The advertisement is also, in every case, to be inserted once at least in the *London* or *Edinburgh Gazette*, accordingly as the district to which it relates is situate in England or Scotland.

LOCOMOTIVE ACT, 1861.

24 & 25 VICT. c. 70.

An Act for regulating the use of Locomotives on Turnpike and other Roads; and the Tolls to be levied on such Locomotives and on the Waggons and Carriages drawn or propelled by the same. [1st *August*, 1861.]

Section 1. Whereas the use of locomotives is likely to become common on turnpike and other roads: And whereas the General Turnpike and Highway Acts and many of the local turnpike Acts do not contain any provisions for regulating the use of locomotives on the roads to which they respectively apply, nor do they authorise the levying of tolls upon or in respect of any locomotive using the roads, or upon or in respect of any waggon or carriage drawn by locomotives: And whereas under and by virtue of certain local turnpike Acts tolls may be levied upon locomotives and other engines drawing or propelling waggons or carriages, or upon the waggons or carriages so drawn or propelled, which are or may be prohibitory of the use of locomotives on the roads to which the said Acts respectively apply: And whereas the weighing clauses in the General Turnpike Acts have not been framed in anticipation of traffic by locomotives, and are in many respects ill adapted to the profitable carrying of goods, or to the levying of just and adequate tolls upon waggons or carriages drawn by locomotives: And whereas it is desirable that the use of locomotives on turnpike and other roads should be regulated by uniform general provisions, and that tolls should be levied upon such locomotives and the waggons or carriages drawn by such locomotives upon turnpike roads: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Scale of tolls to be taken after passing of this Act.

1. From and after the passing of this Act all trustees, corporations, commissioners, and other persons acting under and in execution of any existing general or local turnpike road Act or public bridge Act shall demand and take tolls not exceeding the tolls following; (that is to say,)

For every locomotive propelled by any power containing within itself the machinery for its own propulsion, such a toll for every two tons weight or fractional part of every two tons weight that such locomotive shall weigh as shall be equal to the toll or tolls by their respective Acts made payable for every horse drawing any waggon, wain, cart, or carriage with wheels of a width similar to those of such locomotive: or in the case of a toll by any such Act made payable being charged on the horse or horses drawing any such waggon, wain, cart, or carriage, without reference to the width of the wheels thereof, then such a toll for every two tons or fractional part thereof that such locomotive shall weigh as shall be equal to one horse drawing such waggon, wain, cart, or carriage; which tolls respectively shall be payable so often as tolls made payable as aforesaid for such waggon, wain, cart, or carriage shall be payable at the same gate: Provided always, that if the wheels of such locomotive shall rest upon any shoe or other bearing the surface of which shall bear upon the ground so as to prevent the wheels coming in contact therewith, such and the same tolls only shall be demanded and payable as if the wheels thereof were of a width similar to such shoe or bearing:

For every waggon, wain, cart, or carriage drawn or propelled by any locomotive, for each pair of wheels thereof such a toll as shall not exceed the toll by their respective Acts made payable for two horses drawing any waggon, wain, cart, or carriage with wheels of a similar width, and for every additional wheel thereof one half toll in addition to the said toll; or in the case of a toll by any such Act made payable being charged on the horse or horses drawing any such waggon, wain, cart, or carriage, without reference to the width of the wheels thereof, then such a toll for each wheel as shall be equal to one horse drawing such waggon, wain, cart, or carriage; which said toll or tolls shall be payable so often as the toll made payable as aforesaid for such waggon, wain, cart, or carriage drawn by horses shall be payable at the same gate:

Provided always, that in every case where the wheels of any waggon, wain, cart, or carriage shall not all be cylindrical, as described in the Act of the third year of George the Fourth, chapter one hundred and twenty-six, section nine, the toll payable in respect thereof shall be one half more.

Repeal of former enactments as to tolls to be taken for locomotives.

2. All clauses and provisions in any local or general turnpike road Act or public bridge Act authorising tolls to be demanded or taken upon locomotives or carriages drawn by steam or any other than animal power, different to the tolls herein provided for, shall, so far as the same relate to such tolls, be and the same are hereby repealed: Provided always, that this enactment shall not be deemed or construed to extend to any tolls authorised to be taken in respect of any private roads or private bridges, or to the roads comprised in "The Commercial Roads Continuation Act, 1849."

3. [As to the size and weight of locomotives (1).]

As to the weight on each pair of wheels.

4. It shall not be lawful for any waggon, wain, cart, or other carriage so drawn or propelled as aforesaid, not having cylindrical wheels, to carry any greater weight than is permitted in such waggon, wain, cart, or carriage by the General Turnpike Act; and it shall not be lawful for any waggon, wain, cart, or other carriage having cylindrical wheels to carry over or above the weight of the waggon, wain, cart, or carriage, any greater weight than one ton and a half for each pair of wheels, unless the fellies, tires, or shoes are four inches or more in breadth; nor to carry a greater weight than two tons for each pair of wheels, unless the fellies, tires, or shoes are six inches or more in breadth; nor to carry a greater weight than three tons for each pair of wheels, unless the fellies, tires, or shoes are eight inches or more in breadth; and for every single wheel one half of that permitted to be carried on a pair of wheels; nor in any case to carry a greater weight than four tons on each pair of wheels, or two tons on each wheel; but if such waggons, wains, or other carriages are built and constructed with springs upon each axle, then they shall be allowed to carry one-sixth more weight in addition to the above-mentioned weights upon each pair of wheels: Provided always, that the regulation of weight herein mentioned and provided shall not extend to any waggon, wain, cart, or other carriage carrying only one tree, or one log of timber, or one block of stone, or one cable of rope, or one block, plate, roll, or vessel of iron or other metal, or compounded of any two or more metals cast, wrought, or united in one piece.

5. [Power to Secretary of State to prohibit the use of locomotives destructive to highways or dangerous to the public (2).]

Use of locomotives restricted over suspension and other bridges.

6. It shall not be lawful for the owner or driver of any locomotive to drive it over any suspension bridge nor over any bridge on which a conspicuous notice has been placed, by the authority of the surveyor or persons liable to the repair of the bridge, that the bridge is insufficient to carry weights beyond the ordinary traffic of the district, without previously obtaining the consent of the surveyor of the road or bridgemaster under whose charge such bridge shall be for the time being, or of the persons liable to the repair of such bridge; and in case such owner of the locomotive and surveyor of the road or bridge, or bridgemaster, shall differ in opinion as to the sufficiency of any

(1) Repealed by the Highways and Locomotives Amendment Act, 1878, 41 & 42 Vict. c. 77, s. 28, *post*, which enacts other provisions in lieu thereof.

(2) This section and all orders made in pursuance of it are repealed by the Locomotives Act, 1865, 28 & 29 Vict. c. 83, s. 2, *post*.

Secs. 6—12.

bridge to sustain the transit of the locomotive, then the question shall be determined by an officer to be appointed, on the application of either party, by one of Her Majesty's principal Secretaries of State, whose certificate of sufficiency of such bridge shall entitle the owner of the locomotive to take the same over such bridge.

Damage caused by locomotives to bridges to be made good by owners.

7. Where any turnpike or other roads, upon which locomotives are or hereafter may be used, pass or are or shall be carried over or across any stream or watercourse, navigable river, canal, or railway, by means of any bridge or arch (whether stationary or moveable), and such bridge or arch, or any of the walls, buttresses, or supports thereof, shall be damaged by reason of any locomotive or any waggon or carriage drawn or propelled by or together with a locomotive passing over the same or coming into contact therewith, none of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons interested in or having the charge of such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, shall be liable to repair or make good any damage so to be occasioned, or to make compensation to any person for any obstruction, interruption, or delay which may arise therefrom to the use of such bridge or arch, navigable river, canal, or railway; but every such damage shall be forthwith repaired to the satisfaction of the proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons as aforesaid, respectively interested in or having the charge of such river, canal, or railway, or the tolls thereof, or of such bridge or arch, by and at the expense of the owner or owners or the person or persons having the charge of such locomotive at the time of the happening of such damage; and all such owner and owners, person and persons having the charge of such locomotive as aforesaid, shall also be liable, both jointly and severally, to reimburse and make good as well to the proprietors, undertakers, directors, conservators, trustees, commissioners, and other persons interested in or having the charge of any such navigable river, canal, or railway, or the tolls thereof, or of such bridge or arch, as to all persons navigating on or using, or who but for such obstruction, interruption, or delay would have navigated on or used the same, all losses and expenses which they or any of them may sustain or incur by reason of any such obstruction, interruption, or delay, such losses and expenses to be recoverable by action at law, which action, in case of such proprietors, undertakers, directors, conservators, trustees, commissioners, or other persons so interested as aforesaid, may be brought in the name or names of their agent or agents, clerk or clerks for the time being, or by any person or persons legally authorised to act in their behalf.

Locomotives propelled by steam to consume their own smoke.

8. Every locomotive propelled by steam or any other than animal power to be used on any turnpike road or public highway shall be constructed on the principle of consuming and so as to consume its own smoke; and any person using any locomotive not so consuming its own smoke shall, on conviction thereof before any two of Her Majesty's justices of the peace, forfeit any sum not exceeding five pounds for every day during which such locomotive shall be used on any such turnpike road or public highway.

9. [As to the number of persons in charge of locomotive and waggons. Lights to be used at night (1).]

Exemption from tolls of waggons, &c. now exempt under any general or local act.

10. All waggons, wains, carts, or carriages, as hereinbefore described, drawn by any locomotive, and loaded with any materials such as are now exempt from toll under the provisions of any general or local Act, shall be entitled to the same exemption as they would be if drawn by animal power.

11. [Limit of speed of locomotives on public highways, &c. (2).]

Provisions of general acts relating to turnpike roads to apply to locomotives.

12. All the clauses and provisions of any general or local Acts relating to turnpike roads or highways shall, so far as the same are not expressly altered or repealed by or are not inconsistent with the provisions of this Act, apply to all locomotives propelled by other than animal power, and to all waggons, wains, carts, and carriages of any other description drawn by such locomotive, and to the owners, drivers, and attendants thereof, in like manner as if drawn by animal power: Provided always, that the weight of every locomotive, and the name of the owner or owners thereof, shall be conspicuously and

(1) Repealed by the Locomotives Act, 1865, 28 & 29 Vict. c. 83, s. 2, *post*. See now section 3 of that Act, *post*.

(2) Repealed by the Locomotives Act, 1865, 28 & 29 Vict. c. 83, s. 2, *post*. See now section 4 of that Act, *post*.

legibly affixed thereon; and any owner not having affixed such weight and such name, shall, upon conviction thereof before two justices, forfeit any sum not exceeding five pounds; and any owner who shall fraudulently affix thereon any incorrect weight shall, upon conviction thereof, forfeit any sum not exceeding ten pounds.

Right of action in case of nuisance.

13. Nothing in this Act contained shall authorise any person to use upon a highway a locomotive engine which shall be so constructed or used as to cause a public or private nuisance; and every such person so using such engine shall, notwithstanding this Act, be liable to an indictment or action, as the case may be, for such use, where, but for the passing of this Act, such indictment or action could be maintained.

Short title.

14. This Act may be cited as the "Locomotive Act, 1861."

Extent of Act.

15. This Act shall extend to Great Britain.

LOCOMOTIVES ACT, 1865.

28 & 29 VICT. c. 83.

An Act for further regulating the Use of Locomotives on Turnpike and other Roads for Agricultural and other Purposes. [*5th July*, 1865.]

Secs. 1—3.

24 & 25 Vict. c. 70.

Whereas by the "Locomotives Act, 1861," certain provision was made for regulating the use of locomotives on turnpike and other roads, and it is expedient that further and fuller provision should be made for that object: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Commencement of Act.

1. This Act shall not come into operation till the first day of September one thousand eight hundred and sixty-five, which day is hereinafter referred to as the commencement of the Act, and shall cease and determine on the first of September one thousand eight hundred and sixty-seven.

Certain sections of 24 & 25 Vict. c. 70 repealed.

2. After the commencement of this Act, and so long as the same shall continue in force, the fifth, ninth, eleventh, and fifteenth sections of the said recited Act, and all orders made in pursuance of the said fifth section, are hereby repealed.

Rules for the manner of working locomotives on turnpike roads and highways as herein stated.

3. Every locomotive propelled by steam or any other than animal power on any turnpike road or public highway shall be worked according to the following rules and regulations; *viz.*

Firstly, at least three persons shall be employed to drive or conduct such locomotive, and if more than two waggons or carriages be attached thereto, an additional person shall be employed, who shall take charge of such waggons or carriages:

Secondly, one of such persons, while any locomotive is in motion, shall precede such locomotive on foot by not less than sixty yards, and shall carry a red flag constantly displayed, and shall warn the riders and drivers of horses of the approach of such locomotives, and shall signal the driver thereof when it shall be necessary to stop, and shall assist horses, and carriages drawn by horses, passing the same:

Thirdly, the drivers of such locomotives shall give as much space as possible for the passing of other traffic:

Fourthly, the whistle of such locomotive shall not be sounded for any purpose whatever; nor shall the cylinder taps be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor shall the steam be allowed to attain a pressure such as to exceed the limit fixed by the safety valve, so that no steam shall blow off when the locomotive is upon the road:

Fifthly, every such locomotive shall be instantly stopped, on the person preceding the same, or any other person with a horse, or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped:

Sixthly, any person in charge of any such locomotive shall provide two efficient lights to be affixed conspicuously, one at each side on the front of the same, between the hours of one hour after sunset and one hour before sunrise.

Penalty on non-compli-

In the event of a non-compliance with any of the provisions of this section, the owner of the locomotive shall, on summary conviction thereof before two justices, be liable to a

penalty not exceeding ten pounds; but it shall be lawful for such owner, on proving that he has incurred such penalty by reason of the negligence or wilful default of any person in charge of or in attendance on such locomotive, to recover summarily from such person the whole or any part of the penalty he may have incurred as owner.

ance with rules.

4. Subject and without prejudice to the regulations hereinafter authorised to be made by local authorities, it shall not be lawful to drive any such locomotive along any turnpike road or public highway at a greater speed than four miles an hour, or through any city, town, or village at a greater speed than two miles an hour; and any person acting contrary thereto shall for every such offence, on summary conviction thereof, forfeit any sum not exceeding ten pounds.

Limit of speed of locomotives on turnpike roads and highways.

5. Subject to the provisions of this Act, any locomotive which shall not exceed nine feet in width or fourteen tons in weight may be used on any turnpike road or public highway, provided that the wheels of such locomotive be constructed according to the requirements of the said recited Act; and no locomotive exceeding nine feet in width or fourteen tons in weight shall be used on any such road, except subject to the provisions contained in the third section of the said Act as to the use of locomotives exceeding seven feet in width and twelve tons in weight.

Size and weight of locomotives which may be used.

6. Any provision in any Act contained prohibiting, under penalty, the erection and use of any steam engine, gin, or other like machine, or any machinery attached thereto, within the distance of twenty-five yards from any part of any turnpike road, highway, carriageway, or cartway, unless such steam engine, gin, or other like engine or machinery be within some house or other building, or behind some wall, fence, or screen sufficient to conceal or screen the same from such turnpike road, highway, carriageway, or cartway, shall not extend to prohibit the use of any locomotive steam engine for the purpose of ploughing within such distance of any such turnpike road, highway, carriageway, or cartway, provided a person shall be stationed in the road, and employed to signal the driver when it shall be necessary to stop, and to assist horses, and carriages drawn by horses, passing the same, and provided the driver of the engine do stop in proper time.

Restrictions as to the use of steam engines within 25 yards of roads not to apply to locomotives used for ploughing purposes.

7. The name and residence of the owner of every locomotive shall be affixed thereto in a conspicuous manner. If it is not so affixed the owner shall, on summary conviction, be liable to a penalty not exceeding two pounds.

Name and residence of owner to be affixed to locomotives.

8. The following local authorities, (that is to say,)

(1.) In the City of London and liberties thereof, the Court of the Lord Mayor and Aldermen;

(2.) In the metropolis, as defined by the Act of the session of the eighteenth and nineteenth years of Her present Majesty, chapter one hundred and twenty (except the City of London), the Metropolitan Board of Works;

(3.) In any borough in England the population of which shall have exceeded five thousand at the last census, the council of the borough;

(4.) In any borough or town in England the population of which shall have exceeded five thousand at the last census, not within the jurisdiction of a council, but within the jurisdiction of any trustees or improvement commissioners appointed under any public or private Act of Parliament, the trustees or commissioners;

(5.) In any borough or town in Scotland the population of which shall have exceeded ten thousand at the last census, within the jurisdiction of a town council, the town council, and in any such town in Scotland not within the jurisdiction of a town council, but subject to the jurisdiction of police commissioners, or of trustees exercising under any public or private Act of Parliament the functions of police commissioners, the police commissioners, or, where there are no police commissioners, then the trustees,—

Power to local authorities to make orders, as to hours, &c. locomotives may pass through cities, &c.

may make orders as to the hours during which (and as to the speed, not in any case to exceed two miles an hour, at which,) locomotives are to pass through the city or place subject to their respective jurisdictions; and any person in charge of a locomotive acting contrary to such regulations shall, on summary conviction, be liable to a penalty not exceeding ten pounds:

Penalty on acting contrary to such orders.

Every order made in pursuance of this section shall be reduced into writing, and shall have affixed thereto the common seal of the local authority, where they have a common

Secs. 8—13.

seal, and shall be signed by the members of the local authority, or any two of them, where they have not a common seal:

A copy of such order shall be affixed to some public place within the jurisdiction of the local authority, and advertised in some newspaper circulating within the jurisdiction of the local authority, and the production of a newspaper containing such advertisement shall be evidence of the copy having been advertised in pursuance of this Act.

9. [In Ireland the county surveyor to be deemed the conservator of the roads in his county, and proceedings for damage to be taken in his name.]

10. [How penalties to be recovered and applied in Ireland.]

Sect. 41 of 25 & 26 Vict. c. 93 not to be affected.

11. Nothing in this Act contained shall repeal, alter, or in any way affect the provisions of the forty-first section of "The Thames Embankment Act, 1862."

Saving as to actions at law.

12. Nothing in this Act contained shall authorise any person to use a locomotive which may be so constructed or used as to be a public nuisance at common law, and nothing herein contained shall affect the right of any person to recover damages in respect of any injury he may have sustained in consequence of the use of a locomotive.

Short title.

13. This Act may be cited as "The Locomotives Act, 1865;" and "The Locomotives Act, 1861," and this Act, shall be construed together as one Act.

FACTORY AND WORKSHOP ACT, 1878.

41 VICT. c. 16.

An Act to consolidate and amend the law relating to Factories and Workshops (1).

[27*th May*, 1878].

Secs. 1--4.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

Commencement of Act.

Preliminary.

1. This Act may be cited as the Factory and Workshop Act, 1878.

2. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act: [Provided that at any time after the passing of this Act, any appointment, regulation, or order may be made, any notice issued, form prescribed, and act done which appears to a Secretary of State necessary or proper to be made, issued, prescribed, or done for the purpose of bringing this Act into operation at the commencement thereof (2)].

PART I.

General Law relating to Factories and Workshops.

(1.) *Sanitary Provisions.*

Sanitary condition of factory and workshop.

3. A factory and a workshop shall be kept in a cleanly state and free from effluvia arising from any drain, privy, or other nuisance.

A factory or workshop shall not be so overcrowded while work is carried on therein as to be injurious to the health of the persons employed therein, and shall be ventilated in such a manner as to render harmless, so far as is practicable, all the gases, vapours, dust, or other impurities generated in the course of the manufacturing process or handicraft carried on therein that may be injurious to health.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act (3).

Notice by inspector to

4. Where it appears to an inspector under this Act that any act, neglect, or default in

(1) By the Public Health Act, 1875, sections 10, 11, *ante*, pp. 50, 51, local authorities under that Act have, &c., all powers, &c., under the Bakehouse Regulation Act, 1863. But this latter Act is now repealed by the present Act, which itself makes provision as to bakehouses. See note (1), *ante*, p. 47.

(2) The portion within brackets is repealed by the Statute Law Revision Act, 1883.

(3) See further, the Public Health Act, 1875, s. 91 (6), *ante*, p. 90. As respects every retail bakehouse, the provisions of this section are to be enforced by the local authority of the district. See the Factory and Workshop Act, 1883, 46 & 47 Vict. c. 53, s. 17, *post*.

Secs. 4—34.

sanitary authority of sanitary defects in factory or workshop.

relation to any drain, watercloset, earthcloset, privy, ashpit, water-supply, nuisance, or other matter in a factory or workshop is punishable or remediable under the law relating to public health, but not under this Act, that inspector shall give notice in writing of such act, neglect, or default to the sanitary authority in whose district the factory or workshop is situate, and it shall be the duty of the sanitary authority to make such inquiry into the subject of the notice, and take such action thereon, as to that authority may seem proper for the purpose of enforcing the law (1).

An inspector under this Act may, for the purposes of this section, take with him into a factory or a workshop a medical officer of health, inspector of nuisances, or other officer of the sanitary authority.

(2.) *Safety.*

5.—9. [Fencing of certain machinery, &c.]

(3.) *Employment and Meal Hours.*

10.—21. [Period of employment of children, young persons, and women, &c.]

(4.) *Holidays.*

22. [Days to be observed as holidays, and half holidays to be allowed in factories and workshops.]

(5.) *Education of Children.*

23.—26. [Attendance at school of children employed in a factory or workshop, &c.]

(6.) *Certificates of Fitness for Employment.*

27.—30. [Certificate of fitness for employment of children and young persons under sixteen in factories, &c.]

(7.) *Accidents.*

31, 32. [Notice of accidents causing death or bodily injury, &c.]

PART II.

Special Provisions relating to particular Classes of Factories and Workshops.

(1.) *Special Provisions for Health in certain Factories and Workshops.*

Limewashing and washing of the interior of factories and workshops.

33. For the purpose of securing the observance of the requirements of this Act as to cleanliness in every factory or workshop, all the inside walls of the rooms of a factory or workshop, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of a factory or workshop, if they have not been painted with oil or varnished once at least within seven years, shall be limewashed once at least within every fourteen months, to date from the period when last limewashed; and if they have been so painted or varnished shall be washed with hot water and soap once at least within every fourteen months, to date from the period when last washed.

A factory or workshop in which there is a contravention of this section shall be deemed not to be kept in conformity with this Act.

Where it appears to a Secretary of State that in any class of factories or workshops, or parts thereof, the regulations in this section are not required for the purpose of securing therein the observance of the requirements of this Act as to cleanliness, or are by reason of special circumstances inapplicable, he may, if he thinks fit, by order made under this part of this Act, grant to such class of factories or workshops, or parts thereof, a special exception that the regulations in this section shall not apply thereto (2).

Limewashing, painting, and

34. Where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand

(1) See the Public Health Act, 1875, s. 38, *ante*, p. 63.

(2) See further the Factory and Workshop Act, 1883, 46 & 47 Vict. c. 53, ss. 15—17, *post*. The provisions of the above sections, 33, 34, and 35, are to be enforced by the local authority of the district: Factory and Workshop Act, 1883, s. 17, *post*.

persons, all the inside walls of the rooms of such bakehouse, and all the ceilings or tops of such rooms (whether such walls, ceilings, or tops be plastered or not), and all the passages and staircases of such bakehouse, shall either be painted with oil or varnished or be limewashed, or be partly painted or varnished and partly limewashed; where painted with oil or varnished there shall be three coats of paint or varnish, and the paint or varnish shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months; where limewashed the limewashing shall be renewed once at least in every six months.

Washing of the interior of bakehouses (1).

A bakehouse in which there is any contravention of this section shall be deemed not to be kept in conformity with this Act (2).

35. Where a bakehouse is situate in any city, town, or place containing, according to the last published census for the time being, a population of more than five thousand persons, a place on the same level with the bakehouse, and forming part of the same building, shall not be used as a sleeping place, unless it is constructed as follows; that is to say,

Provision as to sleeping places near bakehouses (1).

unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling; and

unless there be an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation.

Any person who lets or occupies or continues to let or knowingly suffers to be occupied any place contrary to this section shall be liable to a fine not exceeding, for the first offence, twenty shillings, and for every subsequent offence five pounds (2).

36. [Provision as to ventilation by fan in factories and workshops.]

37. [Protection of workers in wet-spinning.]

(2.) *Special Restrictions as to Employment, Meals, and Certificates of Fitness.*

38.—41. [Prohibition of employment of children and young persons in certain factories or workshops, &c.]

(3.) *Special Exceptions relaxing General Law in certain Factories and Workshops.*

42.—60. (a.) *Period of Employment*; (b.) *Meal hours*; (c.) *Overtime*; (d.) *Nightwork.*

(4.) *Special Exceptions for Domestic and certain other Factories and Workshops.*

61. The provisions of this Act which relate:

(1.) To the cleanliness (including limewashing, painting, varnishing, and washing) or to the freedom from effluvia, or to the overcrowding, or ventilation of a factory or workshop; or

(2.) To all children, young persons, and women employed in a factory or workshop having the times allowed for meals at the same hour of the day, or during any part of the times allowed for meals in a factory or workshop being employed in the factory or workshop or being allowed to remain in any room; or

(3.) To the affixing of any notice or abstract in a factory or workshop; or specifying any matter in the notice so affixed; or

(4.) To the allowance of any holidays to a child, young person, or woman; or

(5.) To the sending notice of accidents;

shall not apply—

Exception of domestic factories and workshops and certain other workshops from certain provisions of the Act.

(*a.*) Where persons are employed at home, that is to say, to a private house, room, or place which, though used as a dwelling, is by reason of the work carried on there a factory or workshop within the meaning of this Act, and in which neither steam, water, nor other mechanical power is used, and in which the only persons employed are members of the same family dwelling there; or

(*b.*) To a workshop which is conducted on the system of not employing children or young persons therein, and the occupier of which has served on an inspector notice of his intention to conduct his workshop on that system.

And the provisions of this Act with respect to certificates of fitness for employment shall apply to any such private house, room, or place as aforesaid, which by reason of the

(1) See note (1), *ante*, p. 1127. (2) See note (2) to section 33, *ante*.

Secs. 61–66.

nature of the work carried on there is a factory, as if the same were a workshop within the meaning of this Act, and not a factory.

Where the occupier of a workshop has served on an inspector notice of his intention to conduct that workshop on the system of not employing children or young persons therein, the workshop shall be deemed for all the purposes of this Act to be conducted on the said system until the occupier changes it, and no change shall be made until the occupier has served on the inspector notice of his intention to change the system, and until the change a child or young person employed in the workshop shall be deemed to be employed contrary to the provisions of this Act. A change in the said system shall not be made oftener than once a quarter, unless for special cause allowed in writing by an inspector.

Nothing in this section shall exempt a bakehouse from the provisions of this Act with respect to cleanliness (including limewashing, painting, varnishing, and washing), or to freedom from effluvia.

62. [Exception for certain descriptions of flax scutch mills from certain provisions of Act.]

(5.) *Supplemental as to Special Provisions.*

Requirement of sanitary provisions as condition of special exceptions.

63. Where it appears to a Secretary of State that the adoption of any special means or provision for the cleanliness or ventilation of a factory or workshop is required for the protection of the health of any child, young person, or woman employed, in pursuance of an exception under this part of this Act, either for a longer period than is otherwise allowed by this Act, or at night, he may by order made under this part of this Act direct that the adoption of such means or provision shall be a condition of such employment; and if it appears to a Secretary of State that the adoption of any such means or provision is no longer required, or is, having regard to all the circumstances, inexpedient, he may, by order made under this part of this Act, rescind the order directing such adoption without prejudice to the subsequent making of another order.

Power to rescind order granting or extending exception.

64. Where an exception has been granted or extended under this part of this Act by an order of a Secretary of State, and it appears to a Secretary of State that such exception is injurious to the health of the children, young persons, or women employed in, or is no longer necessary for the carrying on of the business in, the class of factories or workshops or parts thereof to which the said exception was so granted or extended, he may by an order made under this part of this Act rescind the grant or extension, without prejudice to the subsequent making of another order.

Provisions as to order of Secretary of State.

65. Where a Secretary of State has power to make an order under this part of this Act, the following provisions shall apply to that order:

(1.) The order shall be under the hand of the Secretary of State and shall be published in the *London Gazette*, and shall come into operation at the date of such publication in the *London Gazette*, or at any later date mentioned in the order:

(2.) The order may be temporary or permanent, conditional or unconditional, and whether extending a prohibition or exception, granting an exception, directing the adoption of any means or provisions, or rescinding a previous order, or effecting any other thing, may do so either wholly or partly:

(3.) The order shall be laid as soon as may be before both Houses of Parliament, and if either House of Parliament, within the next forty days after the same has been so laid before such House, resolve that such order ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such order or to the making of any new order:

(4.) The order, while it is in force, shall, so far as is consistent with the tenor thereof, apply as if it formed part of the enactment which provides for the extension or grant or otherwise for making the order.

Provisions as to occupier availing himself of special exceptions, and registry of work under them.

66. An occupier of a factory or workshop, not less than seven days before he avails himself of any special exception under this part of this Act, shall serve on an inspector, and (except in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply) affix in his factory or workshop notice of his intention so to avail himself, and whilst he avails himself of the exception shall keep the notice so affixed.

Before the service of such notice on the inspector the special exception shall not be deemed to apply to the factory or workshop, and after the service of such notice on the inspector it shall not be competent in any proceeding under this Act for the occupier to prove that such special exception does not apply to his factory or workshop, unless he has previously served on an inspector notice that he no longer intends to avail himself of such special exception.

The notice so served and affixed shall specify the hours for the beginning and end of the period of employment, and the times to be allowed for meals to every child, young person, and woman where they differ from the ordinary hours or times.

An occupier of a factory or workshop shall enter in the prescribed register and report to an inspector, the prescribed particulars respecting the employment of a child, young person, or woman in pursuance of an exception, but such entry and report need not be made in the case of a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply, except so far as may be from time to time prescribed by a Secretary of State.

Where the occupier of a factory or workshop avails himself of an exception under this part of this Act, and a condition for availing himself of such exception (whether specified in this part of this Act, or in an order of a Secretary of State made under this part of this Act) is not observed in that factory or workshop, then

(1.) If such condition relates to the cleanliness, ventilation, or overcrowding of the factory or workshop, the factory or workshop shall be deemed not to be kept in conformity with this Act; and

(2.) In any other case a child, young person, or woman employed in the factory or workshop, in alleged pursuance of the said exception, shall be deemed to be employed contrary to the provisions of this Act.

PART III.

Administration, Penalties, and Legal Proceedings.

(1.) *Inspection.*

Appointment, payment, &c. of inspectors of factories, and clerks and servants.

67. A Secretary of State from time to time, with the approval of the Treasury as to numbers and salaries, may appoint such inspectors (under whatever title he may from time to time fix) and such clerks and servants as he may think necessary for the execution of this Act, and may assign to them their duties and award them their salaries, and may constitute a principal inspector with an office in London, and may regulate the cases and manner in which the inspectors, or any of them, are to execute and perform the powers and duties of inspectors under this Act, and may remove such inspectors, clerks, and servants.

The salaries of the inspectors, clerks, and servants, and the expenses incurred by them or by a Secretary of State in the execution of this Act, shall be paid out of moneys provided by Parliament.

Notice of the appointment of every such inspector shall be published in the *London Gazette.*

A person who is the occupier of a factory or workshop, or is directly or indirectly interested therein or in any process or business carried on therein, or in a patent connected therewith, or is employed in or about a factory or workshop, shall not act as an inspector under this Act.

An inspector under this Act shall not be liable to serve in any parochial or municipal office.

Such annual report of the proceedings of the inspectors as the Secretary of State from time to time directs shall be laid before both Houses of Parliament.

A reference in this Act to an inspector refers, unless it is otherwise expressed, to an inspector appointed in pursuance of this section, and a notice or other document required by this Act to be sent to an inspector shall be sent to such inspector as a Secretary of State from time to time directs, by declaration, published in the *London Gazette* or otherwise as he thinks expedient for making the same known to all persons interested.

Secs. 68, 69.

Powers of inspectors.

68. An inspector under this Act shall for the purpose of the execution of this Act have power to do all or any of the following things; namely,

(1.) To enter, inspect, and examine at all reasonable times by day and night a factory and a workshop and every part thereof when he has reasonable cause to believe that any person is employed therein, and to enter by day any place which he has reasonable cause to believe to be a factory or workshop; and

(2.) To take with him in either case a constable into a factory in which he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and

(3.) To require the production of the registers, certificates, notices, and documents kept in pursuance of this Act, and to inspect, examine, and copy the same; and

(4.) To make such examination and inquiry as may be necessary to ascertain whether the enactments for the time being in force relating to public health and the enactments of this Act are complied with, so far as respects the factory or workshop and the persons employed therein; and

(5.) To enter any school in which he has reasonable cause to believe that children employed in a factory or workshop are for the time being educated; and

(6.) To examine either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or workshop, or such a school as aforesaid, or whom he has reasonable cause to believe to be or to have been within the preceding two months employed in a factory or workshop, and to require such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; and

(7.) To exercise such other powers as may be necessary for carrying this Act into effect.

The occupier of every factory and workshop, his agents and servants, shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, or the exercise of his powers under this Act in relation to such factory and workshop.

Every person who wilfully delays an inspector in the exercise of any power under this section, or who fails to comply with a requisition of an inspector in pursuance of this section, or to produce any certificate or document which he is required by or in pursuance of this Act to produce, or who conceals or prevents a child, young person, or woman from appearing before or being examined by an inspector, or attempts so to conceal or prevent a child, young person, or woman, shall be deemed to obstruct an inspector in the execution of his duties under this Act: Provided always, that no one shall be required under this section to answer any question or to give any evidence tending to criminate himself.

Where an inspector is obstructed in the execution of his duties under this Act, the person obstructing him shall be liable to a fine not exceeding five pounds; and where an inspector is so obstructed in a factory or workshop, the occupier of that factory or workshop shall be liable to a fine not exceeding five, or where the offence is committed at night, twenty pounds; and where an inspector is so obstructed in a factory or workshop within the meaning of section sixteen of this Act, the occupier shall be liable to a fine not exceeding one, or where the offence is committed at night, five pounds.

Restriction on entry of inspector into dwellings.

69. An inspector before entering, in pursuance of the powers conferred by this Act, without the consent of the occupier, any room or place actually used as a dwelling as well as for a factory or workshop, shall, on an affidavit or statutory declaration of facts and reasons, obtain written authority so to do from a Secretary of State, or such warrant as is hereinafter mentioned from a justice of the peace.

The affidavit or statutory declaration above-mentioned may be inspected or produced in evidence in all respects the same as an information on oath before a justice.

A justice of the peace, if satisfied by information on oath that there is reasonable cause to suppose that any enactment of this Act is contravened in any such room or place as aforesaid, may in his discretion grant a warrant under his hand authorising the inspector named therein at any time within the period named therein, but not exceeding

one month from the date thereof, to enter, in pursuance of this Act, the room or place named in the warrant, and exercise therein the powers of inspection and examination conferred by this Act, and the fines and provisions of this Act with respect to obstruction of an inspector shall apply accordingly.

Certificates of appointment of inspectors.

70. Every inspector under this Act shall be furnished with the prescribed certificate of his appointment, and on applying for admission to a factory or workshop shall, if required, produce to the occupier the said certificate.

Every person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited, or false certificate, or personates the inspector named in any such certificate, or falsely pretends to be an inspector under this Act, shall be liable to be imprisoned for a period not exceeding three months, with or without hard labour.

(2.) *Certifying Surgeons.*

Poor law medical officers to act where no certifying surgeon within three miles.

71. Where there is no certifying surgeon resident within three miles of a factory or workshop, the poor law medical officer shall be for the time being the certifying surgeon under this Act for such factory or workshop.

Appointment of certifying surgeons.

72. Subject to such regulations as may be from time to time made by a Secretary of State, an inspector may from time to time appoint a sufficient number of duly registered medical practitioners to be certifying surgeons for the purposes of this Act, and may from time to time revoke any such appointment.

Every appointment and revocation of appointment of a certifying surgeon may be annulled by a Secretary of State upon appeal to him for that purpose.

A surgeon who is the occupier of a factory or workshop, or is directly or indirectly interested therein, or in any process or business carried on therein, or in a patent connected therewith, shall not be a certifying surgeon for that factory or workshop.

A Secretary of State may from time to time make rules for the guidance of certifying surgeons, and for the particulars to be registered respecting their visits, and for the forms of certificates and other documents to be used by them.

Regulations as to the grant of certificates of fitness.

73. A certificate of fitness for employment shall not be granted for the purposes of this Act, except upon personal examination of the person named therein.

A certifying surgeon shall not examine a child or young person for the purposes of a certificate of fitness for employment, or sign any such certificate, elsewhere than at the factory or workshop where such child or young person is or is about to be employed, unless the number of children and young persons employed in that factory or workshop are less than five, or unless for some special reason allowed in writing by an inspector.

If a certifying surgeon refuses to grant for any person examined by him a certificate of fitness for employment, he shall when required give in writing and sign the reasons for such refusal.

Fees of certifying surgeons for examination of children and young persons.

74. With respect to the fees to be paid to certifying surgeons in respect of the examination of, and grant of certificates of fitness for employment for, children and young persons in factories or workshops, the following provisions shall have effect:

(1.) The occupier may agree with the certifying surgeon as to the amount of such fees:

(2.) In the absence of any such agreement the fees shall be those named in the following scale:—

When the examination is at a factory or workshop not exceeding one mile from the surgeon's residence,	2*s.* 6*d.* for each visit and 6*d.* for each person after the first five examined at that visit.
When the examination is at a factory or workshop more than one mile from the surgeon's residence,	The above fees and an additional 6*d.* for each complete half mile over and above the mile.
When the examination is not at the factory or workshop, but at the residence of the surgeon, or at some place appointed by the surgeon for the purpose, and which place, as well as the day and hour, appointed for the purpose shall be published in the prescribed manner,	6*d.* for each person examined.

Secs. 74–89.

(3.) The occupier shall pay the fees on the completion of the examination, or if any certificates are granted at the time at which the surgeon signs the certificates or at any other time directed by an inspector:

(4.) The occupier may deduct the fee or any part thereof, not exceeding in any case threepence, from the wages of the person for whom the certificate was granted:

(5.) A Secretary of State may from time to time, if he think it expedient, alter any fees fixed by this section.

(3.) *Miscellaneous.*

75—80. [Notice of factory to be given to inspector, &c.]

(4.) *Fines.*

Fine for not keeping factory or workshop in conformity with Act.

81. If a factory or workshop is not kept in conformity with this Act, the occupier thereof shall be liable to a fine not exceeding ten pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order certain means to be adopted by the occupier, within the time named in the order, for the purpose of bringing his factory or workshop into conformity with this Act; the court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues.

82. [Penal compensation to person injured by want of fence to machinery, &c.]

83. [Fine for employing children, young persons, and women contrary to the Act.]

84. [Fine on parent for allowing child or young person to be employed contrary to the Act, or neglecting to cause child to attend school.]

85. [Forgery of certificates, false entries and declarations.]

Fine on person committing offence for which occupier is liable.

86. Where an offence for which the occupier of a factory or workshop is liable under this Act to a fine, has in fact been committed by some agent, servant, workman, or other person, such agent, servant, workman, or other person shall be liable to the same fine as if he were the occupier.

Power of occupier to exempt himself from fine on conviction of the actual offender.

87. Where the occupier of a factory or workshop is charged with an offence against this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier of the factory or workshop proves to the satisfaction of the court that he had used due diligence to enforce the execution of the Act, and that the said other person had committed the offence in question without his knowledge, consent, or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

When it is made to appear to the satisfaction of an inspector at the time of discovering the offence, that the occupier of the factory or workshop had used all due diligence to enforce the execution of this Act, and also by what person such offence had been committed, and also that it had been committed without the knowledge, consent, or connivance of the occupier and in contravention of his orders, then the inspector shall proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the occupier of the factory or workshop.

Restraint on cumulative fines.

88. A person shall not be liable in respect of a repetition of the same kind of offence from day to day to any larger amount of fines than the highest fine fixed by this Act for the offence, except—

(*a.*) where the repetition of the offence occurs after an information has been laid for the previous offence; or

(*b.*) where the offence is one of employing two or more children, young persons, or women contrary to the provisions of this Act.

(5.) *Legal Proceedings.*

Prosecution of offences and recovery

89. All offences under this Act shall be prosecuted, and all fines under this Act shall be recovered, on summary conviction before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

A summary order may be made for the purposes of this Act by a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

and application of fines.

All fines imposed in pursuance of this Act shall, save as otherwise expressly provided by this Act, be paid into the Exchequer.

The court of summary jurisdiction, when hearing and determining a case arising under this Act, shall be constituted either of two or more justices of the peace sitting at some court or public place at which justices are for the time being accustomed to assemble for the purpose of holding petty sessions or of some magistrate or officer sitting alone or with others at some court or other place appointed for the public administration of justice, and for the time being empowered by law to do alone any act authorised to be done by more than one justice of the peace.

Where a proceeding is taken before a court of summary jurisdiction with respect to an offence against this Act alleged to be committed in or with reference to a factory or workshop, the occupier of that factory or workshop, and the father, son, or brother of such occupier, shall not be qualified to act as a member of such court.

Appeal to quarter sessions.

90. If any person feels aggrieved by a conviction or order made by a court of summary jurisdiction on determining an information or complaint under this Act, he may appeal therefrom; subject, in England, to the conditions and regulations following:

(1.) The appeal shall be made to the next practicable court of general or quarter sessions [having jurisdiction in the county or place in which the decision of the court was given, holden not less than twenty-one days after the day on which such decision was given; and

(2.) The appellant shall, within ten days after the day on which the decision of the court was given, serve notice on the other party and on the clerk of the court of summary jurisdiction of his intention to appeal, and of the general grounds of such appeal; and

(3.) The appellant shall, within three days after such notice is served, enter into a recognizance before a court of summary jurisdiction, with or without a surety or sureties as the court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or the appellant may, if the court of summary jurisdiction thinks it expedient, instead of entering into a recognizance give such other security by deposit of money with the clerk of the court of summary jurisdiction or otherwise as the court deem sufficient: and

(4.) Where the appellant is in custody a court of summary jurisdiction may, if they think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody; and

(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just; and

(6.) The court of appeal may also make such order as to costs to be paid by either party as the court thinks just; and

(7.) Whenever a decision is reversed by the court of appeal the clerk of the peace shall indorse on the conviction or order appealed against a memorandum that the same has been quashed, and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction or order has been quashed, in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

(8.) Every notice in writing required by this section to be given by an appellant may be signed by him or by his agent on his behalf, and may be transmitted in a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of post (1).]

(1) The portion of the section between brackets is repealed by Summary Jurisdiction Act, 1884. Proceedings are now regulated by the Summary Jurisdiction Acts.

Secs. 91–93.

Limitation of time and general provisions as to summary proceedings.

91. The following provisions shall have effect with respect to summary proceedings for offences and fines under this Act:

(1.) The information shall be laid within two months, or, where the offence is punishable at discretion by imprisonment, or is a breach of the provisions of this Act with respect to holidays, within three months after the commission of the offence:

[(2.) The description of an offence in the words of this Act, or in similar words, shall be sufficient in law:

(3.) Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant (1):]

(4.) It shall be sufficient to allege that a factory or workshop is a factory or workshop within the meaning of this Act, without more:

(5.) It shall be sufficient to state the name of the ostensible occupier of the factory or workshop or the title of the firm by which the occupier employing persons in the factory or workshop is usually known:

(6.) A conviction or order made in any matter arising under this Act, either originally or on appeal, shall not be quashed for want of form, and a conviction or order made by a court of summary jurisdiction against which a person is authorised by this Act to appeal shall not be removed by certiorari or otherwise, either at the instance of the Crown or of any private person, into a superior court, except for the purpose of the hearing and determination of a special case.

Evidence in summary proceedings.

92. If a person is found in a factory, except at meal times, or while all the machinery of the factory is stopped, or for the sole purpose of bringing food to the persons employed in the factory between the hours of four and five o'clock in the afternoon, such person shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory:

Provided that yards, playgrounds, and places open to the public view, schoolrooms, waiting rooms, and other rooms belonging to the factory in which no machinery is used or manufacturing process carried on, shall not be taken to be any part of the factory within the meaning of this enactment; and this enactment shall not apply to a factory or workshop to which the provisions of this Act with respect to the affixing of notices do not apply.

Where a child or young person is, in the opinion of the court, apparently of the age alleged by the informant, it shall lie on the defendant to prove that the child or young person is not of that age.

A declaration in writing by a certifying surgeon for the district that he has personally examined a person employed in a factory or workshop in that district, and believes him to be under the age set forth in the declaration, shall be admissible in evidence of the age of that person.

A copy of a conviction for an offence against this Act purporting to be certified under the hand of the clerk of the peace having the custody of such conviction to be a true copy shall be receivable as evidence, and every such clerk of the peace shall, upon the written request of an inspector and payment of a fee of one shilling, deliver to him a copy of the conviction so certified.

PART IV.

Definitions, Savings, Application to Scotland and Ireland, and Repeal.

(1.) *Definitions.*

Factories and workshops to which Act applies.

93. The expression "textile factory" in this Act means—

any premises wherein or within the close or curtilage of which steam, water, or other mechanical power is used to move or work any machinery employed in preparing manufacturing, or finishing, or in any process incident to the manufacture of,

(1) The portion between brackets (viz., sub-sections (2) and (3)) are repealed by Summary Jurisdiction Act, 1884.

cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoa-nut fibre, or other like material, either separately or mixed together, or mixed with any other material, or any fabric made thereof: Section 93.

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works shall not be deemed to be textile factories

The expression "non-textile factory" in this Act means—

(1.) any works, warehouses, furnaces, mills, foundries, or places named in Part One of the Fourth Schedule to this Act,

(2.) also any premises or places named in Part Two of the said schedule wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there,

(3.) also any premises wherein, or within the close or curtilage or precincts of which, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes, or any of them; that is to say,

(*a.*) in or incidental to the making of any article or of part of any article, or

(*b.*) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or

(*c.*) in or incidental to the adapting for sale of any article,

and wherein, or within the close or curtilage or precincts of which, steam, water, or other mechanical power is used in aid of the manufacturing process carried on there.

The expression "factory" in this Act means textile factory and non-textile factory, or either of such descriptions of factories.

The expression "workshop" in this Act means—

(1.) any premises or places named in Part Two of the Fourth Schedule to this Act, which are not a factory within the meaning of this Act,

(2.) also any premises, room, or place not being a factory within the meaning of this Act, in which premises, room, or place, or within the close or curtilage or precincts of which premises, any manual labour is exercised by way of trade or for purposes of gain in or incidental to the following purposes or any of them; that is to say,

(*a.*) in or incidental to the making of any article or of part of any article, or,

(*b.*) in or incidental to the altering, repairing, ornamenting, or finishing of any article, or

(*c.*) in or incidental to the adapting for sale of any article,

and to which or over which premises, room, or place the employer of the persons working therein has the right of access or control.

A part of a factory or workshop may for the purposes of this Act be taken to be a separate factory or workshop; and a place solely used as a dwelling shall not be deemed to form part of the factory or workshop for the purposes of this Act.

Where a place situate within the close, curtilage, or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, such place shall not be deemed to form part of that factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a separate factory or workshop, and be regulated accordingly.

Any premises or place shall not be excluded from the definition of a factory or workshop by reason only that such premises or place are or is in the open air.

This Act shall not apply to such workshops, other than bakehouses, as are conducted on the system of not employing any child, young person, or woman therein, but save as aforesaid applies to all factories and workshops as before defined, inclusive of factories and workshops belonging to the Crown; provided that in case of any public emergency a Secretary of State may exempt a factory or workshop belonging to the Crown from this Act to the extent and during the period named by him.

The exercise by any child or young person in any recognised efficient school during a portion of the school hours of any manual labour for the purpose of instructing such child or young person in any art or handicraft, shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

Secs. 94–98.

94. [Definition of employment and working for hire.]

95. [Definition of "certified efficient school." 33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. Definition of "recognised efficient school." 33 & 34 Vict. c. 75.]

General definitions.

96. In this Act, unless the context otherwise requires,—

"Child." The expression "child" means a person under the age of fourteen years:

"Young person." The expression "young person" means a person of the age of fourteen years and under the age of eighteen years:

"Woman." The expression "woman" means a woman of eighteen years of age and upwards:

"Parent." The expression "parent" means a parent or guardian of, or person having the legal custody of, or the control over, or having direct benefit from the wages, of a child or young person:

"Treasury." The expression "Treasury" means the commissioners of Her Majesty's Treasury:

"Secretary of State." The expression "Secretary of State" means one of Her Majesty's principal secretaries of state:

"Education department." The expression "Education Department" means the Lords of the Committee of the Privy Council on Education:

"Sanitary authority." 38 & 39 Vict. c. 55. The expression "sanitary authority" means an urban or rural sanitary authority within the meaning of the Public Health Act, 1875, and any commissions, board, or vestry, in the metropolis having the like powers as such urban sanitary authority:

"Person." The expression "person" includes a body of persons corporate or unincorporate:

"Week." The expression "week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night:

"Night." The expression "night" means the period between nine o'clock in the evening and six o'clock in the succeeding morning:

"Prescribed." The expression "prescribed" means prescribed for the time being by a Secretary of State.

"Summary Jurisdiction Acts." The expression "Summary Jurisdiction Acts" means the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," and any Acts amending the same:

"Court of summary jurisdiction." The expression "court of summary jurisdiction" means any justice or justices of the peace, metropolitan police magistrate, stipendiary or other magistrate, or officer, by whatever name called, to whom jurisdiction is given by the Summary Jurisdiction Acts or any Acts therein referred to:

"Mill-gearing." The expression "mill-gearing" comprehends every shaft, whether upright, oblique, or horizontal, and every wheel, drum, or pulley by which the motion of the first moving power is communicated to any machine appertaining to a manufacturing process.

The factories and workshops named in the Fourth Schedule to this Act are in this Act referred to by the names therein assigned to them.

Special exemption of certain Trades.

Exemption of handicrafts in fifth schedule in private houses.

97. The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour by way of trade or for purposes of gain in or incidental to any of the handicrafts specified in the Fifth Schedule to this Act, shall not of itself constitute such house or room a workshop within the meaning of this Act.

When it is proved to the satisfaction of a Secretary of State that by reason of the light character of the handicraft carried on in any private house or private room by the family dwelling therein, or by any of them, it is expedient to extend this section to that handicraft, he may by order extend the same.

The order shall be made in manner provided by Part Two of this Act, and that part shall apply so far as circumstances admit as if the order were an order extending an exception.

Exemption of certain home-work.

98. The exercise in a private house or private room by the family dwelling therein, or by any of them, of manual labour for the purposes of gain in or incidental to some of the purposes in this Act in that behalf mentioned, shall not of itself constitute such

house or room a workshop where the labour is exercised at irregular intervals, and does not furnish the whole or principal means of living to such family.

Secs. 98—107.

(2.) *Savings.*

99. [Saving as to liability of hirer of machine where not occupier.]

100. Nothing in this Act shall extend—

(1.) To any young person, being a mechanic, artisan, or labourer, working only in repairing either the machinery in or any part of a factory or workshop; or

(2.) To the process of gutting, salting, and packing fish immediately upon its arrival in the fishing boats.

Saving for person employed in repair of machinery or of factory or workshop, or in process of curing fish.

101. The provisions of section ninety-one of the Public Health Act, 1875, with respect to a factory, workshop, or workplace not kept in a cleanly state or not ventilated or overcrowded, shall not apply to a factory or workshop which is subject to the provisions of this Act relating to cleanliness, ventilation, and overcrowding, but shall apply to every other factory, workshop, and workplace.

Application to factories and workshops of 38 & 39 Vict. c. 55.

It is hereby declared that the Public Health Act, 1875, shall apply to buildings in which persons are employed, whatever their number may be, in like manner as it applies to buildings where more than twenty are employed.

102. Any enactment or documents referring to the Acts repealed by this Act, or any of them, or to any enactment thereof, shall be construed to refer to this Act and to the corresponding enactment thereof.

Construction of enactments, &c. referring to repealed Acts.

(3.) *Application of Act to Scotland and Ireland.*

103.—106.

(4.) *Repeal.*

107. The Acts specified in the Sixth Schedule to this Act are hereby repealed from and after the commencement of this Act to the extent in the third column of that schedule mentioned:

Repeal of Acts.

Provided that—(1)

SCHEDULES.

FIRST SCHEDULE.

Schedule 1.

SPECIAL PROVISIONS FOR HEALTH.

Factories and Workshops in which the Employment of Young Persons and Children is restricted.

SECOND SCHEDULE.

Schedule 2.

SPECIAL RESTRICTIONS.

Places Forbidden for Meals.

THIRD SCHEDULE.

Schedule 3.

SPECIAL EXCEPTIONS.

PART ONE.

Period of Employment.

PART TWO.

Meal Hours.

(1) The proviso is repealed by the Statute Law Revision Act, 1883.

Schedule 3.

PART THREE.

Overtime.

PART FOUR.

Additional Half Hour.

PART FIVE.

Overtime for Perishable Article.

PART SIX.

Night Work.

PART SEVEN.

Spell.

Schedule 4.

FOURTH SCHEDULE.

LIST OF FACTORIES AND WORKSHOPS.

PART ONE.

Non-Textile Factories.

Sections 93, 96.

"Print works."

(1.) "Print works," that is to say, any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper;

"Bleaching and dyeing works."

(2.) "Bleaching and dyeing works," that is to say, any premises in which the processes of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material, or the dressing or finishing of lace, or any one or more of such processes, or any process incidental thereto, are or is carried on;

"Earthenware works."

(3.) "Earthenware works," that is to say, any place in which persons work for hire in making, or assisting in making, finishing, or assisting in finishing, earthenware of any description, except bricks and tiles not being ornamental tiles;

"Lucifer-match works."

(4.) "Lucifer-match works," that is to say, any place in which persons work for hire in making lucifer matches, or in mixing the chemical materials for making them, or in any process incidental to making lucifer matches, except the cutting of the wood;

"Percussion-cap works."

(5.) "Percussion-cap works," that is to say, any place in which persons work for hire in making percussion caps, or in mixing or storing the chemical materials for making them, or in any process incidental to making percussion caps;

"Cartridge works."

(6.) "Cartridge works," that is to say, any place in which persons work for hire in making cartridges, or in any process incidental to making cartridges, except the manufacture of the paper or other material that is used in making the cases of the cartridges;

"Paper-staining works."

(7.) "Paper-staining works," that is to say, any place in which persons work for hire in printing a pattern in colours upon sheets of paper, either by blocks applied by hand, or by rollers worked by steam, water, or other mechanical power;

"Fustian-cutting works."

(8.) "Fustian-cutting works," that is to say, any place in which persons work for hire in fustian cutting;

"Blast furnaces."

(9.) "Blast furnaces," that is to say, any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on;

"Copper mills."

(10.) "Copper mills";

"Iron mills."

(11.) "Iron mills," that is to say, any mill, forge, or other premises in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel;

"Foundries."

(12.) "Foundries," that is to say, iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on; except any premises or places in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work;

"Metal and india-rubber works."

(13.) "Metal and india-rubber works," that is to say, any premises in which steam, water, or other mechanical power is used for moving machinery employed in the manufacture of machinery, or in the manufacture of any article of metal not being machinery, or in the manufacture of india-rubber or gutta-percha, or of articles made wholly or partially of india-rubber or gutta-percha;

Schedule 4.

(14.) "Paper mills," that is to say, any premises in which the manufacture of paper is carried on; "Paper-mills."

(15.) "Glass works," that is to say, any premises in which the manufacture of glass is carried on; "Glass works."

(16.) "Tobacco factories," that is to say, any premises in which the manufacture of tobacco is carried on; "Tobacco factories."

(17.) "Letter-press printing works," that is to say, any premises in which the process of letter-press printing is carried on; "Letter-press printing works."

(18.) "Bookbinding works," that is to say, any premises in which the process of bookbinding is carried on; "Bookbinding works."

(19.) Flax scutch mills. "Flax scutch mills."

PART TWO.

Non-Textile Factories and Workshops.

Sections 93, 96.

(20.) "Hat works," that is to say, any premises in which the manufacture of hats or any process incidental to their manufacture is carried on; "Hat works."

(21.) "Rope works," that is to say, any premises being a ropery, ropewalk, or rope work, in which is carried on the laying or twisting or other process of preparing or finishing the lines, twines, cords, or ropes, and in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax, hemp, jute, or tow, and which has no internal communication with any buildings or premises joining or forming part of a textile factory, except such communication as is necessary for the transmission of power; "Rope works."

(22.) "Bakehouses," that is to say, any places in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived; "Bakehouses."

(23.) "Lace warehouses," that is to say, any premises, room, or place not included in bleaching and dyeing works as herein-before defined, in which persons are employed upon any manufacturing process or handicraft in relation to lace, subsequent to the making of lace upon a lace machine moved by steam, water, or other mechanical power; "Lace warehouses."

(24.) "Shipbuilding yards," that is to say, any premises in which any ships, boats, or vessels used in navigation are made, finished, or repaired; "Shipbuilding yards."

(25.) "Quarries," that is to say, any place, not being a mine, in which persons work in getting slate, stone, coprolites, or other minerals; "Quarries."

(26.) "Pit-banks," that is to say, any place above ground adjacent to a shaft of a mine, in which place the employment of women is not regulated by the Coal Mines Regulation Act, 1872, or the Metalliferous Mines Regulation Act, 1872, whether such place does or does not form part of the mine within the meaning of those Acts. "Pit-banks." 35 & 36 Vict. c. 76. 35 & 36 Vict. c. 77.

Schedule 5.

FIFTH SCHEDULE.

SPECIAL EXEMPTIONS.

Straw plaiting.
Pillow-lace making.
Glove making.

Schedule 6.

SIXTH SCHEDULE.

Acts repealed.

Session and Chapter.	Title of Act.	Extent of Repeal.
42 Geo. 3, c. 73 . .	An Act for the preservation of the health and morals of apprentices and others employed in cotton and other mills and cotton and other factories.	The whole Act.
3 & 4 Will. 4, c. 103 .	An Act to regulate the labour of children and young persons in the mills and factories of the United Kingdom.	The whole Act.

Schedule 6.

Session and Chapter.	Title of Act.	Extent of Repeal.
7 & 8 Vict. c. 15 .	An Act to amend the laws relating to labour in factories.	The whole Act.
9 & 10 Vict. c. 40 .	An Act to declare certain ropeworks not within the operation of the Factory Acts.	The whole Act.
13 & 14 Vict. c. 54 .	An Act to amend the Acts relating to labour in factories.	The whole Act.
16 & 17 Vict. c. 104 .	An Act further to regulate the employment of children in factories.	The whole Act.
19 & 20 Vict. c. 38 .	The Factory Act, 1856 . . .	The whole Act.
24 & 25 Vict. c. 117 .	An Act to place the employment of women, young persons, youths, and children in lace factories under the regulations of the Factories Acts.	The whole Act.
26 & 27 Vict. c. 40 .	The Bakehouse Regulation Act, 1863	The whole Act.
27 & 28 Vict. c. 48 .	The Factory Acts Extension Act, 1864.	The whole Act.
29 & 30 Vict. c. 90 .	The Sanitary Act, 1866 . . .	The following words (so far as unrepealed) in section nineteen, "not already under the operation of any general Act for the regulation of factories or bakehouses."
30 & 31 Vict. c. 103 .	The Factory Acts Extension Act, 1867.	The whole Act.
30 & 31 Vict. c. 146 .	The Workshop Regulation Act, 1867	The whole Act.
33 & 34 Vict. c. 62 .	The Factory and Workshop Act, 1870	The whole Act.
34 & 35 Vict. c. 19 .	An Act for exempting persons professing the Jewish religion from penalties in respect of young persons and females professing the said religion working on Sundays.	The whole Act.
34 & 35 Vict. c. 104 .	The Factory and Workshop Act, 1871	The whole Act.
37 & 38 Vict. c. 44 .	The Factory Act, 1874 . . .	The whole Act.
38 & 39 Vict. c. 55 .	The Public Health Act, 1875 . .	The following words in section four, "more than twenty," and the words "at one time," and the following words in section ninety-one, "not already under the operation of any general Act for the regulation of factories or bakehouses."
39 & 40 Vict. c. 79 .	The Elementary Education Act, 1876	Section eight and the following words in section forty-eight, "the Factory Acts, 1833 to 1874, as amended by this Act, and includes the Workshop Acts, 1867 to 1871, as amended by this Act, and".

FACTORY AND WORKSHOP ACT, 1883.

46 & 47 VICT. c. 53.

An Act to amend the Law relating to certain Factories and Workshops.

[25*th August*, 1883.]

Secs. 1—17.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Factory and Workshop Act, 1883.

2—12. [White lead factories.]

13, 14. [Explanation of certain provisions of Factory, &c., Act, 1878.]

Bakehouses.

Regulations for new bakehouses.

15. It shall not be lawful to let or suffer to be occupied as a bakehouse, or to occupy as a bakehouse, any room or place which was not so let or occupied before the first day of June one thousand eight hundred and eighty-three, unless the following regulations are complied with:

(i.) No watercloset, earthcloset, privy, or ashpit shall be within or communicate directly with the bakehouse;

(ii.) Any cistern for supplying water to the bakehouse shall be separate and distinct from any cistern for supplying water to a watercloset;

(iii.) No drain or pipe for carrying off fœcal or sewage matter shall have an opening within the bakehouse.

Any person who lets or suffers to be occupied or who occupies any room or place as a bakehouse in contravention of this section shall be liable, on summary conviction, to a fine not exceeding forty shillings, and to a further fine not exceeding five shillings for every day during which any room or place is so occupied after a conviction under this section.

Penalty for bakehouse being unfit on sanitary grounds for use as a bakehouse.

16. Where a court of summary jurisdiction is satisfied on the prosecution of an inspector or a local authority that any room or place used as a bakehouse (whether the same was or was not so used before the passing of this Act) is in such a state as to be on sanitary grounds unfit for use or occupation as a bakehouse, the occupier of the bakehouse shall be liable, on summary conviction, to a fine not exceeding forty shillings, and on a second or any subsequent conviction, not exceeding five pounds.

The court of summary jurisdiction, in addition to or instead of inflicting such fine, may order means to be adopted by the occupier, within the time named in the order, for the purpose of removing the ground of complaint. The court may, upon application, enlarge the time so named, but if, after the expiration of the time as originally named or enlarged by subsequent order, the order is not complied with, the occupier shall be liable to a fine not exceeding one pound for every day that such non-compliance continues.

Enforcement of law as to retail bakehouses by

17. (1). As respects every retail bakehouse, the provisions of this part of this Act and of sections three, thirty-three, thirty-four, and thirty-five of the Factory and Workshop Act, 1878 (which relate to cleanliness, ventilation, overcrowding, and other sanitary

Secs. 17–20.

local authorities.

conditions), shall be enforced by the local authority of the district in which the retail bakehouse is situate, and not by an inspector under the Factory and Workshop Act, 1878; and for the purposes of this section the medical officer of health of the local authority shall have and exercise all such powers of entry, inspection, taking legal proceedings and otherwise, as an inspector under the Factory and Workshop Act, 1878.

(2.) If any child, young person, or woman is employed in any retail bakehouse, and the medical officer of the local authority becomes aware thereof, he shall forthwith give written notice thereof to the factory inspector for the district.

(3.) An inspector under the Factory and Workshop Act, 1878, shall not, as respects any retail bakehouse, exercise the powers of entry and inspection conferred by that Act, unless he has notice or reasonable cause to believe that a child, young person, or woman is employed therein.

Construction of Act and definitions. 41 & 42 Vict. c. 16.

18. This Act shall be construed as one with the Factory and Workshop Act, 1878; and in this Act, unless the context otherwise requires,—

The expression "white lead factory" includes every factory and workshop in which the manufacture of white lead is carried on:

The expression "retail bakehouse" means any bakehouse or place, the bread, biscuits, or confectionery baked in which are not sold wholesale but by retail in some shop or place occupied together with such bakehouse:

The expression "local authority" means, as respects the City of London and the liberties thereof, the Commissioners of Sewers; as respects the parishes and districts mentioned in the Schedules A. and B. annexed to the Metropolis Management Act, 1855, and any parish to which the said Act may be extended by order in council in manner in the said Act provided, the vestries and district boards elected under the said Act; and as respects any urban sanitary district, the urban sanitary authority, and as respects any rural sanitary district, the rural sanitary authority, within the meaning of the Public Health Act, 1875.

18 & 19 Vict. c. 120.

19 and **20**. [Application of Act to Scotland and Ireland.]

PUBLIC HEALTH (INTERMENTS) ACT, 1879.

42 & 43 VICT. c. 31.

An Act to amend the Public Health Act, 1875, *as to Interments* (1). [21*st July*, 1879.]

Secs. 1—3.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say,)

Short title and construction. 38 & 39 Vict. c. 55.

1. This Act may be cited as the Public Health (Interments) Act, 1879, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

The provisions of 38 & 39 Vict. c. 55, extended to cemeteries.

2. (1.) The provisions of the principal Act, as to a place for the reception of the dead before interment (2), in the principal Act called a mortuary, shall extend to a place for the interment of the dead, in this Act called a cemetery; and the purposes of the principal Act shall include the acquisition, construction, and maintenance of a cemetery.

(2.) A local authority may acquire, construct, and maintain a cemetery either wholly or partly within or without their district, subject as to works without their district for the purpose of a cemetery to the provisions of the principal Act as to sewage works by a local authority without their district (3).

38 & 39 Vict. c. 55, ss. 32–34.

(3.) A local authority may accept a donation of land for the purpose of a cemetery, and a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

10 & 11 Vict. c. 65, incorporated with this Act.

3. The Cemeteries Clauses Act, 1847 (4), shall be incorporated with this Act.

(1) See as to this Act the circular dated 19th August, 1879, and the memorandum dated 13th December 1880, amongst the circulars, &c., of the Local Government Board, printed *post*.

(2) *Ante* p. 112.

(3) *Ante* pp. 61, 62.

(4) *I.e.*, 10 & 11 Vict. c. 65, which will be found *post*.

CEMETERIES CLAUSES ACT, 1847.

10 & 11 VICT. c. 65.

An Act for consolidating in one Act certain Provisions usually contained in Acts authorising the making of Cemeteries (1). [*9th July*, 1847.]

Secs. 1—3.

Whereas it is expedient to comprise in one Act sundry provisions usually contained in Acts of Parliament authorising the making of cemeteries, and that as well for avoiding the necessity of repeating such provisions in each of the several Acts relating to such undertakings as for insuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act shall extend only to such cemeteries as shall be authorised by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith; and all the clauses of this Act, save so far as they shall be expressly varied or excepted in any such Act, shall apply to the cemetery authorised thereby, so far as they are applicable to such cemetery, and shall, with the clauses of every other Act incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

Interpretations in this Act.

And with respect to the construction of this Act and any Act incorporated therewith, be it enacted as follows:

"Special Act."

"Prescribed."

2. The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed authorising the making of a cemetery, and with which this Act shall be incorporated; and the word "prescribed" used in this Act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word occurs shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorised to be taken or used for the purposes thereof; and the expression "the company" shall mean the persons by the special Act authorised to construct the cemetery.

"Lands."

"Company."

Interpretations in this and the special Act.

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Number.

Words importing the singular number shall include the plural number, and words importing the plural number only shall include also the singular number:

Gender.

Words importing the masculine gender shall include females:

"Person."

The word "person" shall include a corporation, whether aggregate or sole:

"Lands,"

The word "lands" shall include messuages, lands, and hereditaments of any tenure:

"The cemetery."

The expression "the cemetery" shall mean the cemetery or burial ground, and the works connected therewith, by the special Act authorised to be constructed:

"Month."

The word "month" shall mean calendar month:

(1) This Act is incorporated with the Public Health (Interments) Act, 1879, *ante*, p. 1145, which latter Act is to be construed as one with the Public Health Act, 1875.

The expression "superior courts" shall mean Her Majsty's superior courts at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the County Palatine of Lancaster and the Court of Pleas of the County of Durham: "Superior courts."

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath: "Oath."

The expression "Established Church" shall mean the united Church of England and Ireland, as by law established: "Established Church."

The word "county" shall include any riding or other division of a county having a separate commission of the peace, and shall also include the county of a city or county of a town: "County."

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises, and if such matter arise in respect of lands situated not wholly in one jurisdiction shall mean a justice acting for the place where any part of such lands shall be situated; and where any matter is authorised or required to be done by "two justices" the expression "two justices" shall be understood to mean two or more justices met and acting together: "Justice." "Two justices."

The expression "quarter sessions" shall mean the quarter sessions as defined by the special Act, or if such expression be not therein defined it shall mean the general or quarter sessions of the peace, which shall be held at the place nearest the cemetery for the county or place in which the cemetery or some part thereof is situated, or for some division of such county having a separate commission of the peace: "Quarter sessions."

And with respect to citing this Act, or any part thereof, be it enacted as follows:

4. In citing this Act in other Acts of Parliament and in legal instruments, it shall be sufficient to use the expression "The Cemeteries Clauses Act, 1847." Short title of this Act.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied or excepted by such Act, form part of such Act, and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates. Form in which portions of this Act may be incorporated in other Acts.

And with respect to the making of the cemetery, be it enacted as follows:

6. Where by the special Act the company shall be empowered, for the purpose of making the cemetery, to take or use any lands otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this Act and the Lands Clauses Consolidation Act, 1845 (1), and shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the special Act, or injuriously affected by the construction of the works thereby authorised, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, or other parties, by reason of the exercise, as regards such lands, of the powers vested in the company by this or the special Act, or any Act incorporated therewith, and, except where otherwise provided by this or the special Act, the amount of such compensation shall be determined in the manner provided by the Lands Clauses Consolidation Act, 1845, for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the last-mentioned Act shall be applicable to determine the amount of such compensation, and to enforce payment or other satisfaction thereof. Construction of cemetery to be subject to the provisions of this and the Lands Clauses Consolidation Act, 1845.

7. If any omission, mis-statement, or wrong description shall have been made of any lands, or of the owners, lessees, or occupiers of any lands described in the special Act or the schedule thereto, the company, after giving ten days notice to the owners of the lands affected by such proposed correction, may apply to two justices for the correction thereof, and if it appear to such justices that such omission, mis-statement, or wrong Errors and omissions in Act or schedule to be corrected by justices, who shall certify the same.

(1) *Ante*, p. 894.

Secs. 7—19.

Certificate to be deposited.

description arose from mistake, they shall certify the same accordingly, and shall in such certificate state the particulars of any such omission, mis-statement, or wrong description; and such certificate shall be deposited with the clerk of the peace of the county in which the lands affected thereby shall be situated, and thereupon the special Act or schedule shall be deemed to be corrected according to such certificate, and the company may take the lands according to such certificate as if such omission, mis-statement, or wrong description had not been made.

Copies of plans, &c., to be evidence.

8. Copies of any alteration or correction of the special Act, or the schedule thereto, or of any extract therefrom, certified by any such clerk of the peace in whose custody such alteration or correction may be, which certificate such clerk of the peace shall give to all parties interested, when required, shall be received in all courts of justice or elsewhere as evidence of the contents thereof.

Company not to dispose of any land consecrated or used for burials.

9. The company shall not sell or dispose of any land which shall have been consecrated or used for the burial of the dead, or make use of any such land for any purpose except such as shall be authorised by this or the special Act, or any Act incorporated therewith.

Cemetery not to be within a certain distance of houses.

10. No part of the cemetery shall be constructed nearer to any dwelling-house than the prescribed distance, or, if no distance be prescribed, two hundred yards, except with the consent in writing of the owner, lessee, and occupier of such house.

Company may build chapels, &c.

11. The company upon any land which by the special Act they are authorised to use for the purposes of the cemetery, may build such chapels for the performance of the burial service as they think fit, and may lay out and embellish the grounds of the cemetery as they think fit.

Company may make or widen roads to cemetery.

12. The company upon any land purchased by them under this or the special Act, or any Act incorporated therewith, may make any new roads to the cemetery, or widen or improve any existing roads thereto which they think fit.

No road to be widened without consent.

13. Provided always, that the company shall not widen or improve any existing road without the consent of the owner thereof if the road be private, or, if the road be public, without the consent of the persons in whom the management of the road is vested by law.

Owners, &c. may enter into agreements for improving roads for that purpose.

14. The company and the owners or persons having the management of any such road as aforesaid may enter into such agreements as they think fit, for enabling the company to widen or improve any such road, and for maintaining the same.

Cemetery to be enclosed and fenced.

15. Every part of the cemetery shall be enclosed by walls or other sufficient fences of the prescribed materials and dimensions, and if no materials or dimensions be prescribed by substantial walls or iron railings of the height of eight feet at least.

Cemetery, &c. to be kept in repair.

16. The company shall keep the cemetery and the buildings and fences thereof in complete repair, and in good order and condition, out of the moneys to be received by them by virtue of this and the special Act.

Company to make compensation for damages done.

17. Provided always, that in the exercise of the powers by this and the special Act granted to the company they shall do as little damage as can be, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

And with respect to preventing nuisance from the cemetery, be it enacted as follows:

Power to make sewers, drains, &c. in and about the cemetery.

18. The company shall make all necessary and proper sewers and drains in and about the cemetery, for draining and keeping the same dry, and they may from time to time, as occasion requires, cause any such sewer or drain to open into any existing sewer, with the consent in writing of the persons having the management of such sewer, and with the consent in writing of the persons having the management of the street or road, and of the owners and occupiers of the lands through which such opening is made, doing as little damage as possible to the road or ground wherein such sewer or drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

Certain provisions of Waterworks Clauses Act, 1874, incor-

19. When any street or road or sewer shall be opened, with such consent as aforesaid, the clauses of the Waterworks Clauses Act, 1847, with respect to breaking up streets for the purpose of laying pipes [1], so far as the same are consistent with this Act and appli-

[1] *I.e.*, ss. 28—34, *ante*, pp. 420, 421.

cable thereto, shall be incorporated with this Act, and shall apply to the company, and to any ground broken by them for making any such sewer or drain as aforesaid to open into any existing sewer.

Secs. 19–30.

porated with this Act.

20. If the company at any time cause or suffer to be brought or to flow into any stream, canal, reservoir, aqueduct, pond, or watering place, any offensive matter from the cemetery, whereby the water therein shall be fouled, they shall forfeit for every such offence the sum of fifty pounds.

Penalty for allowing water to be fouled.

21. The said penalty, with full costs of suit, may be recovered by any person having right to use the water fouled by such offensive matter in any of the superior courts, by action of debt or on the case: Provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased.

Penalty to be sued for within six months.

22. In addition to the said penalty of fifty pounds (and whether such penalty is recovered or not), any person having right to use the water fouled by such offensive matter may sue the company in an action on the case in any court of competent jurisdiction for any damage specially sustained by him by reason of the water being so fouled; or if no special damage be alleged, for the sum of ten pounds for each day during which such offensive matter is brought or flows as aforesaid after the expiration of twenty-four hours from the time when notice of the offence is served on the company by such person.

In addition to penalty of £50, a daily penalty during the continuance the offence.

And with respect to burials in the cemetery, be it enacted as follows:

23. The bishop of the diocese in which the cemetery is situated may, on the application of the company, consecrate any portion of the cemetery set apart for the burial of the dead according to the rites of the Established Church, if he be satisfied with the title of the company to such portion, and thinks fit to consecrate such portion; and the part which is so consecrated shall be used only for burials according to the rites of the Established Church.

A part of cemetery to be set apart and consecrated for burial of members of Established Church.

24. The company shall define by suitable marks the consecrated and unconsecrated portions of the cemetery.

Consecrated ground to be defined.

25. The company shall build, within the consecrated part of the cemetery, and according to a plan approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the Established Church.

A chapel in connection with the Established Church to be constructed.

26. No body buried in the consecrated part of the cemetery shall be removed from its place of burial without the like authority as is by law required for the removal of any body buried in the churchyard belonging to a parish church.

Bodies when interred not to be removed without lawful authority.

27. The company shall from time to time, with the approval of the bishop of the diocese in which the cemetery is situated, appoint a clerk in holy orders of the Established Church to officiate as chaplain in the consecrated part of the cemetery; and such chaplain shall be licensed by and be subject to the jurisdiction of the said bishop, and the said bishop shall have power to revoke any such license, and to remove such chaplain for any cause which appears to him reasonable.

Chaplain to be appointed with consent of the bishop.

28. The chaplain shall, when required, unless prevented by sickness or other reasonable cause, perform the burial service over all bodies brought to be buried in the consecrated part of the cemetery which are entitled to be buried in consecrated ground according to the rites and usage of the Established Church.

Chaplain to perform burial service when required.

29. Any clerk in holy orders of the Established Church, not being prohibited by the bishop, nor under ecclesiastical censure, at the request of the executor of the will of any deceased person, or any other person having the charge of the burial of the body of any deceased person, and with the consent of the chaplain for the time being of the cemetery, or if there be no chaplain with the consent of the bishop, may perform the said burial service over such body in the consecrated part of the cemetery.

Other clergymen of the Established Church may be allowed to officiate.

30. The company, out of the moneys to be received by virtue of this and the special Act, shall allow to the chaplain of the cemetery for the time being such a stipend as is approved of by the bishop of the diocese in which the cemetery is situated, which shall be payable, by equal moieties, on the twenty-fifth day of March and the twenty-ninth day of September in each year; and if any chaplain die, resign, or be removed or appointed, in the interval between the half-yearly days of payment, the company shall pay to him, or his executors or administrators, a part only of the half-yearly payment of

Company to pay the chaplain a stipend approved by the bishop.

Secs. 30–41.

the stipend proportioned to the time during which he shall have been the chaplain since the last preceding day of payment.

Stipend to be recovered by action at law.

31. If the stipend of the said chaplain, or any part thereof, be not paid to the chaplain entitled to receive the same, or to the executors or administrators of a deceased chaplain, for the space of thirty days next after any of the days of payment whereon the same ought to be paid, such chaplain, or his executors or administrators, may recover the same, with full costs of suit, against the company, by action of debt or upon the case in any court of competent jurisdiction.

Burials in the consecrated portion to be registered by the chaplain.

32. All burials in the consecrated part of the cemetery shall be registered in register books to be provided by the company, and kept for that purpose by the chaplain, according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register books, or copies or extracts therefrom, shall be received in all courts in evidence of such burials; and copies or transcripts thereof shall be from time to time sent to the registrar of the ecclesiastical court of the bishop of the diocese in which the cemetery is situated, to be kept with the copies of the other register books of the parishes within his diocese.

Registers to be subject to the regulations of 6 & 7 Will. 4. c. 86, as to searches, &c.

33. The said register books, so far as respects searches to be made therein, and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of the reign of his late Majesty, intituled "An Act for registering Births, Deaths, and Marriages in England," so far as such regulations relate to register books of burials kept by any rector, vicar, or curate.

Clerk appointed for the consecrated part of the cemetery.

34. The company may, with the consent of the chaplain for the time being, from time to time appoint a clerk to assist in performing the service for burials in the consecrated part of the cemetery, and allow to such clerk such stipend as they think proper out of the moneys to be received by virtue of this and the special Act, and they may remove such clerk at their pleasure.

As to burial of persons not members of the Church of England.

35. The company may set apart the whole or a portion of that part of the cemetery which is not set apart for burials according to the rites of the Established Church as a place of burial for the bodies of persons not being members of the Established Church, and may allow such bodies to be buried therein, under such regulations as the company appoint.

Company may allow any burial service to be performed in Dissenting Chapels.

36. The company may allow, in any chapel built within the unconsecrated part of the cemetery, a burial service to be performed according to the rites of any church or congregation other than the Established Church, by any minister of such other church or congregation duly authorised by law to officiate in such church or congregation, or recognised as such by the religious community or society to which he belongs.

Power to appoint gravediggers, &c.

37. The company may appoint gravediggers and other servants necessary for the care and use of the cemetery, and may pay them such wages and allowances as they think fit out of the moneys to be received by virtue of this and the special Act, and may remove them or any of them at their pleasure.

Regulations for ensuring decency and solemnity.

38. The company shall make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner.

No burials under or close to chapels.

39. No body shall be buried in any vault under any chapel of the cemetery, or within fifteen feet of the outer wall of any such chapel.

And with respect to exclusive rights of burial, and monumental inscriptions, in the cemetery, be it enacted as follows:

Parts of the cemetery may be set apart for exclusive burial.

Monumental inscriptions.

40. The company may set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and they may sell, either in perpetuity or for a limited time, and subject to such conditions as they think fit, the exclusive right of burial in any parts of the cemetery so set apart, or the right of one or more burials therein, and they may sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery.

Plan and book of reference to be kept, and be open to inspection.

41. The company shall cause a plan of the cemetery to be made upon a scale sufficiently large to show the situation of every burial place in all the parts of the cemetery so set apart, and in which an exclusive right of burial has been granted; and all such burial places shall be numbered, and such numbers shall be entered in a book to be kept for that purpose, and such book shall contain the names and descriptions of the several

persons to whom the exclusive right of burial in any such place of burial has been granted by the company; and no place of burial, with exclusive right of burial therein, shall be made in the cemetery without the same being marked out in such plan, and a corresponding entry made in the said book, and the said plan and book shall be kept by the clerk of the company.

Form of grant of burial in vault, &c. to be according to schedule.

42. The grant of the exclusive right of burial in any part of the cemetery, either in perpetuity or for a limited time, and of the right of one or more burials therein, or of placing therein any monument, tablet, or gravestone, may be made in the form in the schedule to this Act annexed, or to the like effect, and where the company are not incorporated it may be executed by the company or any two or more of them.

Register of grants to be kept.

43. A register of all such grants shall be kept by the clerk to the company, and within fourteen days after the date of any such grant an entry or memorial of the date thereof and of the parties thereto, and also of the consideration for such grant, and also a proper description of the ground described in such grant, so as the situation thereof may be ascertained, shall be made by the said clerk in such register; and such clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence, for every such entry or memorial; and the said register may be perused at all reasonable times by any grantee or assignee of any right conveyed in any such grant, upon payment of the prescribed sum, or if no sum be prescribed the sum of one shilling, to the clerk of the company.

Rights of burial, &c. to be assignable, or may be bequeathed by will.

44. The exclusive right of burial in any such place of burial shall, whether granted in perpetuity or for a limited time, be considered as the personal estate of the grantee, and may be assigned in his lifetime or bequeathed by his will.

Form of assignment.

45. Every such assignment made in the lifetime of the assignor shall be by deed duly stamped, in which the consideration shall be duly set forth, and may be in the form in the schedule to this Act annexed, or to the like effect.

Assignments to be registered.

46. Every such assignment shall, within six months after the execution thereof, if executed in Great Britain or Ireland, or within six months after the arrival thereof in Great Britain or Ireland, if executed elsewhere, be produced to the clerk of the company, and an entry or memorial of such assignment shall be made in the register by the clerk of the company, in the same manner as that of the original grant; and until such entry or memorial no right of burial shall be acquired under any such memorial; and for every such entry or memorial the clerk shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Probate of wills to be registered.

47. An entry or memorial of the probate of every will by which the exclusive right of burial within the cemetery is bequeathed, and in case there be any specific disposition of such exclusive right of burial in the said will an entry of such disposition, shall, within six months after the probate of such will, be made in the said register, in the same manner as that of the original grant, and until such entry no right of exclusive burial shall be acquired under such will; and for every such entry or memorial the clerk of the company shall be entitled to demand such sum as the company think fit, not exceeding the prescribed sum, or if no sum be prescribed two shillings and sixpence.

Vaults to be kept exclusively for purchasers of exclusive right.

48. No body shall be buried in any place wherein the exclusive right of burial shall have been granted by the company, except with the consent of the owner for the time being of such exclusive right of burial.

No such grant to give the right of burial in consecrated ground to certain persons.

49. No such grant as aforesaid shall give the right to bury within the consecrated part of the cemetery the body of any person not entitled to be buried in consecrated ground according to the rites and usages of the Established Church, or to place any monument, gravestone, tablet, or monumental inscription respecting any such body within the consecrated part of the cemetery.

Power to remove monuments improperly erected.

50. The company may take down and remove any gravestone, monument, tablet, or monumental inscription which shall have been placed within the cemetery without their authority.

Bishop to have power to object to

51. The bishop of the diocese in which the cemetery is situated, and all persons acting under his authority, shall have the same right and power to object to the placing, and to procure the removal of any monumental inscription within the consecrated part of the cemetery as he by law has to object to or procure the removal of any monumental

Secs. 51–57.

monumental inscriptions in consecrated part of cemetery.

inscription in any church or chapel of the Established Church, or the burial ground belonging to such church or chapel, or any other consecrated ground (1).

And with respect to payments to incumbents of parishes or ecclesiastical districts, and to parish clerks, be it enacted as follows:

Payments to incumbents of parishes from which bodies are brought.

52. The company shall, on the burial of every body within the consecrated part of the cemetery, pay to the incumbent for the time being of the parish or ecclesiastical district from which such body shall have been removed for burial such sums, if any, as shall be prescribed for that purpose in the special Act.

Company shall keep account of interments.

53. For ascertaining the amount of the payments, if any, to be made to the incumbents of the several parishes or districts aforesaid, the company shall cause books to be kept, and entries to be made therein of the names of all persons whose bodies are buried within the consecrated part of the cemetery, and the names of the parishes or districts from which such bodies respectively have been removed, and the manner of their burial within the cemetery (distinguishing whether in a place of exclusive burial or otherwise), with the date of such burial; and such books shall be at all reasonable times open to the inspection of the incumbents for the time being of the said several parishes or districts, or any person employed by them, without fee or reward.

Account of payments due to incumbents of parishes to be rendered half-yearly.

54. The company shall on the twenty-fifth day of March and twenty-ninth day of September in each year, or within one month after each of the said days, deliver to the person who is the incumbent of any parish or ecclesiastical district on that day, or to his executors or administrators, on demand made within the said month, an account of the sums, if any, payable in respect of bodies removed for burial within the consecrated part of the cemetery as aforesaid from such parish or ecclesiastical district during the half year next preceding the twenty-fifth day of March or twenty-ninth day of September, as the case may be.

Fees to be paid to incumbents of parishes half-yearly.

55. The sums payable by virtue of the special Act shall be paid half-yearly on the twenty-fifth day of March and the twenty-ninth day of September, or within one month afterwards, to the persons who are the incumbents of the parishes or ecclesiastical districts in respect of which the same are payable on such twenty-fifth day of March and twenty-ninth day of September respectively, or the executors or administrators of such incumbents; (that is to say,) such sums as accrue between the twenty-ninth day of September and the twenty-fifth day of March following shall be paid to the person who is the incumbent on the twenty-fifth day of March, and such sums as accrue between the twenty-fifth day of March and the twenty-ninth day of September following shall be paid to the person who is the incumbent on the twenty-ninth day of September; and if any such sums be not paid to the party entitled to receive the same within the period hereinbefore limited for the payment thereof, such party may recover the same, with full costs by action of debt or on the case, in any court having competent jurisdiction.

Payment to be made to the incumbent for the time being, who is to account with his predecessor.

56. If any incumbent of any parish or district in respect of which sums are payable by the company by virtue of the special Act ceases to be incumbent, by cession, death, or otherwise, between the said two half-yearly days of payment, such incumbent shall be entitled to receive so much of the sum payable at the half-yearly day which happens next after he ceases to be incumbent as has accrued from the last preceding half-yearly day, or from the time when such incumbent became first entitled to receive the fruits of his living, as the case may require, up to the day at which he ceased to be incumbent, and the incumbent of any parish or district who receives from the company any sum to a part of which any preceding incumbent is entitled under the provisions herein contained shall pay such part to him, his executors or administrators, accordingly; and the company shall not be answerable to any person, other than the actual incumbent for the time being, for the payment of any sums by virtue of this or the special Act.

Company to pay parish clerks the compensation mentioned.

57. The company shall, on the burial of every body within the consecrated part of the cemetery, except where the body is buried at the expense of any parish or ecclesiastical district, or union of parishes for the relief of the poor, pay to the parish clerk of the parish or ecclesiastical district from which such body has been removed for burial, if he held the office of parish clerk of such parish or ecclesiastical district at the time of the

(1) See *Maidman* v. *Malpas*, 1 Hagg. Cons. 205; *Harper* v. *Forbes*, 5 Jur. N. S. 275; *Ex parte Medwin*, 1 E. & B. 609; *Keet* v. *Smith*, L. R. 1 P. D. 73.

passing of the special Act, but not otherwise, such sum, if any, as shall be prescribed for that purpose in the special Act.

Secs. 57–66.

And with respect to the protection of the cemetery, be it enacted as follows:

Penalty for damaging the cemetery.

58. Every person who shall wilfully destroy or injure any building, wall, or fence belonging to the cemetery, or destroy or injure any tree or plant therein, or who shall daub or disfigure any wall thereof, or put up any bill therein or on any wall thereof, or wilfully destroy, injure, or deface any monument, tablet, inscription, or gravestone within the cemetery, or do any other wilful damage therein, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Penalty on persons committing nuisances in the cemetery.

59. Every person who shall play at any game or sport, or discharge fire-arms, save at a military funeral, in the cemetery, or who shall wilfully and unlawfully disturb any persons assembled in the cemetery for the purpose of burying any body therein, or who shall commit any nuisance within the cemetery, shall forfeit to the company for every such offence a sum not exceeding five pounds.

Annual account to be made up, and a copy transmitted to the clerk of the peace, &c., and be open to inspection.

60. And with respect to the accounts to be kept by the company, be it enacted, that the company shall every year cause an account to be prepared, showing the total receipt, and expenditure of all moneys levied by virtue of this or the special Act for the year ending on the thirty-first day of December, or some other convenient day in each year, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, certified by the chairman of the company, and duly audited, and shall send a copy of the said account, free of charge, to the clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month from the day on which such accounts end, which last mentioned account shall be open to the inspection of the public at all reasonable hours, on payment of the sum of one shilling for every such inspection; and if the company omit to prepare or send such account as aforesaid, they shall forfeit for every such omission the sum of twenty pounds.

Tender of amends.

61. And with respect to the tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last mentioned party shall not recover in any such action; and if no such tender have been made, the defendant, by leave of the Court where such action is pending, may at any time before issue joined pay into Court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

8 & 9 Vict. c. 20 incorporated as to damages, &c.

62. The clauses of the Railways Clauses Consolidation Act, 1845 (1), with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and such clauses shall apply to the cemetery and to the company respectively.

63. [In Ireland part of penalty to be paid to guardians of unions (2)].

All things required to be done by two justices may, in certain cases, be done by one.

64. All things herein or in the special Act, or any Act incorporated therewith, authorised or required to be done by two justices may and shall be done by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices.

Persons giving false evidence liable to penalties of perjury.

65. Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

And with respect to affording access to the special Act, be it enacted as follows:

Copies of special Act to be kept by company at

66. The company shall, at all times after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act printed by the printers to her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk

(1) This Act will be found *post*. (2) Repealed.

Secs. 66–69.

their office, and deposited with the clerk of the peace, and be open to inspection. 7 W. 4 & 1 Vict. c. 83.

of the peace of the county in which the cemetery is situated a copy of such special Act so printed as aforesaid; and the said clerk of the peace shall receive and he and the company respectively shall keep the said copies of the special Act, and shall allow all persons interested therein to inspect the same, and make extracts or copies therefrom, in the like manner and upon the like terms, and under the like penalty for default as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her Majesty, intituled "An Act to compel clerks of the peace for counties and other persons to take the custody of such documents as shall be directed to be deposited with them under the standing orders of either House of Parliament."

Penalty on company failing to keep or deposit such copies.

67. If the company fail to keep or deposit any of the said copies of the special Act as hereinbefore mentioned they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

Company not exempt from provisions of any future general Act.

68. And be it enacted, that nothing herein contained shall be deemed to exempt the company from any general Act relating to burials in towns or populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament.

Act may be amended, &c.

69. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this session of Parliament.

SCHEDULES.

SCHEDULES to which the foregoing Act refers.

Form of Grant of Right of Burial.

By virtue of [*here name the special Act*] we [*here state the name or description of the company*], in consideration of the sum of to us paid by of do hereby grant unto the said the exclusive right of burial [*or* the right of burying bodies, *as the case may be*] [*or* the right of placing a monument, tablet, or gravestone] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add,* "numbered on the plan of the cemetery made in pursuance of the said Act"], to hold the same to the said in perpetuity [*or the period agreed upon*] for the purpose of burial [*or as the case may be*].

Given under our common seal [*or* under our hands and seals, *as the case may be*], this day of in the year of our Lord .

Form of Assignment of Right of Burial.

I, *A. B.* of in consideration of the sum of paid to me by *C. D.* of do hereby assign unto the said *C. D.* the exclusive right of burial in [*here describe the place*], and numbered on the plan of the cemetery made in pursuance of the said Act, which was granted to me [*or* unto *A. B.* of] in perpetuity [*or as the case may be*] by [*here state the name of the company*] by a deed of grant bearing date the day of and all my estate, title, and interest therein, to hold the same unto the said *C. D.* in perpetuity [*or as, the case may be*, for the remainder of the period for which the same was granted by the said company], subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal this day of .

BURIAL ACT, 1853.

16 & 17 VICT. c. 134.

An Act to amend the Laws concerning the Burial of the Dead in England beyond the limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis. [20*th August*, 1853.]

Secs. 1—3.

15 & 16 Vict. c. 85.

Whereas an Act was passed in the last session of Parliament "to amend the laws concerning the burial of the Dead in the Metropolis," and it is expedient to make better provision for and in relation to burials beyond the limits of the said Act: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

On representation of Secretary of State, Her Majesty in Council may restrain the opening of new burial grounds, and order discontinuance of burials in specified places.

1. In case it appear to Her Majesty in Council, upon the representation of one of Her Majesty's principal Secretaries of State, that for the protection of public health the opening of any new burial ground in any city or town, or within any other limits, save with the previous approval of one of such Secretaries of State, should be prohibited, or that burials in any city or town, or within any other limits, or in any burial grounds or places of burial, should be wholly discontinued, or should be discontinued subject to any exception or qualification, it shall be lawful for Her Majesty, by and with the advice of her Privy Council, to order that no new burial ground shall be opened in such city or town, or within such limits, without such previous approval, or (as the case may require) that after a time mentioned in the order burials in such city or town, or within such limits, or in such burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and so from time to time as circumstances may require; provided always, that notice of such representation, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the *London Gazette*, and shall be affixed on the doors of the churches or chapels of, or on some other conspicuous places within, the parishes affected by such representation, one month before such representation is so considered: Provided also, that no such representation shall be made in relation to the burial ground of any parish until ten days previous notice of the intention to make such representation shall have been given to the incumbent and the vestry clerk or churchwardens of such parish.

Order not to extend to burial grounds of Quakers or Jews, unless expressly included.

2. No such order in council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order; and nothing in this Act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued of the bodies of such people and persons respectively; and no such order in council as aforesaid shall be deemed to extend to any non-parochial burial ground being the property of any private person, unless the same be expressly mentioned in such order.

Burial not to take place after order in Council for discontinuance.

3. It shall not be lawful, after the time mentioned in any such order in council for the discontinuance of burials, to bury the dead in any church, chapel, churchyard, or burial place, or elsewhere, within the parts to which such order extends, or in the burial grounds or places of burial (as the case may be) in which burials have by any such order

Secs. 3—7.

been ordered to be discontinued, except as in this Act or in such order excepted; and every person who shall, after such time as aforesaid, bury any body, or in anywise act or assist in the burial of any body, contrary to this enactment, shall be guilty of a misdemeanor.

Saving of certain rights to bury in vaults, &c.

4. Provided always, that notwithstanding any such order in council, where by virtue of any faculty legally granted, or by usage or otherwise, there is at the time of the passing of this Act any right of interment in or under any church or chapel affected by such order, or in any vault of any such church or chapel, or of any churchyard or burial ground affected by such order, and where any exclusive right of interment in any such burial ground, has been purchased or acquired before the passing of this Act, it shall be lawful for one of Her Majesty's principal Secretaries of State from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious to health, to grant license for the exercise of such right during such time and subject to such conditions and restrictions as such Secretary of State may think fit, but such license shall not prejudice or in anywise affect the authority of the ordinary, or of any other person who, if this Act had not been passed, might have prohibited or controlled interment under such right, nor dispense with any consent which would have been required, nor otherwise give to such right any greater force or effect than the same would have had if this Act had not been passed.

Not to extend to cemeteries established by Act of Parliament, or new burialgrounds, &c.

5. The provisions of this Act shall not extend to authorise the discontinuance of burials, or to prevent the burial of the body of any person, in any cemetery established under the authority of any Act of Parliament (1), or in any burial ground or cemetery to be hereafter provided with the approval of one of Her Majesty's principal Secretaries of State, as herein mentioned.

New burial grounds not to be opened contrary to order in Council.

6. Where by any such order in council as aforesaid it is ordered that no new burial ground shall be opened in any city or town, or within any limits therein mentioned, without the previous approval of one of Her Majesty's principal Secretaries of State, no new burial ground or cemetery (parochial or non-parochial) shall be provided and used in such city or town, or within such limits, without such previous approval.

Certain provisions of Metropolitan Burial Act, 15 & 16 Vict. c. 85, extended to parishes, &c., not in the metropolis.

7. All the provisions contained in the said Act of the last session of Parliament, chapter eighty-five "to amend the laws concerning the Burial of the Dead in the Metropolis," from section ten to section forty-two (both inclusive) (2) of the said Act, and also in sections forty-four, fifty, fifty-one, and fifty-two (2) of the said Act, shall extend and be applicable to and in respect of any parish not in the metropolis, and for the purpose of providing a burial ground for any such parish, or otherwise providing for the interment of the bodies of persons who would have had right of interment in the burial ground of any such parish, and generally in relation to every such burial ground to be so provided, and the fees and payments to be received in respect of interment or other rights therein and otherwise, as if such sections were re-enacted in this Act, and the words "in the metropolis," wherever they occur in such sections, or any of them, were omitted; and section forty-nine of the said Act shall extend to all cemeteries already established and hereafter to be established under the authority of Parliament in like manner as to those mentioned in Schedule (B.) to that Act, and as respects the cemeteries to which such section is hereby extended, the same shall also apply in respect of burials at the expense of any hospital or infirmary in like manner as to burials at the expense of a union or parish: Provided always, that in all cases in which any burial board shall provide a new burial ground under the said Act of the last session of Parliament or under this Act, that new burial ground shall be divided into consecrated and unconsecrated parts in such proportions, and the unconsecrated part thereof shall be allotted in such manner and in such portions as may be sanctioned by one of Her Majesty's principal Secretaries of State; and when any burial board shall by virtue of section thirty of the said Act build on any burial ground provided by such board a chapel for the performance of the burial service according to the rites of the United Church of

Any burial board building a chapel for burials according to the rites of the Church of England also to build a chapel for

(1) See *R.* v. *JJ. of Manchester*, 5 E. & B. 702, 25 L. J. M. C. 45, 2 Jur. N. S. 182, 26 L. T. 195, 4 W. R. 98.

(2) These sections will be found *post*, following this Act.

England and Ireland, they shall also build, on the portion of such ground set apart for burials otherwise than according to the rites of the said church, such chapel accommodation for the performance of burial service by persons not being members of the said church as may be approved of by one of Her Majesty's Secretaries of State.

persons not being members of the Church of England.

8. All burials within any burial ground provided under the said Act of the last session of Parliament or this Act shall be registered in a register book to be provided by the burial board providing such ground (or where the same is provided by the Commissioners of Sewers of the City of London then by such commissioners), and kept for that purpose according to the laws in force by which registers are required to be kept by the rectors, vicars, or curates of parishes or ecclesiastical districts in England; and such register book shall be so kept by some officer appointed by the said board of commissioners to that duty; and in such register books shall be distinguished in what parts of the burial ground, and where the whole of such burial ground is not consecrated for interments according to the rites of the United Church of England and Ireland, whether in the portion so consecrated or in the portion not so consecrated the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books or copies of extracts therefrom shall be received in all courts as evidence of the burials entered therein, and copies or transcripts of such register books, verified and signed by such officer as aforesaid, shall be from time to time sent to the registrar of the diocese to be kept with the copies of the other register books of the parishes within such diocese; and the said register books, so far as respects searches to be made therein and copies and extracts to be taken therefrom, shall be subject to the same regulations as are provided by an Act passed in the seventh year of King William the Fourth, intituled "An Act for registering births, deaths, and marriages in England," so far as such regulations relate to register books of burials kept by any rector, vicar, or curate (1).

Register of burials to be kept in every ground provided under 15 & 16 Vict. c. 85 or under this Act.

Entries to be evidence.

6 & 7 Will. 4, c. 86.

9. Nothing in this Act, except the provisions in sections seven and eight, shall extend to any parish in "the metropolis," as defined by the said Act of the last session, or otherwise affect the provisions of that Act.

Act, except ss. 7 and 8, not to extend to the metropolis.

10. This Act shall not extend to Scotland or Ireland.

Extent of Act.

(1) See the Burial Acts Amendment Act, 1857, 20 & 21 Vict. c. 81, s. 16, *post.*

BURIAL ACT, 1852.

15 & 16 VICT. c. 85.

An Act to amend the Laws concerning the Burial of the Dead in the Metropolis.
[1st *July*, 1852.]

Secs. 1—11.

1. [13 & 14 Vict. c. 52, repealed, and Her Majesty may continue additional member of board therein authorised (1).]

2. [On representation of Secretary of State, Her Majesty in council may order discontinuance of burials in any part of the metropolis.]

3. [Order not to extend to burial grounds of Quakers or Jews, unless expressly included (1).]

4. [Burial not to take place after order in council for discontinuance (1).]

5. [Restriction as to place of burial of inhabitants of parishes the burial grounds whereof are closed (1).]

6. [Saving of certain rights to bury in vaults, &c. (1).]

7. [Saving as to cemeteries in schedule (B.) and new burial grounds hereafter approved of by Secretary of State (1).]

8. [Saving as to St. Paul's Cathedral and Westminster Abbey (1).]

9. [New burial grounds in the metropolis to be approved by Secretary of State (1).]

Churchwardens, after order, or at any time, upon requisition of ten ratepayers, to convene vestry meeting, to determine whether a burial ground shall be provided.

10. Upon the requisition in writing of ten or more ratepayers of any parish in the metropolis in which the place or places of burial shall appear to such ratepayers insufficient or dangerous to health (and whether any order in council in relation to any burial ground in such parish has or has not been made), the churchwardens or other persons to whom it belongs to convene meetings of the vestry of such parish shall convene a meeting of the vestry, for the special purpose of determining whether a burial ground shall be provided under this Act for the parish; and public notice of such vestry meeting, and the place and hour of holding the same, and the special purpose thereof, shall be given in the usual manner in which notices of the meetings of the vestry are given, at least seven days before holding such vestry meeting; and if it be resolved by the vestry that a burial ground shall be provided under this Act for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal Secretaries of State (2).

In case vestry agree to provide a burial ground, burial board to be appointed.

11. In case of such resolution as aforesaid the vestry shall appoint not less than three nor more than nine persons, being ratepayers of the parish, to be the burial board of such parish, of whom one third, or as nearly as may be one third (to be determined among themselves), shall go out of office yearly, at such time as shall be from time to time fixed by the vestry, but shall be eligible for immediate re-appointment: Provided always, that the incumbent of the parish shall be eligible to be appointed and re-appointed from time to time as one of the members of the said board, although not a

(1) This section applies to the metropolis only.

(2) By the Burial Act, 1853, s. 7, *ante*, p. 1156, ss. 10—42 and ss. 44, 50, 51 and 52 of this Act are extended to parishes, &c., not in the metropolis.

As to the meaning of vestry, see s. 52, *post*, and see *In re Sunderland*, 25 L. J. Q. B. 271, 4 W. R. 480, 2 Jur. N. S. 424, *S. C. sub. nom. R.* v. *Peters*, 6 E. & B. 225; *In re Liverpool Burial Board*, 26 L. J. Q. B. 213, 3 Jur. N. S. 441, *S. C. sub. nom. R.* v. *Gladstone*, 7 E. & B. 575, 5 W. R. 530. See now the Burial Act, 1854, 17 & 18 Vict. c. 87, s. 1, and the Burial Act, 1857, 20 & 21 Vict. c. 81, ss. 1 and 4, *post*.

ratepayer of the parish; provided also, that any member of the board may at any time resign his office, on giving notice in writing to the churchwardens or persons to whom it belongs to convene meetings of the vestry (1).

Secs. 11–19.

Resignation of members.

12. [Vacancies to be filled up by vestries (2).]

13. The board shall meet [*at least once in every month*] at their office, or some other convenient place previously publicly notified, and the said board may meet at such other time as at any previous meeting shall be determined upon; and it shall be at all times competent for any two members of the board by writing under their hands, to summon, with at least forty-eight hours notice, the board for any special purpose mentioned in such writing, and to meet at such time as shall be appointed therein (3).

Meetings of the board (1).

14. At all meetings of the board any number not less than three members of such board shall be a sufficient number for transacting business, and for exercising all the powers of the board.

Quorum of meetings of the board (1).

15. The board shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board and for the purposes of their burial ground, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business.

Board may appoint and remove officers, &c. (1).

16. Entries of all proceedings of the board, with the names of the members who attend each meeting, shall be made in books to be provided and kept for that purpose, under the direction of the board, and shall be signed by the members present or any two of them; and all entries purporting to be so signed shall be received as evidence, without proof of any meeting of the board having been duly convened or held, or of the presence at any such meeting of the persons named in any such entry, as being present thereat, or of such persons being members of the board, or of the signature of any person by whom any such entry purports to be signed, all which matters shall be presumed until the contrary be proved; and the board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred.

Minutes of proceedings of board to be entered in a book (1).

Board to keep accounts, which shall be open to inspection (1).

17. All such books shall at all reasonable times be open to the examination of every member of such board, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the members of such board, or any of them, or any of the officers or servants of such board having the custody of the said books, being thereunto reasonably requested, refuse to permit or do not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copies or extracts, every such member, officer, or servant so offending shall for every such offence, upon a summary conviction thereof before any justice of the peace, forfeit any sum not exceeding five pounds.

Penalty for refusing to allow inspection (1).

18. The vestry shall yearly appoint two persons not being members of the board, to be auditors of the accounts of the board, and at such time in the month of March in every year as the vestry shall appoint the board shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.

Auditors to be appointed yearly, who shall examine the accounts, and report to vestries (1).

19. The expenses incurred or to be incurred by the burial board of any parish in carrying this Act into execution shall be chargeable upon and paid out of the rates for the relief of the poor of such parish; the expenses to be so incurred for or on account of any parish in providing and laying out a burial ground under this Act and building the necessary chapel or chapels thereon not to exceed such sum as the vestry shall authorise

Expenses to be paid out of the poor's rate (1).

(1) See note (2) on preceeding page.

(2) See the preceeding note. This section, however, is now repealed by the Statute Law Revision Act, 1875.

(3) The portion of this section between brackets is repealed, see the Burial Act, 1855, 18 & 19 Vict. c. 128, s. 5, *post*.

Secs. 19–23.

to be expended for such purpose; and the overseers or other officers authorised to make and levy rates for the relief of the poor in any parish shall, upon receipt of a certificate under the hands of such number of members of the burial board as are authorised to exercise the powers of the board of the sums required from time to time for defraying any such expenses as aforesaid, pay such sums out of the rates for the relief of the poor as the board shall direct.

Power to borrow money, with sanction of vestry, and approval of the Treasury (1).

20. Provided always, that it shall be lawful for the board, with the sanction of the vestry and the approval of the Commissioners of Her Majesty's Treasury, to borrow any money required for providing and laying out any burial ground under this Act, and building a chapel or chapels thereon, or any of such purposes, and to charge the future poor rates of the parish with the payment of such money and interest thereon; provided [*that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one twentieth of the principal sum borrowed, until the whole is discharged* (2).]

The public works loan commissioners may advance money for the purposes of the Act (1).

21. The commissioners for carrying into execution an Act of the session holden in the fourteenth and fifteenth years of Her Majesty, chapter twenty-three, "to authorise for a further period the advance of money out of the Consolidated Fund to a limited amount for carrying on public works and fisheries and employment of the poor," and any Act or Acts amending or continuing the same, may from time to time make to the burial board of any parish for the purposes of this Act any loan under the provisions of the recited Act, or the several Acts therein recited or referred to, upon security of the rates for the relief of the poor of the parish.

Moneys raised, and the income arising from burial ground, to be applied towards defraying expenses (1).

22. The money raised for defraying such expenses, and the income arising from the burial ground provided for the parish, except fees payable to the incumbent, clerk, and sexton of the parish, and the other fees herein directed to be otherwise paid, shall be applied by the board in or towards defraying the expenses of such board under this Act; and whenever, after repayment of all moneys borrowed for the purposes of this Act in or for any parish and the interest thereof, and after satisfying all the liabilities of the board with reference to the execution of this Act in or for the parish, and providing such a balance as shall be deemed by the board sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the board, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish.

Vestries of parishes may concur in providing a burial ground for the common use of such parishes (1).

23. The vestries of any parishes which shall have respectively resolved to provide burial grounds under this Act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of this Act, as they shall mutually agree, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the burial boards appointed for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint burial board for all such parishes, and may have a joint office, clerk, and officers, and all the provisions of this Act shall apply to such joint burial board accordingly; and the accounts and vouchers of such board shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such board shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses (3).

(1) See note (2) *ante*, p. 1158.

(2) See *Elt* v. *Burial Board of St. Mary's, Islington*, 1 Kay. 449.

The portion of the section within brackets is repealed by the Burial Acts Amendment Act, 1857, 20 & 21 Vict. c. 81, s. 18, *post*.

(3) See further the Burial Act, 1855, 18 & 19 Vict. c. 128, ss. 11, 12 and 13, *post*, and the Burial Acts Amendment Act, 1857, 20 & 21 Vict. c. 81, s. 1, *post*. See, also, *R.* v. *Sudbury*, 1 E. B. & E. 264, 27 L. J. Q. B. 232, 31 L. T. 161, 4 Jur. N. S. 948.

Secs. 24–28.

Incorporation of burial boards (1).

24. For the more easy execution of the purposes of this Act the burial board of every parish appointed under this Act shall be a body corporate, by the name of "The Burial Board for the Parish of ( ) in the county of ( )," and by that name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority (without any license in mortmain) to take, purchase, and hold land for the purposes of this Act; and where the burial boards of two or more parishes act as and form one joint burial board for all such parishes for the purposes aforesaid, such joint board shall for such purposes only be a body corporate by the name of "The Burial Board for the parishes of and in the county of " and by that name shall have perpetual succession and a common seal, and shall sue and be sued, and have power and authority as aforesaid to take, purchase, and hold land for the purposes of this Act.

Board to provide a burial ground, which may be within or without the parish (1).

25. Every burial board shall, with all convenient speed, proceed to provide a burial ground for the parish or parishes for which they are appointed to act, and to make arrangements for facilitating interments therein; and in providing such burial ground the board shall have reference to the convenience of access thereto from the parish or parishes for which the same is provided; and any such burial ground may be provided either within or without the limits of the parish, or all or any of the parishes, for which the same is provided; [but no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this Act, nearer than two hundred yards to any dwelling house, without the consent in writing of the owner, lessee, and occupier of such dwelling house (2).]

Board may, with approval of vestry, purchase land of cemeteries (1).

26. For the providing such burial ground it shall be lawful for the burial board, with the approval of the vestry or vestries of the parish or respective parishes, to contract for and purchase any lands for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this Act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves, and other subsisting rights, which may have been previously granted therein: Provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the burial board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish or respective parishes (3).

Certain provisions of 8 & 9 Vict. c. 18 incorporated with this Act (1).

27. The Lands Clauses Consolidation Act, 1845, (4) except the provisions of that Act "with respect to the purchase and taking of lands otherwise than by agreement," "with respect to the recovery of forfeitures, penalties, and costs," "with respect to lands acquired by the promoters of the undertaking under the provisions of the Lands Clauses Consolidation Act, 1845, or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof," and "with respect to the provision to be made for affording access to the special Act by all parties interested," shall be incorporated with this Act; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said Lands Clauses Consolidation Act, shall mean any such burial board.

Power to sell lands not wanted (1).

28. It shall be lawful for any such board, with the approval of the vestry, to sell and dispose of any lands purchased by them under this Act, or any part thereof, in which no interment shall have taken place, and which it may appear to the board may be properly sold or disposed of; and for completing and carrying any such sale into effect such board may make and execute a conveyance of the lands sold and disposed of as aforesaid unto

(1) See note (2), *ante*, p. 1158.

(2) The portion of the section between brackets is repealed by Burial Acts Amendment Act, 1855, 18 & 19 Vict. c. 128, s. 9, *post*, which see. See, also, Burial Act, 1854, 17 & 18 Vict. c. 87, s. 12, *post*.

(3) As to provision of cemeteries by local authorities see the Public Health (Interments) Act, 1879, 42 & 43 Vict. c. 31, *ante*, p. 1145.

(4) *Ante*, pp. 894, *et seq.*

Secs. 28–32.

the purchaser, or as he shall direct; and such conveyance shall be under the hands of at least two of the members of the board, and under the seal of the board; and the word "grant" in such conveyance shall have the same operation as by the said Lands Clauses Consolidation Act, 1845, is given to the same word in a conveyance of lands made by the promoters of the undertaking; and a receipt under the hands of two of the members of the board shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received; and the money to arise from such sale shall be applied to such of the purposes of this Act as the board shall think fit.

Burial board may, with approval of vestry, &c., appropriate land belonging to parish (1).

29. Provided always, that any burial board under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the Poor Law Board, may from time to time appropriate for the purposes of a burial ground for such parish, either alone or jointly with any other parish or parishes, any land vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish, or for any specific charity (2): Provided always, that where any land so taken and appropriated shall be subject to any charitable use, such lands shall be taken on such conditions only as the Court of Chancery in the exercise of its jurisdiction over charitable trusts shall appoint and direct.

Board may lay out burial ground, and build a chapel for performance of burials according to rites of Established Church (1).

Ground may be set apart for building a chapel, &c.

30. It shall be lawful for any burial board to lay out and embellish any burial ground provided by such board in such manner as may be fitting and proper, and to build on any land to be purchased or appropriated for a burial ground under this Act, and according to a plan to be approved of by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the United Church of England and Ireland; and such burial ground may be consecrated by the bishop of the diocese, when the same shall appear to him to be in a fit and proper condition, for the purposes of interment according to the rites of the United Church: Provided always, that in providing any burial ground such board shall set apart a portion thereof which shall not be so consecrated as aforesaid, and may build thereon a suitable chapel or chapels for the performance of funeral service.

Burial board may contract for works to be done (1).

31. Any burial board may from time to time enter into any contract with any persons or companies for building any chapel or chapels as aforesaid, and inclosing, laying out, and embellishing any burial ground, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts or true copies thereof, shall be entered in books to be kept for that purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by such burial board, for the purposes of this Act, unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county or counties in which the parish or respective parishes shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the burial board at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the burial board to contract with the person offering the lowest price.

No contract above 100*l.* to be entered into without notice.

Burial ground to be the burial ground of the parish or parishes for which it is provided (1).

32. From and after the consecration as aforesaid of any burial ground provided under this Act (except any portion thereof intended not to be so consecrated), or where all or any part of such burial ground, by reason of the same having been already consecrated, shall not require to be consecrated, then from and after such time as the bishop of the diocese shall appoint, such burial ground shall be deemed the burial ground of the parish for which the same is provided, and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and every incumbent or

(1) See note (2), *ante*, p. 1158.
(2) See *In re Egham Burial Board*, 3 Jur. N. S. 956.

minister of the parish or of each of the parishes (as the case may be) for which such burial ground is provided shall, by himself and his curate, or such duly qualified persons as such incumbent or minister may authorise, perform the duties and have the same rights and authorities for the performance of religious service in the burial in such burial ground, or in the consecrated portion thereof, of the remains of parishioners or inhabitants of the parish of which he is such incumbent or minister, and shall be entitled to receive the same fees in respect of such burials which he has previously enjoyed and received; and the clerk and sexton of such parish or of each of such parishes shall (when necessary) perform and exercise the same duties and functions in respect of the burial of the remains of parishioners or inhabitants of the parish of which he is clerk or sexton in such burial ground or the consecrated portion thereof, and shall be entitled to receive the same fees on such burials, as he has previously performed and exercised and received, as if such burial ground were the burial ground of the respective parish of such incumbent or minister, clerk and sexton respectively; and the parishioners and inhabitants of such parish or of each of such parishes shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish, subject nevertheless to the provisions herein contained (1).

Board may sell exclusive rights of burial vaults, and right to erect monuments (2).

33. Any burial board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial either in perpetuity or for a limited period, in any part of any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground (3), but there shall be payable to the incumbent or minister of the parish out of the fees or payments to be paid in respect of any rights acquired under this enactment in the consecrated part of such burial ground (in lieu of the fees or sums which he would have been entitled to on the grant of the like rights in the burial ground of his parish) such fees or sums as shall be settled and fixed by the vestry with the approval of the bishop of the diocese, or if no such fees or sums shall have been so settled then such fees as he would by law or custom have been entitled to on the grant of the like rights in the burial ground of his parish (4).

Board to fix payments for interments in burial ground and for exclusive right of bnrial vaults and right to erect monuments (2).

34. Every burial board under this Act shall and may (without prejudice to the fees and payments herein specially provided for) fix and settle and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and also the sums to be paid for the exclusive right of burial, either in perpetuity or for a limited period, in any burial ground provided by such board, and also the right of constructing any vault or place of burial with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground, and every burial board, with the consent of the vestry, may from time to time revise and alter such fees, payments, and sums, as aforesaid; and a table showing such fees, payments, and sums, and all other fees and payments in respect of interments in such ground, shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground (5).

Division of fees between incumbents of parishes and ecclesiastical districts (2).

35. Where at the time of the discontinuance of interment in any burial ground the fees in respect of burials therein are divided between the incumbent of the parish and the incumbent of any district parish or other ecclesiastical district, each incumbent shall have the same proportion of the fees in the burial ground to be provided under this Act as he was entitled to in respect of interments in the old burial ground.

(1) See *Burial Board of St. Margaret, Rochester* v. *Thompson*, L. R. 6 C. P. 445, 40 L. J. C. P. 213, 24 L. T. N. S. 673, 19 W. R. 892, 36 J. P. 6.

(2) See note (2), *ante*, p. 1158.

(3) See *Ashby* v. *Harris*, L. R. 3. C. P. 523, 37 L. J. M. C. 164, 18 L. T. N. S. 719, 16 W. R. 869.

(4) As to burial grounds provided by the council of a borough, see now Burial Act, 1854, 17 & 18 Vict. c. 87, s. 10, *post*.

(5) Now by Burial Acts Amendment Act, 1855, 18 & 19 Vict. c. 128, s. 7, *post*, all fees are subject to approval of Secretary of State.

Secs. 36–42.

Fees payable to churchwardens and others for parochial purposes (1).

36. Where fees or any portion of fees payable on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any parish for which a burial ground is provided alone or jointly with any other parish or parishes under this Act, are by law or custom payable to the churchwardens of any parish, or to trustees or other persons, for or towards the payment of any annuity or stipend to the incumbent or minister, or any other parochial purpose, or the discharge of any debt or liability, such fees or portion of fees shall be payable in the burial ground to be provided as aforesaid for such parish under this Act, and shall be received by the burial board and paid to the parties entitled to receive the same; and where fees or payments have been received on interments, or for any monument, gravestone, tablet, or monumental inscription, in the burial ground of any such parish by any such churchwardens, or by trustees or other persons, for the purpose of discharging any periodical payment or other liability, it shall be lawful for the burial board, upon the request of such churchwardens, trustees, or persons, to pay from time to time, out of the fees and moneys received by them on account of such parish, such amount as may be necessary for discharging such periodical payment or liability.

Power to vestry, with consent of bishop, to revise the fees to incumbent, &c., or to substitute a fixed payment (1).

37. It shall be lawful for the vestry of any parish from time to time, if they think fit, with the consent of the bishop of the diocese, to revise and vary the fees payable to the incumbent, clerk, and sexton, and other persons and bodies respectively, under the provisions of this Act, or, with such consent as aforesaid, to substitute for the fees payable to such incumbent, clerk, and sexton, and other persons and bodies respectively, a fixed annual sum of such amount as to such vestry may seem just, to be payable by such periodical payments as such vestry may appoint, and in such last-mentioned case the fees which would otherwise be payable under this Act to the incumbent, clerk, and sexton, and such other persons and bodies respectively, shall be paid to the burial board, and such fixed payments as aforesaid shall be paid by such board (2).

Management to be vested in burial boards (1).

38. The general management, regulation, and control of the burial grounds provided under this Act shall, subject to the provisions of this Act and the regulations to be made thereunder, be vested in and exercised by the respective burial boards providing the same; provided that any question which shall arise touching the fitness of any monumental inscription placed in any part of the consecrated portions of such grounds shall be determined by the bishop of the diocese.

Arrangements between the incumbents of parishes (1).

39. Where a burial ground is provided under this Act for the common use of two or more parishes, in case any question arise among the incumbents of such parishes as to the performace of the burial service by a chaplain to be paid by means of contributions from such incumbents, or deductions from fees or sums payable to them, or otherwise touching the performance of service in the consecrated part of such ground, the bishop of the diocese shall from time to time confirm any arrangement which a majority, or, in case of equal numbers, one half of the incumbents shall approve, and such arrangement so confirmed shall be binding upon all the parties concerned.

Certain provisions of 10 & 11 Vict. c. 65 incorporated with this Act (1).

40. The provisions of The Cemeteries Clauses Act, 1847, with respect to the protection of the cemetery (3), shall be incorporated with this Act, and be applicable to any burial ground provided under this Act.

Boards may make arrangements for facilitating the conveyance of bodies to burial grounds (1).

41. Any burial board may make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the dead from the parish or the place of death to the burial ground which shall be provided under this Act, or to any other place of burial, subject to the provisions of this Act and the regulations to be made thereunder, and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.

Places may be provided for reception

42. It shall be lawful for any burial board, with the approval of the vestry, and subject to the provisions of this Act and the regulations to be made thereunder, and for the churchwardens and overseers of the poor of any parish in the metropolis for which a

(1) See note (2), *ante*, p. 1158.

(2) As to burial grounds provided by the council of a borough, see now Burial Act, 1854, 17 & 18 Vict. c. 87, s. 10, *post*.

(3) *I.e.*, 10 & 11 Vict. c. 65, ss. 58—61. The Act will be found, *ante*, p. 1146.

burial board shall not have been appointed under this Act, by the direction of the vestry, and subject as aforesaid, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein, and for providing such places such burial boards may exercise the powers vested in them under this Act for providing burial grounds; and such churchwardens and overseers may exercise all such powers as, under the Act of the fifty-ninth year of King George the Third, chapter twelve, or otherwise, the churchwardens and overseers of any parish not having a workhouse might exercise for providing a workhouse for such parish (2).

of bodies until interment (1).

43. [The Commissioners of Sewers of the City of London to be a burial board for the parishes in the city and its liberties (3).]

44. It shall be lawful for one of Her Majesty's principal Secretaries of State from time to time to make such regulations in relation to the burial grounds and places for the reception of bodies previously to interment which may be provided under this Act as to him may seem proper, for the protection of the public health and the maintenance of public decency, and the burial boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations (4).

Secretary of State may make regulations as to burial grounds, &c. (1).

45. [Brompton cemetery vested in Commissioners of Works (3).]

46. [Money authorised to be advanced under 14 & 15 Vict. c. 89, may be applied in completing the purchase of the Brompton cemetery (3).]

47. [Provision for winding up the West of London and Westminster Cemetery Company (3).]

48. [Brompton cemetery may be sold by direction of the Treasury, and in the meantime used for interments (3).]

49. [Limiting the compensation fee to be payable on pauper burials in cemeteries (3).]

50. Where under any local Act fees on interments in any burial ground of any parish in the metropolis are payable to the churchwardens of such parish, or to any trustees or other persons, for the purpose of enabling them to pay an annuity or stipend to the incumbent or minister, the fees which under this Act, or any Act relating to any cemetery company, would on the interment in the cemetery of any company of any body brought from such parish be payable to such incumbent or minister, shall be payble to the said churchwardens, trustees, or persons, and any surplus of such fees which may remain in their hands after payment of such annuity or stipend shall be paid to such incumbent or minister.

Incumbents' compensations to be payable to the churchwardens where the fees on burials are now paid to them, and the incumbents are not entitled (1).

51. Where any burial ground in which interment is discontinued under this Act belongs to any parish other than the parish within which the same is locally situate, it shall be lawful for the incumbent and churchwardens of the parish to which such burial ground belongs, with the consent of the vestry, or persons possessing the powers of vestry for ecclesiastical purposes of or in such parish, and of the bishop of the diocese, to convey any chapel belonging to such parish, and situate in or attached to such burial ground, and the site thereof, to any persons named by the incumbent and churchwardens of the parish within which the same is situate, with the consent of the vestry, or persons possessing the powers of vestry of or in such parish for ecclesiastical purposes, and of the said bishop, and upon such trusts for such last-mentioned parish, and subject to such conditions to be performed on behalf of such parish, and with such provision for the appointment of new trustees, as to the said bishop may seem proper; and such conveyance shall be effectual to pass all the estate and interest vested in any persons in trust or in behalf of the parish to which such chapel and the site thereof belong; and after the execution of such conveyance all obligation on such last-mentioned parish, or any trustees or others on behalf thereof, to repair such chapel, or to pay any stipend to the minister thereof, or otherwise in relation to or in connection with such chapel, shall cease.

Power for incumbent or churchwardens to convey chapel (1).

(1) See note (2), *ante*, p. 1158.
(2) See the Public Health Act, 1875, ss. 141, 142, 143, *ante*, p. 112.
(3) This section applies to the metropolis only.
(4) See further the Burial Acts Amendment Act, 1855, 18 & 19 Vict. c. 128, s. 8, *post*.

Secs. 52–54.

Interpretation of terms (1).

52. In this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; that is to say,

"Parish" shall mean every place having separate overseers of the poor, and separately maintaining its own poor (2):

"Ratepayers" shall mean the persons for the time being assessed to and paying rates for the relief of the poor of the parish:

"Incumbent" and "minister" shall, in respect of any fee made payable to an incumbent or minister under this Act, mean the clergyman who would have been entitled to the fee had the body been buried in the churchyard or burial ground of the parish from which it came, or in the burial ground of the ecclesiastical district in case such district has a burial ground at the passing of this Act, and if any difference shall arise between two or more persons severally claiming to be the incumbent or minister under this provision, such difference shall be determined by the bishop of the diocese:

"Churchwardens" shall mean also chapelwardens, or other persons discharging the duties of churchwardens:

"Overseers" shall mean also any persons authorised and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor:

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select or other vestry elected under an Act of the fifty-ninth year of King George the Third, chapter twelve, "to amend the Laws for the Relief of the Poor," or elected under an Act passed in the second year of King William the Fourth, chapter sixty, "for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of England and Wales," or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select or other vestry:

"Clerk" shall mean the clerk appointed pursuant to this Act by any burial board appointed under this Act.

53. [Definition of "the metropolis" (3).]

54. [Saving rights of cemetery companies (3).]

(1) See note (2) *ante*, p. 1158.

(2) See *R.* v. *Sudbury*, El. Bl. & El. 264, 27 L. J. Q. B. 232, 31 L. T. 161, 4 Jur. N. S. 948, 6 W. R. 551, 22 J. P. 706. But see now the Poor Law Amendment Act of 1866, 29 & 30 Vict. c. 113, s. 18.

(3) This section applies to the metropolis only.

BURIAL ACT, 1854.

17 & 18 VICT. c. 87.

An Act to make further Provision for the Burial of the Dead in England beyond the Limits of the Metropolis. [10*th August*, 1854.]

Secs. 1, 2.

16 & 17 Vict. c. 134.

Whereas an Act was passed in the last session of Parliament, chapter one hundred and thirty-four, intituled "An Act to amend the Laws concerning the Burial of the Dead in England beyond the Limits of the Metropolis, and to amend the Act concerning the burial of the Dead in the Metropolis" (1): And whereas under the said Act provision is made for providing burial grounds for parishes by burial boards to be appointed by vestries: And whereas in some cases of parishes wholly or partly within boroughs there is difficulty or inconvenience in providing requisite places of burial for the inhabitants under the powers of the said Act, and it is expedient that in such cases such places of burial should be provided by the councils of such boroughs: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Her Majesty may, by order in council, invest town councils with the power of providing burial grounds.

1. In case it appear to Her Majesty in Council, upon the petition of the town council of any borough, stating that an Order in Council has been made for closing all or any of the burial grounds of one or more parishes being wholly or partly within such borough, that there is difficulty or inconvenience in providing, under the powers of the said Act of the last session of Parliament, requisite places of burial for the inhabitants of such parish or parishes, it shall be lawful for Her Majesty, with the advice of Her Privy Council, to order that powers shall be vested in the council of such borough for providing such places of burial under the provisions of this Act: Provided always, that notice of such petition and of the time when it shall please Her Majesty to order that the same be taken into consideration by the Privy Council shall be published in the *London Gazette*, and in one of the newspapers usually circulating in such borough, one month at least before such petition is so considered (2).

Upon the making of such order borough council to have all the powers vested in burial boards under 16 & 17 Vict. c. 134.

2. Upon the making of any such order of Her Majesty in Council as aforesaid in relation to any borough, if the town council of the same shall decide upon providing one or more burial grounds, the said town council shall be a burial board for that purpose, and the provisions of the said Act of the last session, and the provisions of the Act of the fifteenth and sixteenth years of Her Majesty, chapter eighty-five, in the said Act of the last session mentioned or referred to, and thereby extended and made applicable as therein mentioned, except the provisions relating to the constitution, incorporation, meetings, entries of proceedings, and accounts of burial boards (3), shall, subject to the provisions herein contained, extend and be applicable to such borough and the council thereof, and to any burial ground and any places for the reception of the bodies of the dead previously to interment which may be provided by such council under this Act in like manner as the same are applicable to any parish and the burial board thereof, and to

(1) *Ante*, p. 1155.
(2) See the Burial Act, 1855, 18 & 19 Vict. c. 128, s. 1, *post*, following this Act.
(3) *I.e.*, ss. 10—19, and s. 24, *ante*, pp. 1158, 1159, and 1161.

Secs. 2—7.

any burial ground and any such places as aforesaid provided by such burial board, save that no approval, sanction, or authorisation of the vestry of any parish shall be requisite.

Expenses to be paid out of borough fund or borough rates.

3. Provided always, that all expenses of carrying this Act into execution in any borough shall, subject to the provisions hereinafter contained, be chargeable upon and paid out of the borough fund and borough rates of such borough, or partly out of such fund and partly out of such rates, in like manner as if the same were expenses incurred in carrying into effect the provisions of an Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six (1); and any money to be borrowed under the authority of this Act by the Council of such borough, and the interest thereon, shall be charged by such council on the moneys out of which such expenses are by this Act directed to be paid, and the said provisions hereby extended and made applicable to the said council shall be construed accordingly; and any surplus of money raised for defraying such expenses as aforesaid, and of the income of any burial ground provided by the council of any borough, which if the same were provided by a burial board for any parish would be applicable in aid of the rate for the relief of the poor of such parish, shall be applicable in aid of the borough fund or borough rates of such borough, or in case a separate rate has been levied in parts only of such borough, for the purposes of this Act, as hereinafter provided, then such surplus shall be applied rateably towards payment or satisfaction of so much of any borough rate as may be leviable in such parts of such borough: Provided always, that such surplus shall be ascertained upon the auditing of the accounts of the Treasurer of such borough in the month of September in any year (2).

Money may be borrowed at lower rates of interest to pay off securities bearing a higher rate.

4. If any burial board under the said Act of the last session of Parliament, or the council of any borough acting under this Act, can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they think fit, so borrow accordingly in order to pay off and discharge any security or securities bearing a higher rate of interest, and to secure the repayment of the money so borrowed, and the interest to be paid thereon in like manner as other moneys authorised to be borrowed by such burial board or council under the said Act of the last session or this Act.

Power to borrow money to pay off former mortgages.

5. If at the time appointed by any mortgage for payment of the principal money secured thereby any such burial board or council as aforesaid are unable to pay off the same, they may, if they think fit, borrow such sum of money as may be necessary for the purpose of paying off all or any part of such principal money, and secure the repayment of the money so borrowed, and the interest to be paid thereon, in like manner as other moneys authorised to be borrowed by such burial board or council under the said Act of the last session or this Act.

Council how to act under this Act, and conveyances and sales of lands how to be made.

6. The council of any borough shall act in execution and exercise of their duties, powers, and authorities under this Act in like manner as in execution and exercise of their duties, powers, and authorities under the said Act of the fifth and sixth years of King William the Fourth (1); and every conveyance of land to be purchased for the purposes of this Act shall be taken in the name of the body corporate of such borough, and such body corporate shall have power to hold such lands for the purposes of this Act; and no lands purchased under this Act by the council of any borough shall be sold, except with the like approbation and subject to the like restrictions as if sold under the said Act of the fifth and sixth years of King William the Fourth (3); and the signature of any member or members of such council shall not be necessary to any conveyance of any lands so sold; and a receipt under the hand of the treasurer of such borough shall be a sufficient discharge to the purchaser of any such lands for the purchase money in such receipt expressed to be received.

Burial ground to be deemed to be for the parishes in the borough.

7. The burial ground or burial grounds provided for any borough under this Act shall be deemed to be provided for such parish or parishes wholly or in part situate in such borough as the town council shall determine.

(1) Now the Municipal Corporations Act, 1882, *ante*, p. 259.
(2) See the Burial Acts Amendment Act, 1857, 20 & 21 Vict. c. 81, ss. 22, *post*.
(3) See now ss. 108, 109, 110, 128 and 236 of the Municipal Corporations Act, 1882, *ante*, p. 259.

Secs. 8—12.

8. It shall be lawful for the council of any borough, if they see fit, in fixing and settling, revising and altering, the fees, payments, and sums mentioned in section thirty-four of the said Act of the fifteenth and sixteenth years of Her Majesty, from time to time to fix all or any of such fees, payments, and sums in respect of interments of the remains of persons, being inhabitants of that part of any parish partly within and partly without the limits of such borough which is without such limits, and in respect of other rights to be exercised with reference to the interment of the remains of such persons, at a higher amount than the ordinary charge for the time being fixed by such council in respect of the like matters; provided always, that such higher amount shall be fixed with the approval of one of Her Majesty's principal Secretaries of State.

Council may fix a higher rate of payment for interment, &c. in respect of outlying part of any parish partly situate in the borough.

9. Where, previously to the making of any Order in Council under this Act in relation to any borough, it appears to Her Majesty in Council, upon the petition of the town council so made as aforesaid, or otherwise, that any parish wholly or in part within such borough is provided with a sufficient burial ground, it shall be lawful for Her Majesty in and by such order to direct that no part of such parish shall be assessed towards defraying the expenses of executing this Act in such borough, and in such case no burial ground provided for such borough under this Act shall be deemed to be provided for such parish; and any money required to be raised in such borough for defraying such expenses, or paying any money borrowed under this Act by the council of such borough, or any interest thereon, by means of a rate to be levied in such borough, shall be raised by a separate rate, to be levied within such parts of such borough as are not exempted under such order from being assessed as aforesaid; and (so far as may be consistent with this provision) the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the said Act of the fifth and sixth years of King William the Fourth [1].

Order in Council may except parishes already having burial grounds; and in such case, if a rate be necessary, a separate rate to be made on the rest of the borough.

10. The powers of settling and fixing the fees or sums to be payable to the incumbent or minister, and of revising and varying the fees payable to the incumbent, clerk, and sexton, and other persons and bodies, and of substituting for such fees fixed annual sums, by sections thirty-three and thirty-seven of the said Act of the fifteenth and sixteenth years of Her Majesty given to the vestry, and exercisable with the approval or consent of the bishop of the diocese, as therein mentioned, shall, with respect to fees and sums arising in or from any burial ground provided under this Act by the council of any borough, be transferred to such council and be exercisable with the like approval or consent.

Powers of vestry, with consent of bishop, of fixing and revising the fees payable to incumbent, &c., transferred to the borough council.

11. It shall be lawful for the council of any borough to appropriate for the purposes of this Act any land belonging to the body corporate of such borough, or vested in any feoffees, trustees, or others, for the general benefit of the borough, or for any specific charity; provided always, that where any land so appropriated shall be subject to any charitable use, such land shall be taken on such conditions only as the Court of Chancery, in the exercise of its jurisdiction over charitable trusts, shall appoint and direct.

Council may appropriate land belonging to the borough.

12. So much of the said Act of the fifteenth and sixteenth years of Her Majesty as enacts, that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than two hundred yards to any dwelling house, without the consent in writing of the owner, lessee, and occupier of such dwelling house," shall not extend or be applicable to or in respect of any burial grounds which have been or may be provided under the said Act of the last session and this Act, or either of them, or to or in respect of any addition which has been or may be so provided to any burial ground; but no ground not already used as or appropriated for a cemetery shall be appropriated under the said Act of the last session and this Act, or either of them, as a burial ground, or as an addition to a burial ground, nearer than one hundred yards to any dwelling house, without such consent as aforesaid.

Burial ground not to be within 100 yards of a dwelling house.

(1) See now the Municipal Corporations Act, 1882, s. 144, *ante*, 313.

BURIAL ACTS AMENDMENT ACT, 1855.

18 & 19 VICT. c. 128.

An Act further to amend the Laws concerning the Burial of the Dead in England.
[14*th August*, 1855.]

Secs. 1—3.

15 & 16 Vict. c. 85.

16 & 17 Vict. c. 134.

17 & 18 Vict. c. 87.

Whereas an Act was passed in the session of Parliament holden in the fifteenth and sixteenth years of Her Majesty (chapter eighty-five), "to amend the laws concerning the burial of the dead in the metropolis" (1); and an Act was passed in the session of Parliament holden in the sixteenth and seventeenth years of Her Majesty (chapter one hundred and thirty four), "to amend the laws concerning the burial of the dead in England beyond the limits of the metropolis, and to amend the Act concerning the burial of the dead in the metropolis" (2); and an Act was passed in the last session of Parliament (chapter eighty-seven), "to make further provisions for the burial of the dead in England beyond the limits of the metropolis" (3): And whereas it is expedient that further provision should be made for the burial of the dead, and that the said Acts should be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Orders in Council under the recited Acts may be varied by like orders.

1. It shall be lawful for Her Majesty, by and with the advice of Her Privy Council, from time to time to postpone the time appointed by any Order in Council for the discontinuance of burials, or otherwise to vary any Order in Council made under any of the said recited Acts or this Act (whether the time thereby appointed for the discontinuance of burials thereunder or other operation of such order shall or shall not have arrived), as to Her Majesty, with such advice as aforesaid, may seem fit; and every Order of Her Majesty in Council made before the passing of this Act for varying any order previously made under the said Acts or any of them shall be deemed valid and effectual in law.

Penalty on persons burying contrary to the provisions of Orders in Council.

2. If any person, after the time mentioned in any Order in Council under the said Acts or any of them, or this Act, for the discontinuance of burials, shall knowingly and wilfully bury any body or in anywise act or assist in the burial of any body in any church, chapel, churchyard, burial ground, or place of burial or (as the case may be) within the limits in which burials have by such orders been ordered to be discontinued, in violation of the provisions of any such order, every person so offending shall, upon summary conviction before two justices of the peace, forfeit a sum not exceeding ten pounds.

Power to churchwardens to call vestry meetings for providing burial grounds.

Where Order in Council has been made, or

3. The churchwardens or other persons to whom it belongs to convene meetings of the vestry of any parish in which no burial board has been appointed may, at any time, at their discretion, without requisition of ratepayers for that purpose, convene a meeting of such vestry for the purpose of determining whether a burial ground shall be provided for the parish; and where any Order in Council has been made before the passing of this Act for discontinuing burials (wholly or subject to any exception or qualification) in any burial ground of any parish for which no burial board has been appointed, or notice has been given of the intention of the Secretary of State to make a representation to Her Majesty in Council that burials should be discontinued (wholly or subject to any

(1) *Ante*, p. 1158. (2) *Ante*, p. 1155. (3) *Ante*, p. 1167.

exception or qualification) in any burial ground of any parish, the churchwardens or other persons to whom it belongs to convene meetings of vestry shall, with all convenient speed after the passing of this Act, convene a meeting of the vestry for the purpose aforesaid; and where at any time hereafter notice is given of the intention of the Secretary of State to make a like representation in relation to a burial ground of any parish, such churchwardens or other persons as aforesaid shall forthwith convene a meeting of the vestry for the purpose aforesaid; and all the provisions of the said Acts as amended by this Act relating to and consequent upon vestry meetings convened upon such requisition as provided by the first-recited Act shall be applicable to vestry meetings convened under this enactment.

notice given to apply to the Privy Council for closing burial grounds, churchwardens shall call a meeting of vestry.

4. Every vacancy in any burial board shall be filled up by the vestry appointing the same within one month after such vacancy shall have happened, and immediately on the occurrence thereof the same shall be notified by the burial board to the churchwardens or other persons to whom it belongs to convene meetings of the vestry; and in case any such vestry shall neglect to fill up any such vacancy, the vacancy may be filled up by the burial board at any meeting thereof; and every person to be appointed to supply any such vacancy shall be a ratepayer of the parish for which the burial board is appointed; and every such board may act for any purpose, notwithstanding any vacancies therein.

Vacancies in burial board to be filled up by vestry within a month.

5. [Monthly meetings of boards (1).]

6. If the vestry of any parish shall refuse or neglect to authorise the expenditure of such sums as the burial board of such parish shall have declared to be necessary for providing and laying out a burial ground, and building the necessary chapel or chapels therein, it shall be lawful for such burial board to represent such refusal or neglect to one of Her Majesty's principal Secretaries of State; and in case it shall appear to the Secretary of State, after inquiry into the circumstances of the case, that the burial board are unable to provide such burial ground, or to proceed effectually in the execution of their duties, by reason of such refusal or neglect, it shall be lawful for such Secretary of State, by warrant under his hand, to authorise such burial board, without further authority, sanction, or approval of or by such vestry, to expend such sums of money for providing and laying out a burial ground, and building the necessary chapel or chapels thereon, and to borrow and charge such money for all or any of such purposes, and to enter into and make such contracts and purchases, and do such other acts as under the sections nineteen, twenty, twenty-six, and forty-two of the said Act of the fifteenth and sixteenth years of Her Majesty might have been expended, borrowed, and charged, entered into, made, and done with the authority, approval, and sanction of such vestry, subject, nevertheless, to such limitation of amount or other limitation or restriction as such Secretary of State may by his warrant prescribe; and all acts done in pursuance of such warrant shall be as valid and effectual as if the authority, approval, and sanction of such vestry had in every case been obtained.

Sanction of vestry not required for expenditure and other acts of burial board in certain cases.

7. All such fees, payments, and sums as may be fixed, settled, and received by any burial board under section thirty-four of the said Act of the fifteenth and sixteenth years of Her Majesty, shall be so fixed and settled subject to the approval of one of Her Majesty's principal Secretaries of State; and no such fees, payments, or sums shall be altered or varied without such approval.

Fees, &c., to be subject to the approval of Secretary of State.

8. It shall be lawful for one of Her Majesty's principal Secretaries of State from time to time to appoint and authorise any person to inspect any burial ground or cemetery, parochial or non-parochial, or place for the reception of bodies, to ascertain the state and condition thereof, and where regulations in relation thereto have been made or may be made by the Secretary of State under the said Acts or any of them, to ascertain whether such regulations have been observed and complied with; and if any person having the care of any such burial ground or cemetery or other place shall obstruct any person so authorised to inspect the same, or if any person having the care of any burial ground or place for the reception of bodies subject to such regulations as aforesaid shall violate or neglect or fail to observe and comply with any such regulation, or any regulation imposed

Secretary of State may direct inspection of burial grounds.

Penalty for obstructing inspector or violating regulations.

(1) Repealed by Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

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by this Act, every person so offending shall upon summary conviction thereof before two justices forfeit and pay a sum not exceeding ten pounds.

Part of section 25 of 15 & 16 Vict. c. 85, repealed.

Burial ground not to be within 100 yards of a dwelling house.

9. So much of the said Act of the fifteenth and sixteenth years of Her Majesty as enacts that "no ground (not already used as or appropriated for a cemetery) shall be appropriated as a burial ground or as an addition to a burial ground under that Act nearer than two hundred yards to any dwelling-house, without the consent in writing of the owner, lessee, and occupier of such dwelling-house," shall be repealed; but no ground not already used as or appropriated for a cemetery shall be used for burials under the said Act or this Act, or either of them, within the distance of one hundred yards from any dwelling-house, without such consent as aforesaid (1).

If ratepayers resolve, land for new burial ground may be conveyed and settled as old burial ground.

10. If the ratepayers assembled at any vestry duly convened under the provisions of this Act shall, in pursuance of public notice duly given in that behalf, resolve unanimously that any new burial ground to be provided for their parish, under the provisions of this Act, shall be held and used in like manner and subject to the same laws and regulations in all respects as the existing burial ground or churchyard of the said parish, the land for such new burial ground may be conveyed and settled in accordance with such resolution, anything in this or the said recited Acts notwithstanding, and in such case it shall not be necessary to set apart to remain unconsecrated any portion of the land so conveyed and settled: Provided always, that if at any time within ten years thereafter the vestry, duly convened under the provisions of this Act in pursuance of public notice duly given in that behalf, should determine that an unconsecrated burial ground should be also provided for such parish, all the powers and provisions of the said recited Acts and this Act may be put in force and shall be applicable for providing such unconsecrated burial ground separately, in like manner as they might have been put in force and been applicable for providing an ordinary burial ground for such parish.

How burial grounds are to be provided for united parishes.

11. Where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry or any meeting in the nature of a vestry of such several parishes or places in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein, and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish or place separately maintaining its own poor; and the burial board so appointed shall have all the powers for providing a burial ground for the common use of such several parishes or places, and for facilitating interments, and otherwise, as if such several parishes or places had been a parish separately maintaining its own poor; and the expenses of the burial board appointed under this provision shall be borne by the several parishes or places for which such board is appointed, and shall be apportioned among them by such burial board in proportion to the value of the property in such several parishes or places as rated to the relief of the poor; and the sums required by the burial board in respect of the portion of such expenses to be borne by any such parish or place shall be paid out of the rates for the relief of the poor in such parish or place, in like manner as if such burial board had been appointed for such parish or place alone (2).

Burial boards may be appointed for township, &c. (not sepa-

12. The vestry or meeting in the nature of a vestry of any parish, township, or other district not separately maintaining its own poor, which has heretofore had a separate burial ground, may appoint a burial board, and from time to time supply vacancies therein, and may exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as under the said Acts and this Act are vested in the vestry of a parish separately maintaining its own poor; and the burial

(1) See *Cowley (Lord)* v. *Byas*, L. R. 5 Ch. D. 944, 37 L. T. N. S. 233, 26 W. R. 1, 41 J. P. 804.

The provision applies to all burial grounds, private as well as public: *Greenwood* v. *Wadsworth*, 16 L. R. Eq. 288, 43 L. J. Ch. 78, 29 L. T. N. S. 88, 21 W. R. 722.

(2) See the Burial Acts Amendment Act, 1857, 20 & 21 Vict. c. 81, s. 5, *post*.

board so appointed shall have all the powers for providing a burial ground and otherwise as if such parish, township, or other district had been a parish separately maintaining its own poor (1).

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rately maintaining their own poor) which have had separate burial grounds.

13. Where any district (whether a parish or township or other subdivision) not separately maintaining its own poor, but forming part of a parish maintaining its own poor, or of an incorporation or other union maintaining the poor of the places comprised therein, by means of a common rate, shall have a burial board, or shall form part of a place or union of places not co-extensive with the area rated for the relief of the poor, and having one burial board, it shall be lawful for such respective burial board to issue their certificate to the overseers of such parish, or the overseers or other persons authorised to make and collect or cause to be collected such common rate (as the case may be), for payment of the sums required for the expenses of such burial board, or, where such district not separately maintaining its own poor forms part only of the area of the burial board, of the sums required in respect of the portion of such expenses to be borne by such district, in like manner as if such district had been a parish separately maintaining its own poor, and such overseers or persons authorised as aforesaid had been the overseers thereof; and such overseers or persons shall pay such sums as shall be required by such certificate, according to the directions of such burial board, and shall levy such sums as may be required for such payments to the burial board by an addition to the parish rate or common rate, so far as the same affects the district in respect of which such payments are required, or by separate rates to be made from time to time on such district; and for levying such additions or separate rates as aforesaid such overseers or other persons shall have the powers, remedies, and privileges, and proceed in the same manner, as in the case of the rates for the relief of the poor; provided that any such rates may (notwithstanding any restriction in relation to the parish rate or common rate) be made and levied at such times as may be necessary to provide for the payments aforesaid.

Provision for expenses of burial boards of places not separately maintaining their own poor.

14. And whereas doubts have arisen whether in all cases in which any burial board shall build in any burial ground provided by such board a chapel for the burial service according to the rites of the United Church of England and Ireland, such burial board is not also bound by law to build a chapel or chapels upon the unconsecrated part of such burial ground for the performance of burial service for persons not being members of the said church: Be it enacted, that in any such case as aforesaid, where it shall appear to one of Her Majesty's principal Secretaries of State, upon the representation of a majority of the vestry of any parish, consisting of not less than three-fourths of the members of the same, that the building of a chapel upon the unconsecrated part of any such burial ground for the use of persons not being members of the said church is undesirable and unnecessary, it shall be lawful for the said Secretary of State, if he shall think fit, to signify his opinion to that effect to the burial board of the parish, and the said burial board shall thereupon be relieved from all obligation to build the same: Provided always, that such Secretary of State shall not signify his opinion as aforesaid unless it be shown to his satisfaction that notice of the intention to propose to such vestry to make such representation was given in manner required by law for notices of vestry meetings, and of the special purposes thereof.

No obligation to build a chapel for persons not members of the Church of England when Secretary of State, upon representation of three fourths of vestry, declares it unnecessary.

15. No land already or to be hereafter purchased or acquired, under the provisions of any of the Acts hereinbefore recited, for the purpose of a burial ground (with or without any building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same was assessed at the time of such purchase or acquisition.

Assessment to local rates not to be increased after purchases for the purposes of this or any former Act.

16. That in any case where the burial boards appointed under the said recited Acts of the fifteenth and sixteenth and the sixteenth and seventeenth years of Her Majesty, or either of them, for any two parishes, shall provide separate burial grounds for such parishes respectively, and such burial grounds shall adjoin each other, it shall be lawful for the said burial boards to concur in building, either on one of the said burial grounds

Separate burial boards whose burial grounds adjoin may

(1) See *Viner* v. *Tunbridge Churchwardens and Overseers*, 28 L. J. M. C. 251, 33 L. T. 202, 5 Jur. N. S. 1293; *R.* v. *Overseers of Tonbridge*, L. R. 13 Q. B. D. 339, 53 L. J. Q. B. 488, 51 L. T. N. S. 179, 33 W. R. 24.

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contract with each other for specific purposes.

or partly on one of such grounds and partly on the other, such chapels as are authorised to be built by the said Acts, and that such chapels when erected shall be used in common by both of such parishes, and be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively in such manner, consistent with the provisions of the said Acts or either of them, as the said burial boards shall mutually agree upon; and that the said burial boards may agree as to the proportions in which the expenses of erecting such chapel accommodation shall be borne by each of the said boards respectively; and the proportion for each of such parishes of such expenses shall be chargeable upon and paid in the same manner as the costs for providing burial grounds under the said Acts; and where any burial board shall provide a burial ground, and cause chapels to be built thereon, pursuant to the said recited Acts, it shall be lawful for such burial board, with the sanction of one of Her Majesty's principal Secretaries of State, to contract with any other burial board whose burial ground shall adjoin the one on which such chapels shall so have been built, for the use of such chapels, in such manner and on such terms as such respective burial boards shall mutually agree, and that during the existence of any such agreement such chapels shall be deemed and taken to be the chapels of and belonging to each of such burial grounds respectively.

Burial board may let land not required for burials.

17. It shall be lawful for any burial board, with the sanction of one of Her Majesty's principal Secretaries of State, and subject to regulations approved of by him, to let any land purchased by and vested in them under this Act or any of the Acts hereinbefore recited, and which has not been consecrated, and in which no body has been at any time interred, and which is not for the time being required for the purposes of a burial ground, in such manner and on such terms as such board may see fit, but so nevertheless that power shall be reserved to such board to resume any such land which may be required for the purposes aforesaid, upon giving six months notice.

Burial board to keep in order closed burial grounds, &c.

18. In every case in which any Order in Council has been or shall hereafter be issued for the discontinuance of burials in any churchyard or burial ground, the burial board or churchwardens, as the case may be, shall maintain such churchyard or burial ground of any parish in decent order, and also do the necessary repair of the walls and other fences thereof, and the costs and expenses shall be repaid by the overseers, upon the certificate of the burial board or churchwardens, as the case may be, out of the rate made for the relief of the poor of the parish or place in which such churchyard or burial ground is situate, unless there shall be some other fund legally chargeable with such costs and expenses (1).

Act not to abridge powers of local boards of health, &c.

19. Nothing in this Act contained shall in anywise abridge, lessen, or defeat any power, right, or privilege of any local board of health being the burial board of a borough created or to exist under or by virtue of any local Act of Parliament.

Local boards of health to exercise powers of this Act.

20. Any local board of health acting as or created a board under or by virtue of the powers of any local Act of Parliament shall and may have and exercise all the powers, rights, and privileges which by this Act or by the secondly recited Act are or can or may be had, enjoyed, or exercised by any burial board therein named.

Acts to be construed together.

21. The said Acts of the fifteenth and sixteenth, sixteenth and seventeenth, and seventeenth and eighteenth years of Her Majesty and this Act shall be read and construed together as one Act.

(1) This section applies only to a burial ground belonging to a parish and not to one belonging to a private person: *R.* v. *St. John Westgate*, 2 B. & S. 703, 31 L. J. Q. B. 205, 6 L. T. N. S. 504, 8 Jur. N. S. 229

BURIAL ACTS AMENDMENT ACT, 1857.

20 & 21 VICT. c. 81.

An Act to amend the Burial Acts. [25*th August*, 1857.]

Secs. 1—3.

Whereas an Act was passed in the session holden in the fifteenth and sixteenth years of Her Majesty (chapter eighty-five), "to amend the laws concerning the Burial of the Dead in the Metropolis;" (1) and an Act was passed in the session holden in the sixteenth and seventeenth years of Her Majesty (chapter one hundred and thirty-four), "to amend the Laws concerning the Burial of the Dead in England beyond the limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis;" (2) and an Act was passed in the session holden in the seventeenth and eighteenth years of Her Majesty (chapter eighty-seven), "to make further Provision for the Burial of the Dead in England beyond the limits of the Metropolis;" (3) and Acts were passed in the session holden in the eighteenth and nineteenth years of Her Majesty (chapters seventy-eight and one hundred and twenty-eight), "to amend the Laws concerning the Burial of the Dead in England:" (4) And whereas it is expedient to amend the said Acts: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

15 & 16 Vict. c. 85.

16 & 17 Vict. c. 134.

17 & 18 Vict. c. 87.

18 & 19 Vict. cc. 78, 128.

Approval of a majority of vestries of parishes sufficient for Acts done by burial boards acting for more than two parishes.

1. All Acts authorised to be done by any burial board, with the approval, sanction, or authority of the vestry or vestries of the parish or parishes for which such board is constituted, may, where a joint burial board is constituted for more than two parishes, be done with the approval, sanction, or authority (as the case may require) of the vestries of the majority of such parishes.

Joint burial boards may be dissolved.

2. Where the vestries of two or more parishes have agreed to provide one burial ground for the common use of such parishes, such vestries may, at any time before such burial ground has been provided, determine the union between such parishes under such agreement, and upon such union being so determined all the provisions of the said Acts and this Act shall be applicable with regard to such parishes and the respective burial boards thereof as if such union had not been formed, save that any expenses already properly incurred by the joint burial board for such parishes shall be defrayed as provided by the said Acts.

Burial boards may provide more than one burial ground.

3. Any burial board may, if they see fit with the approval of one of Her Majesty's principal Secretaries of State, provide more than one burial ground, and may, if they see fit, with such approval, instead of setting apart a portion of any burial ground for the purpose of such portion being used as unconsecrated ground, provide separate and distinct grounds to be used respectively as consecrated and unconsecrated burial grounds: Where before the passing of this Act any burial board has provided more than one burial ground, or has (instead of setting apart a portion of any burial ground for the purpose of

(1) *Ante*, p. 1158. (2) *Ante*, p. 1155. (3) *Ante*, p. 1167.
(4) 18 & 19 Vict. c. 128, will be found, *ante*, p. 1170. The reference to 18 & 19 Vict. c. 78 is a mistake.

Secs. 3—5.

being used as unconsecrated ground) provided separate and distinct grounds as consecrated and unconsecrated burial grounds, such burial board shall be deemed to have acted lawfully and in accordance with the said Acts.

Local board of health may, by Order in Council, be constituted a burial board.

4. In case it appear to Her Majesty in Council, upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an order in council has been made for closing all or any of the burial grounds within the said district, it shall be lawful for Her Majesty, with the advice of Her Privy Council, in case Her Majesty see fit so to do, to order that such local board shall be a burial board for the district of such local board, or that such commissioners shall be a burial board for the district of such commissioners, and thereupon such local board or such commissioners, as the case may be, shall be a burial board for such district accordingly; and the powers and provisions of the Acts herein-before mentioned (except the provisions relating to the constitution or appointment and resignation of members of burial boards), and the provisions herein contained, shall extend to the district of such board, and to such board, or to the district of such commissioners, and to such commissioners, and to any burial ground and places for the reception of the bodies of the dead previously to interment which may be provided by such board or by such commissioners, in like manner as to any parish or parishes and the burial board thereof, and any burial ground and any such places as aforesaid provided by such last-mentioned board, save that no approval, sanction, or authorisation of any vestry shall be requisite: Provided always, that notice of such petition, and of the time when it shall please Her Majesty to order the same to be taken into consideration by the Privy Council, shall be published in the *London Gazette*, and in one of the newspapers usually circulating in the district of such local board or of such commissioners, one month at least before such petition is so considered: Provided also, that this enactment shall not apply to any such district as aforesaid exclusively consisting of the whole or part of one corporate borough within the meaning of the Public Health Act, 1848 (1).

Burial board may be established for a district not maintaining its own poor, and which has had no separate burial ground.

5. The vestry, or meeting in the nature of a vestry, of any parish, new parish, township, or other district not separately maintaining its own poor, and which has had no separate burial ground, may appoint a burial board; and such vestry or meeting, and the burial board appointed by it, shall exercise and have all the powers which they might have exercised and had under the said Acts and this Act, if such parish, new parish, township, or district had had a separate burial ground before the passing of the said Act of the eighteenth and nineteenth years of Her Majesty: Provided always, that all the powers of any other vestry or meeting and burial board, if any, shall then cease and determine, so far as relates to such parish, new parish, township, or district as aforesaid; and until a burial ground shall be so provided as aforesaid and consecrated for any new parish or district created or to be created pursuant to the provisions of the sixth and seventh Victoria, chapter thirty-seven, the seventh and eighth Victoria, chapter ninety-four, and the nineteenth and twentieth Victoria, chapter one hundred and four, or any or either of them, and to which the said Acts, or any or either of them, may apply, the incumbent of such new parish or district (if any burial ground has been or shall be provided under the herein recited Acts for the burial of the dead, or any or either of them, for any parish or parishes out of rates to which such new parish or district, or any part thereof, shall have contributed or contribute or be liable), shall with respect to the burial in such last-mentioned burial ground of the remains of the parishioners or inhabitants of such new parish or district, or of such part thereof as shall have contributed or contribute as aforesaid, as the case may be, perform the same duties, and have the same rights, privileges, and authorities, and be entitled to the same fees, and also the clerk and sexton of such new parish or district shall, when necessary,

(1) See now 29 & 30 Vict. c. 90, s. 44, *ante*, p. 257, and the Public Health Act, 1875, ss. 4, 310 and 343, *ante*, pp. 42, 214 and 224.

respectively perform the same duties, and be entitled to the same fees, in respect of such burials, as if the said burial ground were exclusively the burial ground of such new parish or district, subject nevertheless to all provisions to which the incumbents, clerks, and sextons of original parishes are respectively subject in and by the said burial Acts, or any or either of them: Provided also, that nothing herein contained shall affect the rights or privileges of any existing incumbent, clerk, or sexton without the consent of such incumbent, clerk, or sexton respectively (1).

Ordinary of diocese may consecrate the whole or part of land belonging to any parish for the burial of poor persons.

6. Where the guardians of any parish or union are or shall hereafter become possessed of any land suitable to the purposes of a burial ground, and the Poor Law Board shall consent to the same being appropriated to the reception of the dead bodies of any poor persons whom such guardians shall be authorised or required by law to bury, it shall be lawful for the ordinary of the diocese wherein such land shall be situated, if he see fit, to consecrate the whole or a part of such land for burial purposes, and after consecration the guardians may lawfully direct any such dead body as aforesaid to be buried therein; and the land so consecrated shall not thenceforth be used for any other purposes than for burials according to the rites of the United Church of England and Ireland, and shall be kept in decent order; and the fences thereof, and any building or other erection therein or adjoining thereto used for the performance of the burial service, shall be maintained in good repair by the guardians, out of the common fund of such parish or union: Provided nevertheless, that the guardians shall not be authorised to direct the body of any poor person to be buried in such grounds who, or whose husband, wife, or next of kin, shall, by letter addressed to the master of the workhouse or otherwise, have expressly desired burial to take place elsewhere.

Provision for transfer to a burial board of a burial ground provided under Church Building Acts.

7. Where a burial ground has been provided for any parish under any of the Acts commonly referred to or known as the Church Building Acts, and the same has been consecrated, and any money expended in providing such burial ground has been borrowed on the security of the church rates, it shall be lawful for the incumbent of the parish, with the consent of the ordinary and the burial board of such parish, or of any borough or district in which such parish is wholly or in part comprised, by instrument in writing under the hands and seals of such incumbent and ordinary, and under the seal of the said burial board, to declare that, in consideration of the payment of the debt by the said burial board, or of such sum as shall be mutually agreed upon, with the consent of the persons, signified in writing under their hands, to whom two thirds of such debt is due, the said burial ground shall be vested in and be under the care and management of such burial board, and thereupon the same shall be vested in and be under the care and management of such board, and shall be subject to the provisions of the herein-before recited Acts and this Act applicable to a consecrated burial ground or the consecrated part of any burial ground provided by any burial board; and any money borrowed as aforesaid, and remaining owing, and the interest due and to become due thereon, and all costs and expenses occasioned by the non-payment thereof, or incurred in providing such burial ground, and then remaining unpaid, shall be charged on and paid out of such rates or fund as under the said last-mentioned Acts and this Act would be chargeable with the expense of providing a burial ground by such board, and such declaration as aforesaid shall be registered in the registry of the diocese; and such board may, with the approval of the vestry, enlarge such burial ground, by the addition of ground to be used for burials otherwise than according to the rites of the Church of England, and to be used subject to the provisions of the Acts herein recited and of this Act in respect to the unconsecrated portions of burial grounds (2).

Vestry of parish in which burial ground is closed may

8. It shall and may be lawful for the vestry of any parish in which any burial ground closed by Order in Council may be situate, and which does not belong to such parish, by resolution of the vestry at a meeting called for that purpose, to purchase such burial ground, and from the time of such purchase such burial ground shall belong to such

(1) See as to this section, *Ormerod* v. *Blackburn*, 28 L. T. N. S. 438, and *Cronshaw* v. *Wigan Burial Board*, L. R. 8 Q. B. 217, 42 L. J. Q. B. 137, 28 L. T. N. S. 283.
Generally as to vestry meetings, see note (2), *ante*, p. 1158.

(2) *I.e.*, 15 & 16 Vict. c. 85, s. 30, *ante*, p. 1162; 16 & 17 Vict. c. 134, s. 7, *ante*, p. 1156; 18 & 19 Vict. c. 128, s. 14, *ante*, p. 1173, and s. 3 of this Act, *ante*, p. 1175.

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parish and be subject to all the conditions affecting the burial grounds of the parish in which the same is situate.

purchase such burial ground if not belonging to parish.

Burial boards not to be appointed for united parishes, &c. in cases provided for by 18 & 19 Vict. c. 128, without consent of Secretary of State, where one of the places separately maintains it own poor or has a burial ground.

9. And whereas by the said Act of the eighteenth and nineteenth years of Her Majesty, chapter one hundred and twenty-eight, it is enacted (1), that where a parish or place has been united with any other parish or place, parishes or places, for all or any ecclesiastical purposes, or where two or more parishes or places have heretofore had a church or a burial ground for their joint use, or where the inhabitants of several parishes or places have been accustomed to meet in one vestry for purposes common to such several parishes or places, it shall be lawful for the vestry, or any meeting in the nature of a vestry, of such several parishes or places, in any of the cases aforesaid, and whether any one or more of such parishes or places do or do not separately maintain its own poor, to appoint a burial board, and from time to time to supply vacancies therein and to exercise the same powers of authorisation, approval, and sanction in relation to such burial board, and such other powers as, under the Acts therein recited and that Act, are vested in the vestry of a parish or place separately maintaining its own poor: Where any of the several parishes or places under the circumstances provided for in the said enactment separately maintains its own poor, or has a separate burial ground, it shall not be lawful for the vestry, or meeting in the nature of a vestry, of such several parishes or places, to appoint a burial board under the said enactment without the approval of one of Her Majesty's principal Secretaries of State; and in case it appear to the Secretary of State that any such parish or place has a sufficient burial ground, or that otherwise it would not be expedient that the powers given by the said enactment should be exercised in relation to such parish or place, the Secretary of State may direct that such parish or place shall be excepted from the operation of the said enactment, and thereupon the same shall be excepted accordingly; and the inhabitants of the remaining parish or parishes, place or places, may assemble in vestry, or in a meeting in the nature of a vestry, from time to time, and in such vestry or meeting may proceed in like manner under the said Acts and this Act in all respects as if the inhabitants of such last-mentioned parish or parishes, place or places, exclusively had a vestry for their common purposes, and were wholly unconnected with the parish or place so excepted (2).

Orders in Council may be made for regulating burial grounds, &c.

10. It shall be lawful for Her Majesty, by Order made by and with the advice of Her Privy Council, on the representation of one of Her Majesty's principal Secretaries of State, from time to time to establish such regulations as to Her Majesty may seem proper for the protection of the public health, and for the maintenance of public decency, in respect of all burials in common graves in any cemeteries named in Schedule (B.) to the Act fifteenth and sixteenth Victoria, chapter eighty-five, and in respect of the like burials in any cemetery established under the authority of any local Act of Parliament (3); and every such Order in Council shall be published in the *London Gazette;* and all persons having the care of such cemeteries and burial grounds and places shall conform to and obey such regulations; and any such person who shall violate or wilfully neglect to observe any of such regulations shall, on summary conviction thereof before two justices of the peace, forfeit and pay any sum not exceeding ten pounds: Provided always, that no such representation shall be made in relation to any cemetery or burial ground until ten days previous notice in writing of the intention to make such representation shall have been given to the person or one of the persons having the control or care of such cemetery or burial ground.

No wall or fence required between the consecrated and unconsecrated portions of burial ground. Boundary marks to be provided.

11. It shall not be necessary to erect or maintain any wall or fence between the consecrated and the unconsecrated portions of any burial ground provided under the hereinbefore recited Acts and this Act, or any of them: Provided always, that in the case of any burial ground where there shall be no such wall or fence, it shall be the duty of the burial board having the care of such burial ground to place, and from time to time to repair and renew, such boundary marks of stone or iron as may be sufficient to show the boundaries of such consecrated and unconsecrated portions respectively.

(1) By s. 11 of that Act, *ante*, p. 1172. See also ss. 12 and 13, *ante*, pp. 1172, 1173.
(2) Generally as to vestry meetings, see note (1), *ante*, p. 1158.
(3) See 16 & 17 Vict. c. 134, ss. 5 and 7, *ante*, p. 1156.

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Appeal.

12. If, upon the application in writing by any burial board to the bishop of the diocese for the consecration of a burial ground, declared in such writing to be in a fit and proper condition for the purpose of interment according to the rites of the United Church of England and Ireland, which application the board is required to make as soon as such ground is in such fit and proper condition, the said bishop shall refuse to consecrate the same, it shall be lawful for such burial board to appeal from such refusal to the archbishop of the province, who shall decide the matter in dispute; and if the said archbishop shall decide that the said burial ground is not in a fit and proper condition as aforesaid, then the board shall be bound to put the said ground in a fit and proper condition; and if the said archbishop shall decide that the said burial ground is in a fit and proper condition as aforesaid, and ought to be consecrated, such decision shall be communicated in writing by the archbishop to the bishop aforesaid; and if after such communication the said bishop shall not within one calendar month consecrate the said burial ground, the said archbishop shall, under his hand and seal, license the same for the interment of bodies according to the rites of the United Church of England and Ireland, and the license of the said archbishop so granted as aforesaid shall, until such burial ground be consecrated, operate to make lawful the use of the same as if it had been consecrated.

Power to incumbent or curate to bury in burial ground certified by Secretary of State prior to consecration.

13. In any burial ground provided under the powers of the Acts hereinbefore recited or this Act, respecting which one of Her Majesty's principal Secretaries of State shall have certified that the necessary provisions have been complied with, it shall be lawful for the incumbent or incumbents of such parish or parishes for which such burial ground is provided, or his or their curate or curates, or such duly qualified person as any such incumbent may authorise, if such incumbent, curate, or such duly qualified person respectively think fit, to bury in such burial ground prior to the decision of the bishop or archbishop upon the application for the consecration thereof.

Section 32 of 3 Geo. 4, c. 126, exempting funerals from tolls, extended to funerals in burial grounds provided for the parish, although not within its limits.

14. Whereas by section thirty-two of the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, it is enacted, that no toll shall be demanded or taken by virtue of that or any other Act or Acts of Parliament on any turnpike road of or from any inhabitant of any parish, township, or place going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or place in which any turnpike road shall lie, from and after the first day of July One thousand eight hundred and fifty-eight, or from and after the termination of any now existing lease of tolls expiring before that date, the said enactment shall extend to exempt from toll every person going to or returning from attending the funeral of any person who shall be buried in any burial ground provided for the parish, township, or place in which he died under the Acts hereinbefore recited and this Act, or any of them, or under any other Act of Parliament, although such burial ground be not within the limits of the parish, township, or place for which it may have been provided, or in which the turnpike road shall lie.

Persons wilfully destroying, &c., register book of burials guilty of felony.

15. That every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book of burials, kept according to the provisions of this Act, or any part or certified copy of any part of such register, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited any part of any such register or certified copy thereof, or shall wilfully insert or cause to be inserted in any registry book or certified copy thereof any false entry of any burial, or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any such register book, knowing the same to be false in any part thereof, or shall forge or counterfeit the seal of any burial board, shall be guilty of felony.

Section 4 of 52 Geo. 3, c. 146, not to apply to burials in grounds provided under the burial Acts.

16. Whereas by the Act of the fifty-second year of King George the Third, chapter one hundred and forty-six, section four, it is provided, that whenever the ceremony of burial shall be performed in any other place than the parish church or churchyard of any parish (or the chapel or chapelyard of any chapelry providing its own distinct registers), and such ceremony shall be performed by any minister not being the rector, vicar, minister, or curate of such parish or chapelry, the minister who shall perform such ceremony of burial shall on the same or on the next day transmit to the rector, vicar, or other minister of such parish or chapelry, or his curate, a certificate of such burial, and the rector, vicar, minister, or curate, of such parish or chapelry shall thereupon

Secs. 16–23.

enter such burial according to such certificate in the book kept pursuant to that Act for such purpose (1): And whereas distinct registers are by law required to be kept in the burial grounds provided under the Burial Acts: The recited enactment of the said Act of King George the Third shall not apply in any case where the ceremony of burial is performed in a burial ground provided or to be provided under the Acts of Her Majesty hereinbefore recited and this Act, or any of them.

Fees for service done in unconsecrated portion of burial ground to be identical as for consecrated portion.

17. No fees shall be charged or received by any burial board in respect of any service done or right granted in the unconsecrated portion of any burial ground provided by such board, but such as are identical in amount with the fees charged and received in respect of the same service or right in the consecrated portion of such ground, less any such portion of such corresponding fees or payments which may be received for or on account of any incumbent, churchwarden, clerk, or sexton, or of any trustee for or on behalf of any incumbent, churchwarden, clerk, or sexton.

So much of section 20 of 15 & 16 Vict. c. 85, as to payment of money borrowed repealed.

18. So much of section twenty of the firstly hereinbefore recited Act as requires "that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one twentieth of the principal sum borrowed, until the whole is discharged" (2), shall be repealed, and the provisions of the other Acts hereinbefore recited to which the said section has been extended shall be construed accordingly.

Clauses of 10 & 11 Vict. c. 16, with respect to mortgages incorporated.

19. The clauses of the Commissioners Clauses Act, 1847 (3), with respect to mortgages to be executed by the commissioners, shall be incorporated with this Act, and shall apply to mortgages and other securities to be executed by burial boards; and for the purposes of this Act the expression "the commissioners," where used in the said clauses, shall mean the burial board acting in the execution of the said clauses and the Acts hereinbefore recited or this Act.

Sinking fund to be provided for paying off mortgages.

20. Provided always, that for the purpose of providing a sinking fund for paying off the principal money borrowed on mortgages granted under any of the said Acts or this Act, the burial board shall once in every year set aside, out of the moneys charged by such mortgages, such sum as they think proper, being a sum equal to or exceeding one fiftieth part of the principal money so borrowed.

Power to burial boards to borrow money on terminable annuities.

21. Any burial board or council of a borough may, for the purpose of raising money, instead of making mortgages under any of the said Acts, grant terminable annuities for a life or lives, or for any number of years not exceeding thirty years, to be paid out of the like moneys as provided with regard to the moneys secured by such mortgages.

Power to councils of boroughs to make a separate rate for burial and expenses.

22. Any money required by the council of any borough for the purpose of defraying the expense of executing the Acts hereinbefore recited, or any of them, or this Act, or for paying any moneys borrowed under such Act, or any interest thereon, may be raised by such council, if they think fit, by means of a separate rate, to be called a burial rate, to be charged upon all property within such borough liable to be charged to the borough rate; and the council of such borough shall have all such powers for making and levying such rate, and all provisions shall be applicable in respect thereof, as in the case of a borough rate made under the Act passed in the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six (4).

Orders in Council may be issued, on representation of Secretary of State, so as to prevent vaults, &c., being dangerous to health.

23. It shall be lawful for Her Majesty, upon the representation of one of Her Majesty's principal Secretaries of State, by and with the advice of Her Privy Council from time to time to order such acts to be done by or under the directions of the churchwardens or such other persons as may have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health; and every such Order in Council shall be published in the *London Gazette*, and such churchwardens or other persons shall do or cause to be done all acts ordered as aforesaid, and the expenses incurred in and about the doing thereof shall be paid out of the poor rates of the parish: Provided always, that no such representation shall be made until ten days previous notice of the intention to make such representation shall have been given to the churchwardens or other persons, or one of the churchwardens or

(1) See 16 & 17 Vict. c. 134, s. 8, *ante*, p. 1157.
(2) *Ante* p. 1160.
(3) See the Commissioners Clauses Act, 1847, 10 Vict. c. 16, ss. 75—88, *post*.
(4) See now the Municipal Corporations Act, 1882, s. 144, *ante*, p. 313.

other persons, having the care of the vaults or places of burial to which the representation relates (1).

Secs. 23–27.

24. In all cases in which unconsecrated land or buildings is or are vested in a trustee or trustees, either under any local Act or otherwise, for the purposes of a cemetery or burial ground, and burials in such cemetery or burial ground shall by Order in Council under the hereinbefore recited Acts or any of them have been ordered to be wholly or partially discontinued, it shall be lawful for the trustee or trustees for the time being of such cemetery or burial ground, from time to time, with the sanction of one of Her Majesty's principal Secretaries of State, to let, demise, or lease any part or parts in which no interment shall have taken place of such land or buildings, and to renew or accept surrenders of any leases or tenancies thereof, and to sell and absolutely dispose thereof for money in gross, or for any perpetual or other rent or rents to be be made payable thereout, and by public auction or private contract, and to sell all or any such perpetual or other rent or rents for money in gross and in manner aforesaid, and for any of the purposes aforesaid to make and execute any contracts, conveyances, leases, or other assurances, and to take any measures and make any arrangements which may be deemed expedient; and upon any such lease or sale as aforesaid a grant or conveyance by such trustee or trustees alone shall be a sufficient assurance of the property thereby purported to be leased or sold and the receipts of such trustee or trustees shall be effectual discharges for the moneys therein expressed to have been received, and shall absolve any lessee or purchaser from having to see to or being answerable for the application of such moneys; and the net moneys to be received by such trustee or trustees under any of the preceding powers shall be applied by them in discharge of any incumbrances affecting such cemetery or burial ground, and any debts which such trustee or trustees may have properly incurred in their fiduciary capacity; and any residue of such moneys shall, where such land or buildings shall have been held in trust for any parish, be applied in such manner, for the benefit of such parish, as the vestry of such parish shall direct; but where such land or buildings shall have been held in trust for the benefit of private persons, such residues shall be divided by such trustee or trustees rateably among the *cestuis que trusts;* and it shall be lawful for such trustee or trustees so to apply any reserved fund in his or their hands.

Trustees of closed cemeteries empowered with sanction of Secretary of State to let, lease, or sell portions thereof which have not received interments.

25. Except in the cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose, it shall not be lawful to remove any body, or the remains of any body, which may have been interred in any place of burial, without license under the hand of one of Her Majesty's principal Secretaries of State, and with such precautions as such Secretary of State may prescribe as the condition of such license; and any person who shall remove any such body or remains, contrary to this enactment, or who shall neglect to observe the precautions prescribed as the condition of the license for removal, shall, on summary conviction before any two justices of the peace, forfeit and pay for every such offence a sum not exceeding ten pounds (2).

Bodies not to be removed from burial grounds, save under faculty without license of Secretary of State.

26. Where any cemetery in which burials have, by Order in Council, under the hereinbefore recited Acts or any of them, been ordered to be discontinued, is adjoining or near to any land appropriated or about to be appropriated by any burial board for the purposes of a burial ground, and appears to such board eligible for the purpose of appropriating or erecting buildings for or making approaches to such burial ground, it shall be lawful for such board, with the approval of the vestry or respective vestries, to purchase such cemetery; and where in the like case any cemetery has been so purchased before the passing of this Act, the purchase thereof shall be deemed to have been lawful (3): Provided always, that, notwithstanding such purchase, such Order in Council shall remain in full force and effect in relation to such cemetery.

Burial boards may in certain cases purchase cemeteries which have been closed.

Orders in Council to remain in force.

27. No resolution or proceeding of any vestry, or meeting in the nature of a vestry, for the purposes of the said recited Acts and this Act, or any of them, shall be void or

Resolutions &c., of vestries not to

(1) Amended by 22 Vict. c. 1, *post*, p. 1183. See *Foster* v. *Dodd*, L. R. 3 Q. B. 67, 37 L. J. Q. B. 28, 17 L. T. N. S. 614, 16 W. R. 155, 32 J. P. 20.

(2) As to indictment for removing body, see *R.* v. *Sharpe*, 7 Cox C. C. 214, 1 Dears. & B. C. C. 160, 26 L. J. M. C. 47.

(3) See 15 & 16 Vict. c. 85, s. 26, *ante*, p. 1161.

Secs. 27–30.

be void by reason of irregularity of notices, &c.

voidable by reason of any defect or irregularity of or in notice of such vestry or meeting, or any other error in form in the calling of such vestry or meeting, or in the proceedings thereat, unless notice in writing of such defect or irregularity or error shall have been given at such vestry or meeting, or within seven days after the day of the holding thereof, to the churchwardens or other persons to whom it belongs to call meetings of such vestry, or such meeting in the nature of a vestry, who shall thereupon call another meeting for the purpose of considering the previous resolution or proceeding or the matter thereof; and no such resolution and proceeding made or taken at any such vestry, or meeting in the nature of a vestry, before the passing of this Act, which shall not have been objected to by notice in writing to such churchwardens or persons as aforesaid, shall be deemed invalid by reason of any such defect, irregularity, or error.

"Burial board."

28. In the construction of this Act the expression "burial board" shall mean a burial board constituted under the hereinbefore recited Acts or any of them, or under this Act (1).

Construction of certain expressions used in 17 & 18 Vict. c. 87.

29. That the expression "borough" whenever used in the said Act of the seventeenth and eighteenth years of Her said Majesty, shall be construed to include any city, borough, port, cinque port, or town corporate named in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and to any city, borough, port, cinque port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent Act; and the words "town council of any borough" or "council of any borough," wherever used in the said Act of the seventeenth and eighteenth years of Her said Majesty, shall (as well with respect to all past as to future proceedings under the same Act, and for the purpose of confirming and making valid all such past proceedings), be construed to mean town council or council of any city, borough, port, cinque port, or town corporate.

Recited Acts and this to be as one.

30. The hereinbefore recited Acts and this Act shall be construed together as one Act.

(1) See 15 & 16 Vict. c. 85, s. 24, *ante*, p. 1161.

BURIAL ACT, 1859.

22 VICT. c. 1.

An Act more effectually to prevent danger to the Public Health from Places of Burial.
[25*th March*, 1859.]

Secs. 1, 2.

20 & 21 Vict. c. 81.

Whereas in section twenty-three of an Act passed in the session holden in the twentieth and twenty-first years of Her Majesty, chapter eighty-one, "to amend the Burial Acts," it was enacted that it should be lawful for Her Majesty, upon the representation of one of Her Majesty's principal Secretaries of State, by and with the advice of Her Privy Council, from time to time to order such Acts to be done by or under the directions of the churchwardens or such other persons as might have the care of any vaults or places of burial, for preventing them from becoming or continuing dangerous or injurious to the public health; and such churchwardens or other persons should do or cause to be done all Acts ordered as aforesaid, and the expenses incurred in and about the doing thereof should be paid out of the poor rates of the parish: And whereas it is expedient to amend the said enactment as herein-after mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Where persons having the care of a place of burial neglect to comply with Order in Council, the churchwardens may act in their stead.

1. Where it appears to one of Her Majesty's principal Secretaries of State, on the representation of any person authorised by him to inspect any vaults or place of burial in relation to which an order in council has been or shall have been issued under the said recited enactment, that any Acts which by such Order in Council are ordered to be done by or under the direction of persons other than churchwardens having the care of such vaults or place of burial are not done or performed within a reasonable time, and according to the intent of such Order in Council, it shall be lawful for such Secretary of State, by writing under his hand, to authorise and direct the churchwardens of the parish in which such vaults or place of burial may be situate forthwith to do or complete the Acts in such Order in Council mentioned, or such of them as remain undone, and such order of the Secretary of State shall be obeyed by such churchwardens, and they and all persons acting under their direction shall have the same power of entering and doing all such Acts upon the premises to which the Order in Council relates as if the said Acts had by the Order in Council been directed to be done by such churchwardens, and such vaults or place of burial had been under their care; and any person who shall obstruct such churchwardens or any others acting under their direction in relation to the premises, or remove or interfere with the works done by such churchwardens, shall be guilty of a misdemeanour.

This and recited Act to be as one.

2. This Act shall be read together with the said Act of the twentieth and twenty-first years of Her Majesty, and the Burial Acts therein mentioned, as one Act.

BURIAL ACT, 1860.

23 & 24 VICT. c. 64.

An Act to make further provision for the Expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards. [*6th August*, 1860.]

Secs. 1, 2.

20 & 21 Vict. c. 81.

Whereas by an Act passed in the session holden in the twentieth and twenty-first years of Her Majesty (chapter eighty-one), "to amend the Burial Acts," it is provided that upon the petition of the local board of health of any district established under the Public Health Act, or upon the petition of any commissioners elected by the ratepayers and acting under or by virtue of the powers of any local Act of Parliament for the improvement of any town, parish, or borough, stating that the district of such local board of health or of such commissioners is co-extensive with a district for which it is proposed to provide a burial ground, and that no burial board has been appointed for such district, and that an Order in Council has been made for closing all or any of the burial grounds within the said district, it should be lawful for Her Majesty, with the advice of Her Privy Council, in case Her Majesty see fit so to do, to order that such local board should be a burial board for the district of such local board, or that such commissioners should be a burial board for the district of such commissioners, and that thereupon such local board or such commissioners, as the case might be, should be a burial board for such district accordingly: And whereas under "The Local Government Act, 1858," a local board may, at the option of the vestry, be the burial board in certain cases: And whereas it is expedient that such local boards and commissioners respectively, when constituted burial boards, should be authorised to provide for their expenses as herein-after mentioned: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in the present Parliament assembled, and by the authority of the same, as follows:

21 & 22 Vict. c. 98, s. 49.

Expenses of local board constituted a burial board may be paid out of general district rate, or by a separate rate.

1. Any money required by any local board constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts and of this Act in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the local board so think fit, be paid out of the general district rates leviable within such district; and such local board may levy as part of the general district rate, or by a separate rate, under the name and designation of a burial rate to be assessed and recovered in like manner as a general district rate within the district for which they act as a burial board, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them.

Expenses of improvement commissioners, when acting as a burial board, may be paid out of improve-

2. Any money required by any such commissioners as aforesaid who shall have been constituted a burial board for defraying the expense of carrying into execution the powers and provisions of the Burial Acts in the district for which they may have been so constituted a burial board, or for paying any moneys borrowed, or annuities granted under the authority of the said Acts, or any interest on moneys borrowed, or for providing a sinking fund for the repayment of such moneys, may, if the commissioners so think fit, be paid out of the improvement rate leviable within such district, and the

commissioners as such burial board may levy as part of the improvement rate, or by a separate rate under the name and designation of a burial rate to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for the purposes aforesaid, or any of them (1).

ment rate, or by a separate rate.

3. The local board and the commissioners respectively who may have been constituted a burial board shall keep distinct accounts of their receipts and expenditure in the exercise of their functions as such burial board; and where their expenses are defrayed by moneys raised under the provisions of this Act, such accounts shall be audited in the same manner as other accounts of the receipts and expenditure of such local board and commissioners respectively, and any surplus of the moneys raised by any rate made under this Act, and of the income of any burial ground provided by means of moneys raised or paid under the provisions of this Act, which may remain after payment of the expenses and moneys which should be defrayed or paid under the Burial Acts, shall be applied in aid of the general district rate or improvement rate, as the case may be, levied within the district, which shall have been or might have been charged with a separate rate under this Act.

Separate accounts to be kept.

4. Where any parish or place has been divided into two or more parts or districts for all or any ecclesiastical purposes, and any one of such parts has a separate burial ground, it shall not be lawful for the vestry or meeting in the nature of a vestry for such entire parish or place to appoint a burial board without the approval of one of Her Majesty's principal Secretaries of State.

As to appointment of burial boards without consent of Secretary of State.

(1) See now the Burial Act, 1862, 25 & 26 Vict. c. 100, *post*.

BURIAL ACT, 1862.

25 & 26 VICT. c. 100.

An Act to authorise Improvement Commissioners acting as Burial Boards to mortgage certain Rates for the purposes of the Burial Acts. [*7th August*, 1862.]

Secs. 1, 2.

[After reciting 23 & 24 Vict. c. 64, s. 2, *ante*, p. 1184, the Act proceeds as follows :—]

And whereas doubts have arisen whether under such provisions the improvement rate or burial rate can be legally mortgaged or assigned as a security for the payment of the sums referred to in the said Act, and it is expedient that the commissioners acting as such burial board should have the power of mortgaging the said rates : Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Commissioners, with consent of Treasury may mortgage improvement rate and burial rate, or either.

1. Any commissioners elected by the ratepayers, and acting under or by virtue of the powers of any Local Act of Parliament for the improvement of any town, parish, or borough, who shall have been constituted a burial board for any district, may, with the approval of the commissioners of Her Majesty's Treasury, from time to time borrow at interest on mortgage of the improvement rate and burial rate, or either of them, leviable within the district, such sums of money as may be required by the burial board for the purposes of the Burial Act within the district.

Certain provisions of 10 & 11 Vict. c. 16, to apply to this Act.

2. The clauses and provisions of The Commissioners Clauses Act, 1847, (1) with respect to the mortgages to be executed by the commissioners, shall be incorporated with this Act, and shall be applicable to all mortgages created under the provisions thereof.

(1) *I.e.*, 10 & 11 Vict. c. 16, ss. 75—88, which will be found *post*.

BURIAL ACT 1871.

34 & 35 VICT. c. 33.

An Act to explain and amend the Burial Acts. [29*th June*, 1871.]

Secs. 1, 2.

20 & 21 Vict. c. 81.
23 & 24 Vict. c. 64.

Whereas under the Burial Acts it is not lawful for a vestry or meeting in the nature of a vestry in certain cases to appoint a burial board without the approval of one of Her Majesty's principal Secretaries of State, and doubts have arisen whether such approval is to be given before or after the appointment of a board, and it is expedient to remove such doubts:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Approval of Secretary of State to appointment of burial board.

1. Where the approval of one of Her Majesty's principal Secretaries of State to the appointment of a burial board by a vestry or meeting in the nature of a vestry is required under the Burial Acts, such vestry or meeting in the nature of a vestry shall not, after the passing of this Act, appoint such board until a resolution of such vestry or meeting declaring the expediency of such appointment has been passed, and notice thereof sent to one of Her Majesty's principal Secretaries of State, and the same has been approved of by the Secretary of State, and approval of such resolution shall be deemed to be approval of the appointment of the board.

The Secretary of State before giving such approval may require notice of such resolution, in such form and containing such particulars as he may direct, to be published in such manner as he may think sufficient for giving notice thereof to all persons interested.

Provided that where the approval of one of Her Majesty's principal Secretaries of State has been given before the passing of this Act to the appointment of any burial board, that approval shall be valid whether it has been given before or after the date of such appointment.

Act to be construed with Acts in schedule.

Short title.

2. This Act shall be construed as one with the Acts mentioned in the schedule to this Act, and those Acts and this Act may be cited together as the Burial Acts, 1852 to 1871, and each of them may be cited as the Burial Act of the year in which it was passed.

SCHEDULE.

THE BURIAL ACTS, 1852 TO 1871.

Session and Chapter.	Title of Act.
15 & 16 Vict. c. 85 .	An Act to amend the laws concerning the Burial of the Dead in the Metropolis.
16 & 17 Vict. c. 134 .	An Act to amend the laws concerning the Burial of the Dead in England, beyond the limits of the Metropolis, and to amend the Act concerning the Burial of the Dead in the Metropolis.
17 & 18 Vict. c. 87 .	An Act to make further provision for the Burial of the Dead in England beyond the limits of the Metropolis.
18 & 19 Vict. c. 128 .	An Act further to amend the laws concerning the Burial of the Dead in England.
20 & 21 Vict. c. 81 .	An Act to amend the Burial Acts.
22 Vict. c. 1 . .	An Act more effectually to prevent danger to the Public Health from places of Burial.
23 & 24 Vict. c. 64 .	An Act to make further provision for the expenses of Local Boards of Health and Improvement Commissioners acting as Burial Boards.
25 & 26 Vict. c. 100 .	An Act to authorise Improvement Commissioners acting as Burial Boards to mortgage certain rates for the purposes of the Burial Acts.

BURIAL ACT, 1808.

48 GEORGE III. c. 75.

An Act for providing suitable Interment in Churchyards or Parochial Burying Grounds in England for such dead Human Bodies as may be cast on shore from the sea, in cases of wreck or otherwise. [18*th June*, 1808.]

Secs. 1—3.

Whereas no provision hath yet been made by the laws now in force for providing suitable interment in churchyards or parochial burying grounds, for such dead human bodies as may be cast on shore from the sea by wreck or otherwise, in that part of the United Kingdom called England: And whereas it is expedient that provision should be made for the decent interment of such bodies; May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that, from and after the passing of this Act, the churchwarden and churchwardens, overseer and overseers of the poor for the time being of the respective parishes throughout England, in which any dead human body or dead human bodies shall be found thrown in or cast on shore from the sea by wreck or otherwise, shall, and he and they is and are hereby required, upon notice to him or them given that any such body or bodies are thrown in or cast on shore by the sea, and is or are lying within the bounds of the parish for which he or they shall be churchwarden or churchwardens, overseer or overseers of the poor, to cause the same to be forthwith removed to some convenient place, and with all convenient speed to cause such body or bodies to be decently interred in the churchyard or burial ground of such parish, so that the expenses attending on such burial do not exceed the sum which at that time is allowed in such parish for the burial of any person or persons buried at the expense of such parish: Provided always, that in case any such body or bodies shall be thrown in or cast on shore from the sea in any extra-parochial place where there is no churchwarden or churchwardens, overseer or overseers of the poor, then and in every such case the constable or headborough of such place shall, on notice being given to him that such body or bodies is or are lying in such extra-parochial place, forthwith cause such body or bodies to be removed to some convenient place, and with all convenient speed cause the same to be buried in such and the like manner as the churchwardens and overseers within England are hereby required to bury such body or bodies.

In cases where dead human bodies shall be cast on shore, churchwardens, &c., of the parish where the body shall be found to cause the same to be removed and interred in a decent manner in the churchyard of such parish.

Minister of the parish to perform the funeral service, &c.

2. And be it further enacted, that every minister, parish clerk, and sexton of such respective parishes shall perform their several and respective duties in such and the like manner as is customary in other funerals, and shall admit of such body or bodies being interred in such churchyards or burial grounds without any improper loss of time, receiving for the same, by way of compensation, such and the like sums as in cases of burials made at the expense of such parishes.

Rewarding persons finding dead human bodies, and giving notice thereof to parish officers.

3. And be it further enacted, that in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall within six hours thereafter give notice thereof to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every such case such person or persons shall receive the sum of five shillings for his, her, or their trouble, such sum to be forthwith

paid to the person or persons first giving such notice only; but nevertheless that no greater sum than five shillings shall be paid for any one notice, although there may be a greater number of such bodies than one.

Persons finding dead human bodies cast on shore, and not giving notice, subject to a penalty.

4. Provided always, and be it further enacted, that in case any person or persons shall find any such body or bodies cast on shore from the sea by wreck or otherwise, and shall not within six hours thereafter give notice to some one of the churchwardens or overseers of the poor of the parish for the time being in which such body or bodies shall be found, or to the constable or headborough for the time being, in case such body or bodies shall be found in any extra-parochial place, or cause such notice to be left at his or their last or usual place or places of abode, then and in every case such person or persons shall for every such offence forfeit and pay the sum of five pounds.

Expenses to be paid by churchwardens, &c.

5. And be it further enacted, that all necessary and proper payments, costs, charges, and expenses which shall be made or incurred in or about the execution of this Act, shall be made and paid by the churchwarden or churchwardens, overseer or overseers, constable or headborough for the time being of such respective parishes and places as aforesaid.

Who are to be reimbursed by the treasurer of the county.

6. And, for the purpose of reimbursing him or them all such payments, costs, charges, and expenses, be it further enacted, that it shall and may be lawful to and for any one justice of the peace for the county or place within that part of the United Kingdom called England, in which any such body or bodies shall have been so removed and buried as aforesaid, by any writing under his hand, to order and direct the treasurer for such county to pay such sum or sums of money to such churchwarden and churchwardens, overseer and overseers, constable or headborough, for his or their costs and expenses in or about the execution of this Act (after the same shall have been duly verified on oath) as to the said justice shall seem reasonable and necessary; and such treasurer shall and he is hereby authorised and required forthwith to pay the sum or sums of money so ordered and directed to be paid to the person or persons empowered to receive the same; and such treasurer shall be allowed the same in his accounts.

Penalty on parish officers neglecting to remove and inter dead human bodies so found or cast on shore.

7. Provided always, and be it enacted, that in case any such churchwarden or churchwardens, overseer or overseers, constable or headborough, shall refuse or neglect to remove or cause to be removed such body or bodies from the seashore to some convenient place prior to the interment thereof, for the space of twelve hours after such notice given to him or them, or left in writing at his or their last or usual place or places of abode by any person or persons whomsoever, or shall neglect or refuse to perform the several other duties required of him and them by this Act, then and in every such case every such churchwarden or overseer, constable or headborough, shall for every such offence forfeit and pay the sum of five pounds.

Recovery of penalties under this Act.

8. And be it further enacted, that all penalties and forfeitures which shall be incurred under this Act, if not paid on conviction, shall be levied and recovered by distress and sale of the goods and chattels of the offender or offenders, by warrant under the hand and seal of any justice of the peace for the county or place where the offence shall happen (which warrant such justice is hereby empowered to grant on the confession of the party, or upon the evidence of any credible witness upon oath), and the surplus of the money arising by such distress and sale shall be returned on demand to the owner of such goods and chattels, after deducting the costs and charges of making, keeping, and selling the distress; and such penalties and forfeitures, when recovered, shall be paid to the informer or informers; and in case sufficient distress shall not be found, or such penalties and forfeitures shall not be paid forthwith, it shall and may be lawful to and for such justice, and he is hereby authorised and required, by warrant under his hand and seal, to cause the offender or offenders to be committed to the common gaol or house of correction of such county or place, there to remain without bail or mainprize, for any time not exceeding two calendar months, nor less than fourteen days, unless such penalties and forfeitures, and all reasonable charges attending the recovery thereof, shall be sooner fully paid and satisfied.

9. And be it further enacted, that in all cases where any conviction shall be had for any offence or offences committed against this Act or against any Order of Sessions, or any matter in pursuance of this Act, the form of conviction shall be in the words or to the effect following; (that is to say,)

Secs. 9–14.

Form of conviction.

"Be it remembered, that on this day of , in the year of the reign of , *A.B.* is convicted before , one of His Majesty's justices of the peace for the of having [*as the offence shall be*], and I the said do adjudge him [*or*, them] to forfeit and pay for the same the sum of . Given under my hand and seal the day and year aforesaid."

Appeal to the quarter sessions.

10. Provided always, and be it enacted, that if any person or persons shall think himself, herself, or themselves aggrieved by any judgment or determination, or by any matter or thing done in pursuance of this Act, such person or persons may appeal to the justices of the peace at the first general or quarter sessions of the peace to be holden for the county or place (within which the matter of appeal shall arise) next after the expiration of one calendar month from the time such matter of appeal shall have arisen, the person or persons appealing having first given ten days notice at least of his or their intention to bring such appeal, and of the matter thereof, to the person or persons so appealed against, and forthwith after such notice entering into a recognizance before some justice of the peace for such county or place, with sufficient sureties conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices at such sessions, upon due proof of such notice and recognizance having been given and entered into, are hereby authorised and required to hear and determine the matter of such appeal in a summary way, and to make such determination therein, and to award such costs to either of the parties, or otherwise, as they shall judge proper; and the said justices may if they see cause mitigate any fine, penalty, or forfeiture, and may also order such further satisfaction to be made to the party injured as they shall judge reasonable, and all such determinations of the said justices shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever.

Proceedings shall not be quashed for want of form.

11. And be it further enacted, that where any distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers on account of any defect or want of form in the information, summons, conviction, warrant, or distress, or other proceedings relating thereto, nor shall the party or parties distrained be deemed a trespasser or trespassers *ab initio* on account of any irregularity that shall be afterwards done by the party or parties so distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage in an action upon the case.

Penalties, &c., shall be paid by persons incurring the same, and not by the parish.

12. Provided always, and be it further enacted, that all penalties and expenses attendant thereon which shall be incurred under the provisions of this Act shall be paid and borne by the person or persons incurring the same, and that the parish or place wherein such person or persons ought to have acted in the duties prescribed by this Act shall be wholly exempted therefrom.

Lords of manors, &c., shall pay the same fee as heretofore on interring dead bodies, &c.

13. Whereas in cases of dead wrecks wherein no living person is found or owner known, the lords of manors on which any such dead body or dead bodies may be washed in and who are entitled to wreck there, have usually paid a small fee for the placing such body or bodies in the ground in the state in which the same have been found, and such payments have been adduced and admitted as proof on trials at common law of the right of such lords of manors to wrecks in such manors: Be it therefore enacted, that in all and every such cases it shall and may be lawful to and for all and every lord or lords of any manor or manors throughout England to pay or cause to be paid to the churchwarden or churchwardens, overseer or overseers, constable or headborough, of such respective parishes and places as aforesaid, such and the like sums as he or they was or were heretofore accustomed to pay for the placing any such body or bodies into the ground as aforesaid, such sums to go in part payment and discharge of the costs and expenses to be incurred in or about the execution of this Act, and credit to be given for the same by such overseers, churchwardens, constable or headborough in their accounts with the county to which such accounts shall be submitted, anything in this Act to the contrary thereof in anywise notwithstanding.

14. [*Expenses of interments shall be raised as county rates under* 12 *Geo. II. c.* 29 (1).]

(1) Repealed by Statute Law Revision Act, 1872 (No. 2).

BATHS AND WASH-HOUSES ACT, 1846.[1]

9 & 10 VICT. c. 74.

An Act to encourage the establishment of public Baths and Wash-houses.

[26*th August*, 1846.]

Secs. 1, 2.

Whereas it is desirable for the health, comfort, and welfare of the inhabitants of towns and populous districts to encourage the establishment therein of public baths and wash-houses and open bathing places: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this Act may be adopted for any incorporated borough in England which is regulated under an Act passed in the sixth year of the reign of his late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also, with the approval of one of Her Majesty's principal Secretaries of State, for any parish in England not within any such incorporated borough.

Act may be adopted in certain boroughs and parishes.

2. And be it enacted, that in this Act the following words and expressions shall have the several meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretation of Act.

["Parish" shall mean every place having separate overseers of the poor, and separately maintaining its own poor [2]:]

"Borough" shall mean city, borough, port, cinque port, or town corporate:

["Ratepayers" shall mean such of the persons for the time being assessed to and paying rates for the relief of the poor of the parish as for the time being shall be duly qualified to vote for the election of overseers for the parish [2]:]

"Churchwardens" shall mean also chapelwardens, or other persons discharging the duties of churchwardens:

"Overseers" shall mean also any persons authorised and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor:

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry [elected under an Act passed in the fifty-ninth year of the reign of King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor [2], or] elected under an Act passed in the second year of the reign of His late Majesty, intituled "An Act for the better Regulation of Vestries and for the Appointment of Auditors of Accounts, in certain Parishes of England and Wales," or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry:

59 Geo. 3, c. 12

1 & 2 Will. 4, c. 60.

"Commissioners" shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners:

(1) Where the Baths and Wash-houses Acts (see the interpretation clause of the Public Health Act, 1875, *ante*, p. 47) are in force within the district of an urban authority, such authority shall have all powers, &c., exerciseable by or attaching to the council, &c., or persons acting in the execution of the said Acts: Public Health Act, 1875, s. 10, *ante*, p. 50.

(2) The portions between brackets are repealed by the Statute Law Revision Act, 1875. See now the Baths and Wash-houses Act, 1847, 10 & 11 Vict. c. 61, s. 2, *post*, which is to be construed as one with this Act.

Secs. 2—10.

"Clerk" shall mean, as regards an incorporated borough the town clerk of such borough and as regards a parish, the clerk appointed pursuant to this Act by the commissioners:

"Justice" shall mean justice of the peace for the county, riding, division, liberty, borough, or place where the matter requiring the cognisance of justices shall arise:

"Lands" shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure:

Words importing the masculine gender shall include the feminine:

Words of the plural number shall include the singular, and words of the singular number shall include the plural:

3. [Council of any borough may adopt the provisions contained in this Act, if they think fit (1).]

Expenses of carrying this Act into execution shall be charged upon the borough fund, and income arising carried to same.

4. . . . . the income arising from the baths and wash-houses and open bathing places in any borough shall be paid to the credit of the borough fund thereof, and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities, with reference to the execution of this Act, to be called "The Public Baths and Wash-houses Account" (2).

On the requisition of ten ratepayers churchwardens, &c. to convene vestry meeting to determine whether this Act shall be adopted.

5. And be it enacted, that upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, not being within any such incorporated borough, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given at least seven days before the day to be appointed for holding such vestry; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal Secretaries of State for his approval, and as soon as such approval shall have been signified in writing under the hand of any such Secretary of State, such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish: Provided always, that no such resolution of the vestry shall be deemed to be carried unless at least two thirds of the number of votes given on the question according to the usual manner of voting at such vestry shall have been given for such resolution.

If vestry resolve to adopt the Act, a copy of resolution to be sent to Secretary of State, &c.

No resolution deemed to be carried unless two thirds vote for it.

Where Act adopted vestry to appoint commissioners for carrying the same into execution.

6. And be it enacted, that in such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one third, or as nearly as may be one third (to be determined among themselves), shall go out of office yearly, but shall be eligible for immediate re-appointment (3).

Resignation of commissioners.

7. And be it enacted, that any commissioner may at any time resign his office as a commissioner on giving seven days notice in writing of his intention to resign to the clerk, and also to the churchwardens.

Vacancies to be filled up by vestry.

8. And be it enacted, that any vacancies in the commissionership may be filled up by the vestry when and as the vestry shall think fit.

Meetings of the commissioners.

9. And be it enacted, that the commissioners shall meet at least once in every calendar month at their office, or some other convenient place previously publicly notified.

Special meetings of commissioners.

10. And be it enacted, that the commissioners may meet at such other time as at any previous meeting shall be determined upon, and it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight

(1) Repealed by the Statute Law Revision Act, 1875.

(2) The first portion of this section was repealed by the Statute Law Revision Act, 1875.

(3) Acts of commissioners are to be valid, notwithstanding informalities. See the Baths and Wash-houses Act, 1847, 10 & 11 Vict. c. 61, s. 3, *post*.

hours notice, the commissioners for any special purpose therein named, and to meet at such times as shall be therein named.

Quorum of meetings of commissioners.

11. And be it enacted, that at all meetings of the commissioners any number not less than one third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed then any number not less than two commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners.

Commissioners may appoint and remove, officers, &c.

12. And be it enacted, that the commissioners shall appoint, and may remove at pleasure, a clerk and such other officers and servants as shall be necessary for effecting the purposes of this Act, and, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

Minutes of proceedings of commissioners to be entered in a book.

13. And be it enacted, that all orders and proceedings of the commissioners shall be entered in books, to be kept by them for that purpose, and shall be signed by the commissioners, or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings; and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever.

Commissioners to keep accounts, which shall be open to inspection.

14. And be it enacted, that the commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books, or any part thereof, without paying for the same; and in case the commissioners, or any of them, or any of their officers or servants having the custody of the said books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds.

Penalty for refusing to allow inspection.

Auditors to be appointed yearly who shall examine the accounts and report to vestries.

15. And be it enacted, that the vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners, and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry.

Expenses of executing Act in any parish to be paid out of the poor's rate.

16. And be it enacted, that the expenses of carrying this Act into execution in any parish not within any such incorporated borough to such amount as shall be from time to time sanctioned by the vestry shall be chargeable upon and paid out of the moneys to be raised or applicable for the relief of the poor of the parish.

Overseers to levy, as part of the poor's rate such sums as vestry shall deem necessary to pay expenses.

17. And be it enacted, that for defraying the expenses which shall have been or shall be incurred in carrying this Act into execution in the parish the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid, and recovered in like manner, and with the like powers and remedies in all respects, as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts.

Moneys raised, and the income arising from baths, &c. in the parish to be applied

18. And be it enacted, that the money raised for defraying the expenses of carrying this Act into execution, and the income arising from the baths and wash-houses and open bathing places in the parish, shall be applied by the commissioners in or toward defraying the expenses of carrying this Act into execution in the parish; and whenever, after repayment of all moneys borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commis-

Secs. 18–23.

towards defraying expenses.

sioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers in aid of the rate for the relief of the poor of the parish.

Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of Secretary of State.

19. And be it enacted, that the vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes in such manner not inconsistent with the provisions of this Act, and for such time as they shall mutually agree; and for that purpose it may, with the approval of such Secretary of State, be agreed on between such vestries that any public baths and wash-houses and open bathing places shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly; and according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said baths and wash-houses and open bathing places, form one body of commissioners, and shall act accordingly in the execution of this Act, and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively in the same proportions as those in which such parishes shall be liable to such expenses.

Incorporation of commissioners.

20. And for the more easy execution of the purposes of this Act, be it enacted, that the commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of "the Commissioners for Public Baths and Wash-houses in the parish of ( ) in the county of ( )," and by that name may sue and be sued in all Courts, and before all justices and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act.

Councils, &c. may borrow money for the purposes of the Act, with the approval of the Treasury.

21. And be it enacted, that for carrying this Act into execution in any borough or parish respectively, the council, with the approval of the Commissioners of Her Majesty's Treasury, and the commissioners, with the sanction of the vestry, and also with the approval of the Commissioners of Her Majesty's Treasury, may from time to time borrow at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the rates for the relief of the poor of the parish, the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly [1].

The Public Works Loan Commissioners may advance money for the purposes of this Act.

22. And be it enacted, that the commissioners for carrying into execution an Act passed in the second session of the fifth year of the reign of Her Majesty, intituled "An Act to authorise the Advance of Money out of the Consolidated Fund to a limited Amount for carrying on Public Works and Fisheries and Employment of the Poor, and to amend the Acts authorising the Issue of Exchequer Bills for the like purposes," may from time to time make to the council of any such borough, or commissioners of any such parish respectively, for the purposes of this Act, any loan under the provisions of the recited Act or the several Acts therein recited or referred to, upon security of [the borough fund, or] the rates for the relief of the parish, [as the case may be [2].]

8 & 9 Vict. c. 16 incorporated with

23. And be it enacted, that the provisions of the Companies Clauses Consolidation Act, 1845, with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the

[1] Now the consent of the Local Government Board, and not that of the Treasury, is required: 35 & 36 Vict. c. 79, s. 34, *ante*, p. 257.

[2] The portions of this section between brackets are repealed by the Statute Law Revision Act, 1875. See now the Public Works Loans Act, 1875, 38 & 39 Vict. c. 89, First Schedule, *post*.

company, and the provisions of the same Act with respect to the making of bye-laws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act; and the expressions in such provisions applicable to the company and the directors shall apply as regards a borough to the council, and as regards a parish to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall in the application of such provisions to this Act be deemed to be required or directed to be made or executed as regards a borough under the common seal of the mayor, aldermen, and burgesses, and as regards a parish under the common seal of the commissioners; and so much of such provisions as are applicable to the "secretary of the company" shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts as regards a borough the burgesses, and as regards a parish the ratepayers, shall have the privileges of shareholders.

this Act for certain purposes.

24. And be it enacted, that in any such borough the council, with the approval of the Commissioners of Her Majesty's Treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen, and burgesses; and in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the poor law commissioners for England and Wales, may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; and in any such parish the commissioners, with the approval of the vestry, and in any such borough the council, may from time to time contract for the purchasing or renting of any lands necessary for the purposes of this Act, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish.

Council may appropriate, with consent of the Treasury, lands vested in the mayor, &c. Commissioners may, with approval of vestry, &c. appropriate lands belonging to parish; or contract for purchase of the same.

25. And be it enacted, that the council and commissioners respectively may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be respectively, erect any buildings suitable for public baths and wash-houses, and as to such wash-houses either with or without open drying grounds, and make any open bathing places, and convert any buildings into public baths and wash-houses, and may from time to time alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Councils and commissioners may erect, &c. public baths and wash-houses and open bathing places.

26. And be it enacted, that the council and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving, such public baths and wash-houses and open bathing places, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act; which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of non-performance; and all such contracts, or true copies thereof, shall be entered in books to be kept for that purpose: Provided always, that no contract above the value or sum of one hundred pounds shall be entered into by the council or the commissioners, for the purposes of this Act, unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county in which the borough or parish shall be situated, expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or commissioners at a certain time and place in such notice to be mentioned, but it shall not be incumbent on the council or commissioners to contract with the person offering the lowest price.

Councils and commissioners may enter into contracts for the purposes of this Act.

No contract above 100*l.* to be entered into without notice.

Secs. 27–32.

Council or commissioners may purchase existing baths, &c.

27. And be it enacted, that the council of any such borough, and the commissioners, with the approval of the vestry of any such parish, may, if they shall think fit, contract for the purchase or lease of any baths and wash-houses already or hereafter to be built and provided in any such borough or parish, and appropriate the same to the purposes of this Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any public baths and wash-houses which have been already or may hereafter be built or provided in any such borough or parish by private subscriptions or otherwise may, with the consent of the council of any such borough, or with the consent of the commissioners, and approval of the vestry of any such parish, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said baths and wash-houses to the said council or commissioners respectively, or make over to them the management of such baths and wash-houses; and in all such cases the baths and wash-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act as fully as if they had been built or provided by the said council or commissioners; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the commissioners in the case of a parish.

Power to water and gas companies to supply water and gas to baths, &c.

28. And be it enacted, that any commissioners of waterworks, trustees of waterworks, water companies, canal companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, canals, reservoirs, wells, springs, and streams of water, and gas works respectively, may in their discretion grant and furnish supplies of water or gas for such public baths and wash-houses and open bathing places either without charge or on such other favourable terms as they shall think fit.

Councillors and commissioners not to be personally liable.

29. And be it enacted, that nothing in this Act contained shall render any member of the council of any borough, or any commissioner, personally, or any of their lands, goods, chattels, or moneys (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the council or commissioners respectively in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of any thing done or suffered in due pursuance of this Act.

Persons may appeal against orders of councils and commissioners

30. And be it enacted, that every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the council or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the Companies Clauses Consolidation Act, 1845, incorporated with this Act, he might have if feeling aggrieved by any determination of any justice with respect to any penalty.

Council, &c. empowered to make sale and exchange of lands, with consent.

31. And be it enacted, that the council, with the approval of the Commissioners of Her Majesty's Treasury, and the commissioners appointed under this Act, with the approval of the vestry, and of the Commissioners of Her Majesty's Treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the commissioners respectively for the purposes of this Act, and apply the proceeds in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the commissioners, may convey the lands so sold or exchanged accordingly.

When baths, &c. are considered too expensive they may, with approval of Treasury, be sold, and proceeds of sale carried to borough fund or poor's rate.

32. And be it enacted, that whenever any public baths or wash-houses or open bathing places which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the Commissioners of Her Majesty's Treasury may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the commissioners, shall convey the same accordingly; and the purchase money shall be paid to such person as the council or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same; and the net proceeds of such sale shall be paid to the credit of the borough fund, or of the rate for the relief of the poor of the parish.

Secs. 33–39.

Management to be vested in councils and parish commissioners.

33. And be it enacted, that the general management, regulation, and control of the public baths and wash-houses and open bathing places established under this Act shall, subject to the provisions of this Act, be as to any borough vested in and exercised by the council, and as to any parish vested in and exercised by the commissioners.

Council, &c. may make bye laws for regulating the use of baths and wash-houses, &c., and charges thereat.

34. And be it enacted, that the bye-laws which the council and commissioners respectively may from time to time make, alter, repeal, and enforce shall include such bye-laws for the management, use, and regulation of the public baths and wash-houses and open bathing places, and of the persons resorting thereto respectively, and for determining from time to time the charges for the use of such baths and wash-houses and open bathing places respectively, as the council and commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants, or by other persons, of any bye-law made by them respectively; and such bye-laws shall make sufficient provision for the several purposes respectively expressed in the Schedule (A.) to this Act: provided always, that no bye-law made under the authority of this Act shall be of any legal force until the same shall have received the approval of one of Her Majesty's principal Secretaries of State (1).

Bye-laws to be approved by the Secretary of State.

Copies or abstracts of bye-laws to be hung up in every bath room, &c.

35. And be it enacted, that a printed copy or sufficient abstract of the bye-laws relating to the use of the baths and open bathing places respectively shall be put up in every bath room and open bathing place respectively; and a printed copy or sufficient abstract of the bye-laws relating to the use of the wash-houses shall be put up in some convenient place near every washing tub or trough, or every pair of washing tubs or troughs, in every wash-house.

Proportion of baths for the labouring classes.

36. And be it enacted, that the number of baths for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the baths of any higher class if but one, or of all the baths of any higher classes if more than one, in the same building or buildings (2).

37. [Charges to be fixed by councils and commissioners not exceeding those in Schedule (B.) (3)].

As to recovery of charges at wash-houses.

38. And be it enacted, that for the recovery of the charges at such wash-houses the officers, servants, and others having the management thereof may detain the clothes brought to be washed or other goods and chattels of any person refusing to pay the charge to which such person may be liable, or any part thereof, till full payment thereof be made, and in case such payment be not made within seven days may sell such clothes, goods, and chattels, or any of them, returning the surplus proceeds of such sale, after deducting the unpaid charge and the expenses of such detention and sale, and the unsold articles, if any, on demand, to such person.

Penalty for council, commissioners, or officers taking fees beyond salaries, or being interested in contracts.

39. And be it enacted, that if any clerk or other officer, or any servant who shall be in anywise employed by any council or commissioners in pursuance of this Act, shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution, other than such salaries, wages, or allowances as shall have been appointed by the council or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or commissioners for or on account of any thing done or forborne or to be done or forborne in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council or commissioner shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit the sum of fifty pounds.

(1) See the circular dated 25th July, 1877, amongst the circulars, &c., of the Local Government Board, which are collected, *post;* and the Model Bye-laws, *post.*

(2) See further the Baths and Wash-houses Act, 1847, 10 & 11 Vict. c. 61, s. 5, *post.*

(3) Repealed by Statute Law Revision Act, 1875. See the Baths and Wash-houses Act, 1847, 10 & 11 Vict. c. 61, s. 7, *post.*

Secs. 40, 41.

Application of penalties.

40. And be it enacted, that such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit as regards a borough of the borough fund, and as regards a parish of the rate for the relief of the poor thereof.

41. [Act may be amended, &c. (1).]

SCHEDULE.

Schedules referred to by the foregoing Act.

SCHEDULE (A.)

Bye-laws to be made in all Cases.

Schedule A.

For securing that the baths and wash-houses and open bathing places shall be under the due management and control of the officers, servants, or others appointed or employed in that behalf by the council or commissioners.

For securing adequate privacy to persons using the baths and wash-houses and open bathing places, and security against accidents to persons using the open bathing places.

For securing that men and boys above eight years old shall bathe separately from women and girls and children under eight years old.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or commissioners.

In parishes. For regulating the procedure of the commissioners.

(1) Repealed by the Statute Law Revision Act, 1847.

BATHS AND WASH-HOUSES ACT, 1847.[1]

10 & 11 VICT. c. 61.

An Act to amend the Act for the Establishment of Public Baths and Wash-houses.
[*2nd July*, 1847.]

Secs. 1—5.

Whereas an Act was passed in the last session of Parliament, intituled "An Act to encourage the Establishment of Public Baths and Wash-houses:" And whereas it is expedient to afford additional facilities for the establishment of public baths and wash-houses and open bathing places; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the recited Act, as amended by this Act, and this Act shall be construed and be carried into execution as one Act.

9 & 10 Vict. c. 74.

Recited Act and this Act to be construed as one.

2. And be it enacted and declared, that the following words and expressions in the recited Act shall have in the said Act and this Act the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

Interpretation of expressions in recited Act and this Act.

"Parish" shall mean not only every place having separate overseers of the poor and separately maintaining its own poor, but also every place maintaining its own poor and having a vestry:

"Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish:

"Vestry" shall mean not only a vestry as defined in the said Act, but also any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise as or instead of a vestry or select vestry.

3. . . . . and all acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, whether appointed before or after the passing of this Act, shall, notwithstanding his disqualification or want of qualification for or any defect or irregularity in or in any way concerning his appointment to such office, be as valid and effectual as if he were duly qualified or there had not been any such defect or irregularity [2].

Acts of commissioners of public baths &c. to be valid, notwithstanding informalities.

4. And be it enacted, that the Lands Clauses Consolidation Act, 1845, shall be incorporated with the recited Act and this Act: Provided always, that the council and commissioners respectively shall not purchase or take any lands otherwise than by agreement.

Incorporation of 8 & 9 Vict. c. 18.

Council, &c. not to take land, &c.

5. And be it enacted, that the number of washing tubs or troughs for the labouring classes in any building or buildings under the management of the same council or commissioners shall not be less than twice the number of the washing tubs or troughs of any higher class, if but one, or of all the higher classes if more than one, in the same building or buildings.

Proportion of washing accommodation for labouring classes.

(1) See note (1), *ante*, p. 1191.
(2) The first portion of this section is repealed by the Statute Law Revision Act, 1847.

Secs. 6—8.

Power to make charges for use of baths, &c. not exceeding those in the schedule.

6. [So much of recited Act as regulates charges for use of baths, &c., repealed (1).]

7. And be it enacted, that the council and the commissioners respectively may from to time make such reasonable charges for the use of the baths and wash-houses and open bathing places provided under the recited Act and this Act respectively as they think fit, not exceeding the charges mentioned in the schedule annexed to this Act.

8. [Act may be amended, &c. (1).]

SCHEDULE.

SCHEDULE to which this Act refers.

Charges for the Baths and Wash-houses and open Bathing Places.

1. Baths for the Labouring Classes.

Every bath to be supplied with clean water for every person bathing alone, or for several children bathing together, and in either case with one clean towel for every bather.

For one person above eight years old:

Cold bath, or cold shower bath, any sum not exceeding . . . One penny.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding . . . . . Twopence.

For several children, not above eight years old, nor exceeding four, bathing together:

Cold bath, or cold shower bath, any sum not exceeding . . Twopence.

Warm bath, or warm shower bath, or vapour bath, any sum not exceeding . . . . . Fourpence.

2. Baths of any higher Class.

Such charges as the council and the commissioners respectively think fit, not exceeding in any case three times the charges above-mentioned for the several kinds of baths for the labouring classes.

3. Wash-houses for the Labouring Classes.

Every wash-house to be supplied with conveniences for washing and drying clothes and other articles.

For the use by one person of one washing tub or trough, and of a copper or boiler (if any), or, where one of the washing tubs or troughs shall be used as a copper or boiler, for the use of one pair of washing tubs or troughs, and for the use of the conveniences for drying:

For one hour only in any one day, any sum not exceeding . One penny.

For two hours together, in any one day, any sum not exceeding . . . . . Threepence.

Any time over the hour or two hours respectively, if not exceeding five minutes, not to be reckoned.

For two hours not together, or for more than two hours in any one day, such charges as the council and the commissioners respectively think fit.

For the use of the washing conveniences alone, or of the drying conveniences alone, such charges as the council and the commissioners respectively think fit, but not exceeding in either case the charges for the use for the same time of both the washing and the drying conveniences.

4. Wash-houses of any higher Class.

Such charges as the council and the commissioners respectively think fit.

5. Open Bathing Places, where several persons bathe in the same water, for one person, one halfpenny (2).

(1) Repealed by Statute Law Revision Act, 1875.

(2) Now "one penny," Baths and Wash-houses Act, 1878, 41 Vict. c. 14, s. 14, *post*.

BATHS AND WASH-HOUSES ACT, 1878.[1]

41 VICT. c. 14.

An Act to amend the Law relating to Public Baths and Wash-houses.

[27*th May*, 1878.]

Secs. 1—6.

Whereas the Act passed in the session held in the ninth and tenth years of the reign of Her present Majesty, chapter seventy-four, intituled "An Act to encourage the Establishment of Public Baths and Wash-houses," was amended by the Act passed in the session held in the tenth and eleventh years of the reign of Her present Majesty, chapter sixty-one, intituled "An Act to amend the Act for the Establishment of Public Baths and Wash-houses," and it is expedient further to amend the said first-recited Act, and to provide for the establishment of covered swimming baths and other purposes:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Baths and Wash-houses Act, 1878.

"Covered swimming bath."

The words "covered swimming bath" in this Act shall mean a swimming bath protected by a roof or other covering from the weather.

Construction of Act. 38 & 39 Vict. c. 66. 38 & 39 Vict. c. 55.

2. This Act and the recited Acts, as amended by the Statute Law Revision Act, 1875, and the Public Health Act, 1875, and by this Act, shall be construed and carried into execution as one Act; and the words "the council and the commissioners," when used in this Act shall include the urban authority mentioned in the tenth section of the Public Health Act, 1875.

Covered swimming baths authorised.

3. All the provisions of the recited Acts respectively shall be construed to extend and to have extended from the passing of such Acts respectively to covered swimming baths as well as to baths, wash-houses, and open bathing places.

As to charges for swimming baths.

4. The council and the commissioners respectively may from time to time provide covered swimming baths, and make such reasonable charges for the use thereof as they shall think fit, not exceeding the charges mentioned in the schedule annexed to this Act.

Power to close swimming baths for a limited period.

5. The council and the commissioners respectively may during such period, not exceeding five months in any one year, as they shall think fit, from the beginning of the month of November to the end of the month of March, close any covered swimming bath or open swimming bath, and may either keep the same closed or may establish therein a gymnasium or such other means of healthful recreation as they shall think fit, or may during such period allow any covered or open swimming bath to be used as an empty building for such purposes of healthful recreation or exercise as they shall think fit during such period as aforesaid, and may at any time allow any portion of the public baths not required by the commissioners to be used for holding vestry meetings or other parochial purposes: Provided always, that no covered or open swimming bath when closed may be used for music or dancing.

Power to make bye-laws.

6. The council and the commissioners respectively may make bye-laws for the regulation, management, and use of the open or swimming baths when used for any of the purposes mentioned in the fifth section of this Act; and all the provisions in the

(1) See note (1), *ante*, p. 1191.

Secs. 6—14.

principal Act relating to bye-laws shall extend and apply to bye-laws made under this section.

Power to appoint officers.

7. The council and the commissioners respectively may appoint and remove at pleasure such officers and servants as shall be necessary for the management and superintendence of any gymnasium or other means of recreation established under this Act, and may appoint reasonable salaries, wages, and allowances for such officers and servants.

Power to make charges for gymnasium, &c.

8. The council and the commissioners respectively may from time to time make such reasonable charges for the use of the gymnasium or other means of recreation established under this Act, or for the use of any covered swimming bath as an empty room, as they shall think fit.

Powers of borrowing, &c. extended to this Act.

9. The provisions in the twenty-first, twenty-second, and twenty-third sections of the principal Act authorising the borrowing and advancement of money for the purposes of that Act shall be taken to authorise the borrowing and advancement of money in like manner for the purposes of this Act; and the approval of the Local Government Board shall be substituted for that of the Commissioners of Her Majesty's Treasury in all cases where money is borrowed for the purposes of the principal Act or this Act.

Power to remove offenders.

Baths, &c. to be considered public and open places.

10. The council and the commissioners respectively, and their respective servants and agents, may remove any person offending against any of the bye-laws made under this Act and the recited Acts, or any of them; and any bath or wash-house, or open bathing place, or covered swimming bath, established under this Act and the recited Acts, or any of them, shall be taken to be a public and open place, so as to make offences against decency therein criminal offences.

Power to refuse admittance to baths, &c. to offenders.

11. The council and the commissioners respectively, and their respective officers and servants, may refuse admittance to any bath, wash-house, open bathing place, or covered swimming bath, or any of them, to any person (1) who shall have been convicted of wilfully disobeying any of the bye-laws in such bath, wash-house, open bathing place, or covered swimming bath; (2) who shall have been convicted of any offence against public decency in any of such baths, wash-houses, open bathing places, or covered swimming baths as aforesaid.

12. [Power to make superannuation allowances to officers, &c., employed about baths, &c., within the metropolis (1).]

Expenses of Act and income arising to be applied as under principal Act.

13. The expense of carrying this Act into execution shall be defrayed, and the income arising from the use in any manner of any covered swimming bath established under the provisions of this Act and the recited Acts, or any of them, shall be applied, in the same manner as that in which the expenses of the principal Act are thereby directed to be defrayed, and the income arising from baths and wash-houses, and open bathing places, is thereby directed to be applied.

Increase of charge.

14. The charge of one halfpenny, fixed by the tenth and eleventh Victoria, chapter sixty-one, section seven, and part five of the schedule to that Act, shall be increased to one penny.

SCHEDULE.

The SCHEDULE above referred to.

CHARGES FOR COVERED SWIMMING BATHS.

1ST CLASS.—Any sum not exceeding eightpence for each person.
2ND CLASS.—Any sum not exceeding fourpence for each person.
3RD CLASS.—Any sum not exceeding twopence for each person.

(1) Applies to the metropolis only.

MUNICIPAL CORPORATIONS (BOROUGH FUNDS) ACT.

35 & 36 VICT. c. 91.

An Act to authorise the application of Funds of Municipal Corporations and other governing bodies in certain cases (1). [10*th August*, 1872.]

Whereas by the Act passed in the session holden in the twentieth and twenty-first years of the reign of Her Majesty, intituled an Act to amend the Acts concerning the Municipal Corporations, the trustees acting under any Act of Parliament for supplying any borough, or any district within or in certain cases beyond the limits of a borough, with water or gas, or having powers for providing or maintaining any cemetery or market in or for any borough, or otherwise improving the same, are authorised and empowered to transfer to the body corporate of such borough all their rights, estates, properties, and liabilities: 20 & 21 Vict. c. 50.

And whereas by the ninety-second section of the Act passed in the session holden in the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, to provide for the regulation of Municipal Corporations in England and Wales, in each borough the annual proceeds of all property and hereditaments belonging to the body corporate, and fines and rates levied in the borough, are directed to form the borough fund, and such fund is directed to be applied in the payment of certain salaries and certain expenses and the expenses necessarily incurred in carrying into effect the provisions of the said Act, and the surplus (if any) of such fund is directed to be applied, under the direction of the council, for the public benefit of the inhabitants and the improvement of the borough:

And whereas the Public Health Act, 1848, the Local Government Act, 1858, and various local Acts of Parliament, have conferred powers of improving, cleansing, paving, lighting, and otherwise governing places or districts upon boards of health, commissioners, trustees, or other persons (2):

And whereas it is expedient to extend the powers of governing bodies so as to enable them to apply the borough or other funds under the control of such governing body towards such costs, charges, and expenses as may be incurred for the purposes and in the manner herein provided:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

(1) The general principle, apart from this Act, is that opposition to a Bill before Parliament must be in defence of corporate property or rights: See *Att.-Gen.* v. *Mayor, &c., of Wigan*, 1 Kay, 268, 23 L. J. Ch. 429, 434, 18 Jur. 299, 23 L. T. 43, 2 W. R. 308; *R.* v. *Dublin Town Council*, 9 L. T. N. S. 123; *Brighton* v. *North*, 16 L. J. Ch. 255; *Bright* v. *North*, 2 Ph. 216.

This Act does not take away the right of a municipal corporation to defray out of their funds or rates the expenses incurred in defending any attack made by Bill in Parliament, whether against their existence as a corporation or against their property, or only against their rights, power, and privileges: *Att.-Gen.* v. *Mayor, &c., of Brecon*, L. R. 10 Ch. D., 204, 48 L. J. Ch. 153, 40 L. T. N. S. 52, 27 W. R. 332.

(2) See section 313 of the Public Health Act, 1875, *ante*, p. 215.

Secs. 1—4.

Interpretation of terms.

1. The term "governing body" in this Act shall mean the council of any municipal borough, the board of health, local board, commissioners, trustees, or other body acting under any general or local Act of Parliament for the management, improvement, cleansing, paving, lighting, and otherwise governing places or districts, and the term "district" shall mean the borough, place, township, or district within which the governing body may for the time being have jurisdiction: Provided, however, that in the borough of Cambridge, in any matters affecting the constitution, power, or functions of the Board of Cambridge Improvement Commissioners, as defined in the several Acts of Parliament relating thereto, the term "governing body" shall mean such board of improvement commissioners, and not the council of the borough of Cambridge.

Costs of promoting or opposing parliamentary and other proceedings for benefit of inhabitants to be charge on borough and local funds, except in certain cases.

2. When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal Bill or Bills in Parliament (1), or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the payment of the costs and expenses attending the same (2); and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: Provided that nothing in this Act contained shall authorise any governing body to promote any Bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament: Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a Bill by a governing body has been decided by a Committee of either House of Parliament to be unreasonable or vexatious.

No payment to member of governing body to be so charged.

3. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such bill shall be charged as aforesaid.

Costs of promoting or opposing Bills to require sanction of special meetings.

4. No expense in relation to promoting or opposing any Bill or Bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such board, and in respect of other matters, the approval of one of Her Majesty's Secretaries of State, and in case of the promotion of a Bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the Bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the Bill in Parliament: Provided further, that no expense in promoting or opposing any Bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act (1858) for the adoption of that Act (3).

(1) The provisions of this Act do not apply to Provisional Orders. See section 297 (8) of the Public Health Act, 1875, *ante*, p. 207. This Act applies only to local and personal bills.

(2) See section 6, *post*, p. 1205.

(3) It was held by Lord Campbell, in *R.* v. *Morris*, 28 L. J. 266, that a local board should obtain express sanction from a meeting of ratepayers called for the purpose before incurring expenses for parliamentary proceedings.

As regards local boards, the provisions of the Public Health Act, 1875, must now be observed. See section 313, *ante*, p. 215. These provisions will be found, *ante*, pp. 243—245.

The court will not grant a mandamus to call a second meeting in order that a poll may be demanded where the applicant has not a real interest in the matter: *R.* v. *Mayor of*

5. The approval of the Local Government Board or one of Her Majesty's principal Secretaries of State, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or Secretary of State objecting to such approval (2).

Proviso as to approval of Local Government Board, &c., to any such resolution.

6. All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by some person to be authorised by one of Her Majesty's principal Secretaries of State or by the Local Government Board, as the case may be.

Costs to be examined.

7. The Local Government Board, or one of Her Majesty's principal Secretaries of State, shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

Power to direct local inquiry.

8. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exerciseable by the inhabitants of any district under any general or special Act.

Saving clause.

9. The one hundred and forty-second section of The Towns Improvement Clauses Act, 1847, is hereby repealed so far as the same is inconsistent with the provisions of this Act.

Towns Improvement Clauses Act, 1847, s. 142, repealed.

10. The provisions of this Act shall not extend to applications for any Bill in Parliament for any object which would, for the time being, be attainable by Provisional Order (1).

Act not to extend to Bills if object attainable by Provisional Order.

11. This Act shall not extend or apply to Ireland or the city of London or the metropolitan area as defined by the Metropolitan Local Management Act, 1855.

Act not to apply to Ireland or the metropolis.

Peterborough, 44 L. J. Q. B. 85, 23 W. R. 343. As to the common law right to a poll, see *R.* v. *Wimbledon Local Board*, L. R. 8 Q. B. D. 459, 51 L. J. Q. B. 219, 46 L. T. N. S. 47, 30 W. R. 400.

(1) See sections 297 and 298 of the Public Health Act, 1875, and the notes thereto, *ante*, pp. 205—207.

LOCAL LOANS ACT, 1875.

38 & 39 VICT. c. 83.

An Act to amend the Law relating to Securities for Loans contracted by Local Authorities.
[13*th August*, 1875.]

Secs 1—5.

Whereas it is expedient to amend the law relating to securities for loans contracted by local authorities:—

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

(1.) *Preliminary.*

Short title.

1. This Act may be cited for all purposes as "The Local Loans Act, 1875."

Limits of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act.

Definition of borrowing under Act.

4. A local authority shall be deemed to borrow, subject to the provisions of this Act, whenever it raises a loan by the issue of debentures or debenture stock or annuity certificates, purporting to be created under its powers, or partly in one way and partly in another; subject to this proviso, that where a loan is directed to be raised by debentures or debenture stock or annuity certificates under this Act, the prescribed mode only shall be adopted.

(2.) *Debentures.*

Regulations as to debentures.

5. A debenture under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such debenture specified with payment, as in the debenture mentioned, of the principal sum and interest therein specified.

Where a debenture under this Act charges property other than the local rate, and it is intended that in default of payment of the principal sum due on such debenture, or of the interest thereon, the property is to be sold, a statement to that effect shall be inserted in the debenture.

The principal sum may be made payable to the bearer of the debenture, or to a person to be named therein, his executors, administrators, or assigns.

A debenture in which the principal sum is made payable to the bearer shall be transferable by delivery.

A debenture in which the principal sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal debenture, and shall be transferable by writing in manner directed by the local authority.

There may be attached to a debenture under this Act, or be thereafter issued in respect thereof, or partly in one way and partly in the other, coupons making the interest as therein mentioned payable to the bearer of each coupon, or to the person named in each coupon or his order, or the interest on a debenture may be made payable to the owner for the time being of such debenture, or may be otherwise made payable in such manner as in the said debenture mentioned.

A coupon making the interest therein mentioned payable to the person named therein or his order is in this Act referred to as a coupon payable to order.

A debenture under this Act shall not be issued for a less sum than the prescribed sum, or, where no sum is prescribed, than twenty pounds.

(3.) *Debenture Stock.*

Secs. 6, 7.

Regulations as to debenture stock.

6. A debenture stock may be created and issued by a local authority having power to raise a loan or any part thereof by the issue of debenture stock. Such debenture stock shall be of a nominal amount, not exceeding the amount of money authorised to be raised by such stock, and shall, unless otherwise provided by the conditions of issue, be redeemable at par at the option of the local authority at such times and upon such conditions as the local authority may declare at the time of the issue thereof.

The title of any person to any share in debenture stock shall be evidenced by the entry in the register as in this Act mentioned of the name of such person as owner of such share.

Debenture stock shall bear such rate of interest, to be payable at such times as the local authority may declare at the time of issue of the stock.

Debenture stock and the interest thereon shall be a charge on the local rate or property specified at the time of the issue thereof, in the same manner as if it were a principal sum and interest charged thereon by deed.

Where debenture stock and the interest thereon is a charge on property other than the local rate, and it is intended that in default of the payment of the interest thereon, or for the purpose of raising the money required for the redemption of the stock, the property is to be sold, a declaration to that effect shall be made by the local authority at the time of the issue of the stock, and shall be deemed to form one of the conditions of such issue.

Debenture stock shall have all the incidents of personal estate, and shall, subject to the provisions of this Act, be transferable by writing in manner directed by the local authority (1).

The interest on any share of debenture stock shall be recoverable by the owner of such share in the same manner in all respects as if such interest were an annuity of like amount secured to him by an annuity certificate under this Act.

The owner of any share in debenture stock shall not be entitled to require payment of the nominal amount of stock held by him, except at the time and upon the conditions declared by the local authority at the time of the issue of such stock.

The conditions of issue of debenture stock shall be declared by the local authority at the time of such issue, and a printed copy of such conditions shall be supplied to every owner of debenture stock requiring the same, and shall be entered in the register of such stock.

The local authority may, if it thinks fit, on the application of the owner of any share in debenture stock, grant to him a certificate of title to his share in such stock, or any part of such share, with coupons attached entitling the bearer of the coupons to the interest on the share or part of a share specified in such certificate.

A certificate of title to a share in debenture stock under this section (in this Act called a stock certificate to bearer) shall entitle the bearer to the stock therein described, and to the interest thereon, and shall be transferable by delivery (2).

Any share in stock in respect of which a stock certificate to bearer has been issued, shall, so long as such certificate is outstanding, cease to be dealt with through the medium of the register.

Debenture stock, in respect of which a stock certificate to bearer has not been issued, is in this Act referred to as nominal debenture stock.

(4.) *Annuity Certificates.*

Regulations as to annuity certificates.

7. An annuity certificate under this Act shall be an instrument taking effect as a deed, and charging the local rate or property in such certificate specified with payment, as in the certificate mentioned, of the annual sum therein specified.

Where an annuity certificate under this Act charges property other than the local rate, and it is intended that in default of payment of the annual sum secured by such

(1) As to composition for stamp duty on transfers of debenture and other stocks of municipal corporations, see the Inland Revenue Act, 1880, 43 & 44 Vict. c. 20, ss. 53, 55.

(2) As to the stamp duty on "stock certificates to bearer," see Customs and Inland Revenue Act, 1881, 44 Vict. c. 12, s. 46.

Secs. 7—12.

annuity certificate, or of some part thereof, the property is to be sold, a statement to that effect shall be inserted in the annuity certificate.

The annual sum may be made payable to the bearer of the certificate or to a person to be named therein, his executors, administrators, or assigns.

An annuity certificate in which the annual sum is made payable to the bearer shall be transferable by delivery.

An annuity certificate in which the annual sum is made payable to a person named therein, his executors, administrators, or assigns, is in this Act referred to as a nominal annuity certificate, and shall be transferable by writing in manner directed by the local authority.

An annuity certificate under this Act shall not be issued for a less annual sum than the prescribed sum, or, where no sum is prescribed, than three pounds.

(5.) *Priority of Loans.*

Priority of loans.

8. All sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of the same loan by a local authority under this Act shall be paid without any preference the one over the other by reason of the priority of date of any of such securities.

Where more than one loan has been raised under this Act by the same local authority, the sums for the time being due or authorised to be raised on or in respect of any securities issued in respect of each loan shall take priority according to the date of such loan.

Where any sum of money is authorised to be borrowed in manner provided by this Act, such sum may, unless it is otherwise prescribed, be raised under this Act as one loan or several loans, as may be deemed most convenient by the borrowing authority, so that the aggregate amount authorised to be borrowed be not exceeded.

The date of each loan shall, with a view to the priority of the loan and to the period within which such loan is to be discharged, and for the other purposes of this Act, so far as relates to that period, be fixed by the local authority, and may be so fixed irrespectively of the dates of the particular securities issued in respect of such loan, so that the period within which the loan is required to be discharged be not exceeded.

(6.) *Notice of Trusts.*

Notice of trust not receivable.

9. No notice of any trust, expressed, implied, or constructive, shall be received by the local authority, or by any registrar or officer of the local authority, in relation to any security issued by such authority under this Act.

Owners of securities not responsible for acts of local authority.

10. A person advancing any money to a local authority and receiving in consideration of such advance any security under this Act, shall not be bound to inquire into the application of the money advanced, or be in any way responsible for the non-application or misapplication thereof.

(7.) *Remedy for Non-payment.*

Remedy by mandamus for non-payment of money.

11. The local authority shall pay or raise all sums for the time being due or authorised to be raised on or in respect of any security issued by them under this Act, and if default is made in payment of any sum so due, such sum shall be deemed to be a specialty debt due to the person entitled thereto from the local authority of such a nature that a *mandamus* will be granted to enforce the payment thereof; and an action may be brought accordingly, in which a *mandamus* may be claimed.

Remedy by appointment of receiver for non-payment of money.

12. Where a local authority makes default for a period of twenty-one days in paying an amount of not less than five hundred pounds (whether in one sum or separate sums) for the time being due on or in respect of any security issued under this Act, the persons entitled to the said amount, or any of such persons, may, instead of or in addition to bringing an action or actions, apply to the county court for the appointment of a receiver, and any receiver so appointed (subject to any direction which may be given by the court) shall from time to time raise as hereinafter-mentioned, by or out of the local rate or property charged, sufficient money to pay the amount the payment of which is

so in default, and all sums due while he is receiver on or in respect of any such security, together with all costs, charges, and expenses incurred in or about the appointment of such receiver and the execution of his duties under this section, including a proper remuneration for his trouble, and shall render to the defaulting authority the balance, if any, remaining in his hands after making the said payments.

Where the amount so due or authorised to be raised is charged on the local rate, the receiver may raise the money he is authorised to raise under this section by means of the local rate, and for that purpose shall have the same power as the defaulting authority of levying the local rate, and the receiver shall have such access to and use of the documents of the defaulting authority relative to the local rate as he may require.

Where the amount so due or authorised to be raised is charged on any property, other than the local rate, the receiver may raise the sum which he is authorised to raise under this section by receipt of the rents and profits of the property, and if the security involves a power of sale, as in this Act mentioned, by sale of the property in such manner and subject to such conditions of sale and otherwise as the court may direct.

A county court may appoint a receiver under this section with respect to any local rate levied, or any property situate wholly or partly within the jurisdiction of such court, and may remove such receiver and appoint another in his stead, and so from time to time; and may make such orders and give such directions as to the powers and duties of the receiver, and otherwise as to the disposal of the moneys received by him, as may be thought fit for carrying this section into effect (1).

(8.) *Discharge of Loan.*

Loan borrowed to be discharged within prescribed period.

13. Every loan borrowed in manner provided by this Act shall be discharged within the prescribed period from the date thereof (2), and if no period is prescribed, within the period of twenty years from the date thereof, which period of twenty years shall for the purposes of this Act be included under the term "prescribed period," and such discharge shall be secured by one or more of the following methods; that is to say,

By the issue of annuity certificates limited to expire within the prescribed period; or,

By the issue of debentures made payable in such a manner that in each year such number of debentures will become due and be paid off as will secure the repayment of the whole sum secured by such debentures by equal annual instalments, extending over the whole of the prescribed period, or over a less time than the prescribed period; or,

By the annual appropriation, as in this Act mentioned, of a fixed sum to the discharge of a certain portion of such loan; or,

Where a sinking fund is prescribed, but not otherwise, by the establishment of a sinking fund and the application thereof in manner in this Act mentioned.

Discharge of loan by appropriation of annual sum.

14. Where a fixed annual sum is appropriated to the discharge of a loan, or part of a loan, the local authority shall raise in every year an equal sum of money of such amount as will, at, or before the expiration of the prescribed period, pay off the whole of such loan or part of a loan, and the interest thereon. The local authority shall in each year pay out of such fixed sum the interest due on the loan or part of a loan during the current year, and appropriate the residue of such sum, in the case of money borrowed on debentures, to the payment off of a corresponding amount of the principal sum secured by such debentures, and in the case of money borrowed by the issue of debenture stock to the redemption of a corresponding amount of such stock.

The debentures or portion of debenture stock to be paid off in every year shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be deter-

(1) The proceedings are by petition, to be presented to the court of the district in which the local authority exercises its authority; and the same procedure is followed, and fees paid and costs allowed, as on any other petition where the subject-matter exceeds £100. See the County Court Rules, 1876 (Order 39 a), rr. 36, 38.

(2) See Public Health Act, 1875, s. 234 (4), *ante*, p. 173.

Secs. 14, 15, mined by lot, the lots shall be drawn in presence of the local authority, and any owners of debenture or debenture stock who choose to be present; the local authority shall cause not less than one month's previous notice of the time and place at which lots are to be drawn to be given by advertisement, published once at the least in each of four successive weeks in some newspaper circulating in the district within which the local authority has jurisdiction.

Any fractional sum remaining of such residue as aforesaid, after payment of the debentures or debenture stock, payable as aforesaid, shall be carried to the credit of the annual sum to be raised in the ensuing year. All expenses incurred by the local authority in respect of any drawings by lot or otherwise in respect of the discharge of a loan shall be paid out of the current revenue of the local authority.

Discharge of loan by sinking fund.

15. Where a sinking fund is prescribed for any loan or part of a loan, the local authority shall create a sinking fund as hereinafter-mentioned; that is to say,

(1.) Such equal yearly or half-yearly sums shall be paid into the sinking fund in each year as, being accumulated at compound interest at the prescribed rate, or if no rate is prescribed, at such rate as in the opinion of the local authority (regard being had to the securities in which they are authorised to make investments), will at the expiration of some period, not longer than the prescribed period, be sufficient, after payment of all expenses, to discharge such loan or part of a loan; and,

(2.) The first of such payments shall be made within one year from the date of the loan; and,

(3.) All sums paid into the sinking fund shall be, as soon as may be, invested by the local authority in the prescribed manner, and if no manner is prescribed, or if a manner having been prescribed, the Local Government Board shall assent, in securities in which trustees are by law for the time being authorised to invest, or in debentures, debenture stock, or annuity certificates issued under this Act, and any such investments may be from time to time varied or transposed, and all dividends and other annual sums received in respect of such investments shall, as soon as may be after they are received, be paid into the sinking fund and invested by the local authority in like manner; and,

(4.) The local authority may from time to time apply the sinking fund, or any part thereof, in or towards the discharge of the loan or part of a loan for which it was created, and until such loan or part is wholly discharged shall not apply the same for any other purpose;

(5.) The debentures or portion of debenture stock, to the payment of which such sinking fund is for the time being applicable, shall be ascertained in such manner as may have been fixed at the time of the issue of the debentures or debenture stock, or may thereafter have been arranged. Where the debentures or portion of debenture stock to be paid off are or is to be determined by lot, the lots shall be drawn and notice shall be given in manner hereinbefore in this Act mentioned:

(6.) Any surplus of the sinking fund remaining after the discharge of the loan or part of a loan, for the discharge of which it was created, shall be paid into some other sinking fund under the control of the local authority, or if there is no such fund shall be applied to any purpose to which such loan is applicable, or otherwise, as the local authority may, with the assent of the Local Government Board, think expedient:

(7.) Where any part of the sinking fund is invested in any securities of the local authority, or is applied in paying off any part of the loan before the prescribed period, the interest which would otherwise be payable on such securities or on such part of the loan shall be paid into the sinking fund and invested in manner provided by this Act:

to (8.) If the annual income of the sinking fund is not less than the annual interest receiver, amayable on so much of the loan or part of the loan in respect of which it was the court) shall has remains undischarged, the equal annual sums required by this secrate or property charged into the sinking fund may cease to be so paid.

Annual return as to sinking fund.

16. Where a sinking fund is created for the purpose of discharging any loan or part of a loan the local authority shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form and verified in such manner as the Board from time to time directs, showing the amount which has been invested or applied for the purpose of such sinking fund during the year next preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year. If it appears to the Local Government Board, by such return or otherwise, that the local authority have failed to comply with the provisions of this Act with respect to the sinking fund, that board may, if they think fit and after hearing the local authority, if desirous to be heard, by order direct that the sum in respect of which default has been made is to be raised and invested or applied as part of the sinking fund, and any such order may be enforced by *mandamus*.

Supplemental Provisions.

(1.) *As to Coupons.*

Temporary issue of coupons.

17. Coupons in respect of any debenture or stock certificate to bearer under this Act may be issued comprising the interest payable during the whole period of years for which the debenture or stock certificate is in force, or any less period, and at the expiration of any such less period fresh coupons may be issued in respect of the debenture or stock certificate, or such debenture or stock certificate may be exchanged for another debenture or stock certificate with coupons for a further period.

Endorsement and crossing of coupons.

18. A coupon payable to order, which when presented for payment purports to be endorsed by the person named therein, shall be a sufficient authority to the person paying the money to pay the amount due in respect of such coupon to the bearer thereof, and it shall not be incumbent on the person paying such coupon to prove that such endorsement or any subsequent endorsement was made by or under the direction or authority of the person who is named in the coupon, or to whom the coupon was made payable by any endorser.

Where a coupon bears across its face an addition in written, printed, or stamped letters of the name of any banker or of the words "and company" in full or abbreviated, between two transverse lines, such addition shall be deemed to be a material part of the coupon, and have the force of a direction to the person by whom such coupon is to be paid that the same is to be paid only to or through the banker named, or if none is so named, to or through some banker, and the same shall be payable only to or through the banker named or some banker.

Coupons issued in respect of a security are exempt from stamp duty as if attached thereto.

19. Any coupons issued in respect of any debenture or stock certificate to bearer under this Act shall for the purpose of the Acts relating to stamp duties be deemed to have been attached to and issued with such security.

(2.) *As to Stock Certificates.*

Conversion into nominal debenture stock of stock in certificate to bearer.

20. The bearer of a stock certificate to bearer may, on delivery to the local authority of his certificate and of all unpaid coupons belonging thereto, require the local authority to enter him in the register of the local authority as an owner of the share of stock described in the stock certificate to bearer, and thereupon that stock shall become nominal debenture stock and the interest thereon shall be payable as if no stock certificate to bearer had been issued in respect of that share of stock.

Trustee not to apply for stock certificate to bearer.

21. A trustee of debenture stock shall not apply for or hold a stock certificate to bearer unless authorised to do so by the terms of his trust, and any contravention of this provision by a trustee shall be deemed a breach of trust. But this provision shall not impose on the local authority an obligation to inquire whether a person applying for a stock certificate to bearer is or is not a trustee, or subject to the local authority to any

Secs. 21–25

liability in the event of their issuing a stock certificate to bearer to a trustee, or invalidate any stock certificate to bearer issued.

(3.) *As to Execution and Supply of Securities.*

Execution and supply of securities.

22. Every debenture, stock certificate to bearer, and annuity certificate under this Act shall be deemed to be well executed if under the common seal of the local authority, where that authority is a body corporate, and if signed by two or more members of the local authority, where the local authority is not a body corporate, or if otherwise executed in such manner as the Local Government Board may direct on the application of any local authority, whether corporate or unincorporate.

The Commissioners of Inland Revenue may, when required by any local authority, and on payment of such sum as may, with the sanction of the Treasury, be agreed upon, supply such authority with debentures, stock certificates to bearer, coupons, and annuity certificates under this Act in such form and of such materials as the local authority may direct.

(4.) *As to Register of Nominal Securities.*

Register of nominal securities.

23. A local authority issuing nominal debentures, nominal debenture stock, or nominal annuity certificates under this Act, shall cause a register of such securities to be kept in one or more book or books, and there shall be entered in such register—

(1.) The names and addresses and the descriptions of the owners for the time being of every such security, with a statement of the securities held by each person registered, and

(2.) The date at which the name of any person was entered in the register in respect of any such security.

The register under this section shall be evidence of any matters by this Act directed or authorised to be inserted therein.

Inspection of register.

24. Any person may inspect the register at any reasonable time upon payment of such fee not exceeding one shilling as may be fixed by the local authority, and shall be entitled to obtain from the registrar, copies or extracts certified by him to be true copies or extracts of such register, upon payment of such fee not exceeding two shillings and sixpence, and twopence for every folio of seventy-two words, as the local authority may from time to time fix, and any copy or extract so certified shall be admissible in evidence.

Rectification of register.

25. If the name of any person is without sufficient cause entered in or omitted from the register, or if default is made or unnecessary delay takes place in making any entry in such register, the person aggrieved or the local authority may apply to the court for an order that the register may be rectified.

The court may either refuse the application with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, whether there has or has not been any default on the part of the registrar, make an order for the rectification of the register, and make such order as to the payment of the costs of the application or of damages to the person aggrieved as to the court may seem just.

The court may, in any proceeding under this section, decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, and generally any question which it may be necessary or expedient to decide for the rectification of the register.

The court for the purposes of this section means any of Her Majesty's superior courts of law or equity, or any court to which the jurisdiction of such courts may be transferred, and where the value of any security or securities to which the application relates does not exceed fifty pounds shall include a county court, and the jurisdiction by this Act given to a superior court may be exercised in a summary manner by any judge or judges of such court sitting in chambers or otherwise (1).

(1) In the County Court the proceedings are by petition to the court of the district in which the local authority exercises its authority; and the same procedure is followed, and fees paid and costs allowed, as on any other petition where the subject-matter exceeds £20 and does not exceed £100. County Court Rules, 1876 (Order 39 a), rr. 37, 38.

(5.) *As to Loans under Official Sanction.*

Permissive issue of securities under official sanction

26. Any local authority about to raise a loan by the issue of any securities under this Act may apply to the Local Government Board to authorise the issue of such securities under official sanction.

The Local Government Board, before granting their official sanction to such issue, shall require the local authority to furnish in such form, and with such particulars, and supported by such evidence as the Local Government Board may require, such returns of the financial condition of such authority and borrowing powers of such authority and of the indebtedness of such authority, whether incurred before or after the passing of this Act, and such other particulars as will enable the Local Government Board to ascertain the facts required by this section to be stated in relation to such issue, and the Local Government Board may make such examination or inquiries for ascertaining the said matters and the accuracy of such returns as they may think expedient, and they shall not give their sanction unless they are satisfied with the information given and the result of the inquiries made.

The issue of any securities under official sanction shall be authenticated by an official stamp on such securities or otherwise as the Local Government Board may from time to time direct.

The sanction of the Local Government Board given in respect of any securities shall be conclusive evidence that the local authority by whom such securities may be issued had power to issue the same, and that the same have been duly issued, and are as to form and otherwise in conformity with this Act.

The owner of any security issued under official sanction shall on request made by him to the Local Government Board be furnished with a statement of the following particulars; (that is to say,)

Where a security is charged on a rate, of the rateable value, at the date of the issue of such security, of the property subject to the rate, and where the security is a charge on property, of the estimated value of such property; also of

The relative priority of the loan, in respect of which such security is issued, and of the other loans (if any) of the borrowing authority;

and such statement shall be evidence of the particulars therein stated.

(6.) *As to Investments on Loans under Act.*

Power for trustees to invest in loans under Act.

27. Any trustee or other persons for the time being authorised or directed to invest any moneys in the debentures or debenture stock of any railway or other company shall, unless the contrary is provided by the instrument authorising or directing such investment, have the same power of investing such moneys in any nominal debentures or nominal debenture stock issued under this Act as they have of investing such moneys in debentures or debenture stock of any railway or other company as aforesaid.

Power for Public Works Loan Commissioners to take securities under Act.

28. When the Public Works Loan Commissioners are authorised to grant any loan to a local authority under any Act, passed either before or after the passing of this Act, and are satisfied with the sufficiency of the rates or other property on which such loan is charged to defray the loan, they may, notwithstanding anything contained in any other Act of Parliament, take debentures, debenture stock, or annuity certificates under this Act as a security for such loan.

(7.) *As to General Rules.*

Application of rules in schedule.

29. The general rules in the schedule to this Act with respect to the transfer and transmission of nominal securities shall have the same force as if they were enacted in the body of this Act.

Power to make general rules.

30. The local authority may from time to time, with the consent of the Local Government Board, make, and when made, add to, rescind, or alter, such rules as they think fit with respect to the following matters:

(1.) The issue of coupons, the registry of securities, the mode of transferring securities not transferable by delivery, the fees, if any, to be charged in respect of registry and otherwise in respect of any security issued by them under this Act; and,

Secs. 30–34.

(2.) With respect to any matter or thing required for the purposes of carrying into effect this Act, and not inconsistent therewith.

The local authority may also by such rules as aforesaid add to, rescind, or alter any of the rules in the schedule hereto.

Any general rules made by the local authority in pursuance of this section shall, so far as they are consistent with this Act, have the same force as if they were enacted therein.

Provided, that any rules made, added to, rescinded, or altered in pursuance of this section shall not affect any securities issued in respect of any loan the date of which is prior to the date of such making, addition, rescission, or alteration.

(8.) *As to Borrowing.*

Borrowing and re-borrowing by local authorities.

31. Any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of this Act, may, if it thinks fit, borrow in manner provided by this Act any loan which it is authorised to borrow.

Any local authority may from time to time in like manner re-borrow money for the purpose of discharging any loan lawfully contracted by them either before or after the passing of this Act; provided that the time for repayment of any money so borrowed shall not be extended beyond the unexpired portion of the term for which the original loan was contracted, unless with the sanction of the Local Government Board, and in no case shall be extended beyond the prescribed period.

(9.) *As to Forgery and Loss of Securities.*

Forgery of securities.

32. For the purposes of the Act of the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, chapter ninety-eight, intituled "An Act to consolidate and amend the Statute Law of England relating to indictable offences by forgery," debenture stock under this Act shall be deemed to be capital stock of a body corporate, and any other security issued in pursuance of this Act shall be considered to be a writing obligatory, and any coupon bearing across its face an addition in written, printed, or stamped letters of the name of any banker, or of the words "and company" in full or abbreviated, between two transverse lines, shall be deemed to be a cheque or draft on a banker.

Loss of securities.

33. If any security issued under this Act is lost, mislaid, or destroyed, the local authority shall, on such indemnity being given as they may require, and on payment of the expense of the issue, issue a fresh security in the place of the security so lost, mislaid, or destroyed.

(10.) *Definitions.*

Definitions.

34. For the purposes of this Act—

"Prescribed" means prescribed by any Act passed either before or after the passing of this Act authorising a local authority to borrow money:

"Local authority" means the justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, the council of any municipal borough, also any authority whatsoever having power to levy a rate, as in this Act defined, also any prescribed authority:

"Municipal borough" means any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and any Acts amending the same:

A "rate" means a rate the proceeds of which are applicable to public local purposes and leviable on the basis of an assessment in respect of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other document requiring payment from some authority or officer, is or can be ultimately raised out of a rate, and the levy of a rate includes the issue and enforcement of any such precept, certificate, or document as aforesaid, and expressions relating to the levy and the assessment and making of a rate shall be construed accordingly:

Local rate" means any rate as before defined which a local authority have power to levy or charge by way of mortgage or otherwise:

"Security" means any debenture, debenture stock, annuity certificate, coupon, or stock certificate to bearer issued under this Act:

"Person" includes a body of persons corporate or unincorporate:

"Executors and administrators" includes successors.

(11.) *Repeal and consequential Enactment.*

Repeal of 36 & 37 Vict. c. 35.

35. The County Debentures Act, 1873, is hereby repealed, as from the commencement of this Act; but this repeal shall not abridge or prejudicially affect the incorporation of any county authority under that Act, or any right in respect of any debenture issued in pursuance of that Act before the commencement of this Act, or any remedy for non-payment of moneys secured by any such debenture, and all such rights and remedies may be enforced as if this Act had not been passed.

Incorporation of county authority for purposes of Act.

36. The justices of any county, liberty, riding, parts, or division of a county in general or quarter sessions assembled, issuing any securities under this Act, shall, so far as relates to such securities, be deemed to be incorporated by the name of the justices of the county, liberty, riding, parts, or division of the county to which they belong, or by any other name by which such justices are ordinarily known, or by which they granted the said securities, and may sue and be sued in any action or other legal proceeding relating thereto by such corporate name.

SCHEDULE.

General Rules.

Transfer of Nominal Securities.

(1.) A number of persons, not exceeding such number as may from time to time be directed by the local authority, may be registered as joint owners of the same nominal security, with right of survivorship between them.

(2.) Unless otherwise directed by a general rule of the local authority, the instrument of transfer of any nominal security issued by a local authority shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain owner of such security until the name of the transferee is entered in the register in respect thereof.

(3.) The transfer books of nominal securities may be closed at such times, not exceeding twice in each year, and not exceeding fourteen days at each time of closing, as the local authority may direct.

Transmission of Nominal Securities.

(4.) The executors or administrators of a deceased owner of a nominal security shall be the only persons recognised by the local authority as having any title to such security.

(5.) Any person becoming entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may be registered as owner upon such evidence being produced as may from time to time be required by the local authority.

(6.) Unless otherwise directed by a rule of the local authority, any person who has become entitled to a nominal security in consequence of the death or bankruptcy of any owner, or in consequence of the marriage of any female owner, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such security.

(7.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such security.

(8.) The instrument of transfer shall be presented to the local authority, accompanied with such evidence as the local authority may require to prove the title of the transferor, and thereupon the local authority shall register the transferee as owner.

(9.) In the construction of this schedule the term "nominal security" means any nominal debenture, nominal debenture stock, or nominal annuity certificate.

PUBLIC WORKS LOANS ACT, 1875.[1]

38 & 39 VICT. c. 89.

An Act to consolidate with Amendments the Acts relating to Loans for Public Works.
[13*th August*, 1875.]

Secs. 1—4.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as the "Public Works Loans Act, 1875."

Commencement of Act.

2. This Act shall, save as otherwise provided in this Act, come into operation on the first day of April one thousand eight hundred and seventy six, which date is hereinafter referred to as the commencement of this Act.

Extent of Act.

3. This Act shall extend to the Isle of Man.

Public Works Loan Commissioners.

Constitution, &c. of Public Works Loan Commissioners.

4. For the purpose of loans out of moneys issued in pursuance of this Act, and for the purpose of the execution of this Act and of any enactment passed or hereafter to be passed authorising or referring to such loans, there shall be a body of commissioners (in this Act referred to as the loan commissioners), who may be styled the Public Works Loan Commissioners.

Every person who may from time to time be appointed by Act of Parliament a Public Works Loan Commissioner shall, on signing the declaration in the second schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act.

The Public Works Loan Commissioners shall hold office during such period as may be authorised by any Act appointing them, and if no period is so authorised, during the period of five years after the passing of such Act, and, if at the expiration of such period successors have not been appointed, may continue to hold office until successors be appointed, subject to this qualification, that they shall not grant any new loan after the expiration of such period.

Whenever any vacancy among the commissioners occurs by any commissioners dying or declining to act, or declining further to act, the remaining commissioners or a majority of them may by writing under their hands and seals, with the concurrence of the Treasury, appoint such person to fill the vacancy as seems fit, and the person so appointed shall, on signing the declaration in the second schedule to this Act, be deemed to be one of the Public Works Loan Commissioners under this Act, and shall hold office for the period during which the commissioner in whose place he is appointed would have held office.

A Public Works Loan Commissioner shall not receive any salary, fee, or emolument in respect of his services as such commissioner.

(1) See the Public Health Act, 1875, ss. 242, 243, 244, *ante*, pp. 176, 177.

Secs. 5—7.

5. With respect to the loan commissioners, the following provisions shall have effect:

Powers, &c., of commissioners.

(1.) The loan commissioners may sue and be sued in the name of their secretary for the time being; and no action or suit in law or equity brought or commenced by or against the said commissioners in the name of their secretary for the time being shall abate or be discontinued by the death or removal of such secretary, or by the act of such secretary without the consent of the said commissioners; but the secretary to the said commissioners for the time being shall always be deemed the plaintiff or defendant in such action or suit as the case may be; and

(2.) The commissioners may examine any persons willing to be examined on any matters connected with the execution of this Act, and may for that purpose, or otherwise for the purpose of the execution of this Act, administer an oath, and take any affidavits or declaration; and

(3.) The loan commissioners shall annually cause to be made out up to the end of every financial year a report of their transactions under this Act during the year, and such report shall contain or have annexed thereto the prescribed particulars respecting moneys issued to and loans granted by the commissioners either before or after the passing of this Act, and the execution of the duties of the loan commissioners, and such other particulars as the loan commissioners may from time to time think fit:

Such particulars shall include a statement of any difference that may have arisen between the loan commissioners and any public department respecting the grant of any loan or the construction of any Act relating to loans by the loan commissioners:

Such report shall be transmitted to the Treasury within two months after the date up to which it is required to be made, and shall be forthwith laid by the Treasury before both Houses of Parliament if Parliament be then sitting, or if not, within one month after the then next sitting of Parliament; and

(4.) Any minute made of proceedings at meetings of the commissioners, if signed by any person purporting to be the chairman, either of the meeting of the commissioners at which such proceedings took place, or of the next ensuing meeting of the commissioners, shall be receivable in evidence in all legal proceedings without further proof, and until the contrary is proved every meeting of the commissioners, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly convened and held, and all the members thereof to have been duly qualified to act; and

(5.) An act or proceeding of the commissioners shall not be questioned on account of any vacancy or vacancies in their body.

Officers and their salaries and expense

6. The loan commissioners may from time to time appoint or employ a secretary, solicitor, civil engineer, surveyor, and such number of officers, clerks, messengers, and other persons as they may, with the consent of the Treasury, deem necessary, and may remove any person so appointed or employed.

The loan commissioners may from time to time assign to any person so appointed or employed by them such salary or remuneration as they may, with the sanction of the Treasury, think proper.

A person appointed or employed by the loan commissioners, in pursuance of this section, shall not receive any remuneration in respect of such appointment or employment or otherwise in respect of the execution of his duties under this Act, except such as may be assigned to him in pursuance of this section.

Every such salary or remuneration, and all expenses incurred by the loan commissioners in the execution of this Act, shall be paid out of moneys provided by Parliament.

Securities given to and property vested in secretary to vest in his successor.

7. Where under this or any other Act or any conveyance, obligation, or security, any real or personal property, or any estate or interest therein, or any chose in action, has been or may be vested in, conveyed, made payable, or secured to the secretary of the loan commissioners for the time being as such secretary, and in respect of his office, all such real and personal property, estate and interest, and chose in action whatsoever, upon the death, removal, or resignation of any such secretary from time to time, and as

Secs. 7—11

often as the same happens and the appointment of a successor takes place, shall (subject to the same trusts, and equities, if any, as the same were before respectively subject to) vest in such succeeding secretary, by force of this Act and without any act or deed whatever to be done by the secretary dying, resigning or removed, or by the heirs, executors, or administrators of such secretary, or by any person or persons claiming under him, them or any of them, and notwithstanding the same may have been expressed to be vested in, conveyed, made payable to or secured to such secretary, his heirs, executors, administrators, and assigns, or any of them; and shall be proceeded upon in the name of any succeeding secretary, by any action or suit in law or equity, or in any other manner as the same might have been proceeded upon by or in the name or names of such secretary dying, resigning, or removed.

Where the secretary of the loan commissioners is a party to any action, suit, or other legal proceeding, such secretary acting under the direction of the commissioners shall be deemed to represent the Crown, so far as regards the interest of the Crown in any loan granted under this Act or any money due under a security for any such loan, and it shall not be necessary to make the Crown or any other person on behalf of the Crown, a party to such action, suit, or proceeding, in respect of such interest as aforesaid.

Execution of conveyances, leases, &c. by secretary on behalf of commissioners.

8. All conveyances, leases, mortgages, releases, arrangements, and things which the loan commissioners are authorised by this Act to grant, execute, make or concur in, and all powers, acts, and things which the loan commissioners are authorised by this Act to exercise, do, or concur in, in relation to any mortgaged property or rate, may be granted, executed, made, concurred in, exercised, and done by their secretary for the time being under their direction, and when so granted, executed, made, concurred in, exercised, and done by such secretary shall be deemed to have been granted, executed, made, concurred in, exercised, and done by him under the direction of the commissioners, unless the contrary is shown by some person interested in contesting the validity thereof.

Any property, chose in action, estate, interest, powers, authorities, and privileges vested in or exerciseable by the secretary of the commissioners in pursuance of this Act shall be dealt with and exercised by him under the direction of the commissioners and not otherwise.

Objects, Terms, and Duration of Loan.

Loans for public works.

9. The loan commissioners may, if they think it expedient, from time to time, in manner mentioned in this Act, make loans for the purpose of any of the works mentioned in the first schedule to this Act, to any person having power under an Act of Parliament or otherwise to borrow for such purpose.

The loan commissioners in considering the propriety of granting a loan shall have regard to the sufficiency of the security for its repayment, and, subject to the provisions of any special Act, shall determine whether the work for which the loan is asked would be such a benefit to the public as to justify a loan out of public money, having regard to the amount of money placed at their disposal by Parliament.

Interest on loan.

10. Every loan granted under this Act shall bear interest at a rate not less than the rate authorised by a special Act relating to such loan, or if no rate be so authorised, not less than five per cent. per annum; provided that when the aggregate amount of principal moneys due by any harbour authority to the commissioners under "The Harbours and Passing Tolls, &c., Act, 1861," exceeds one hundred thousand pounds, the rate of interest on such excess shall be three and a half per cent., or such higher rate, not exceeding five per cent., as may in the judgment of the Treasury be necessary to enable the loan to be made without loss to the Exchequer.

Term of years for repayment of loans.

11. Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise) within a period from the date of the actual advance of such loan, not exceeding the period authorised by a special Act relating to such loan, or if no period be so authorised not exceeding twenty years.

Where a loan has been granted repayable within a period less than the full period allowed by the foregoing provisions of this section, the loan commissioners, if the repayment of the loan with interest is in their opinion sufficiently secured by such security as is required by this Act, and if they think fit, may extend the period for the repayment of such loan to a period not exceeding the said full period from the date of the advance of such loan.

Where no period is authorised by a special Act relating to the loan, the Treasury, on the recommendation of the loan commissioners, stating special circumstances, may either before or after the grant of the loan, extend the period within which the loan is to be repaid to such period as may be recommended by the loan commissioners.

The loan commissioners in considering whether the period for the repayment of a loan should or should not be the said full period, and the loan commissioners and the Treasury in considering whether the period should be extended as aforesaid shall have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by such work.

The first instalment for the repayment of every loan shall be made payable within a period not exceeding five years from the date of the advance of such loan.

Security for loans.

12. The loan commissioners before advancing any money on account of a loan shall take security for the repayment of the loan with the interest, consisting of the security authorised by the special Act relating to the loan, or if none is so authorised, of a mortgage of property or of a rate, or of both property and a rate, and (save as hereinafter mentioned) of personal security.

The loan commissioners may, if they think fit, dispense with personal security in any case in which in their opinion the mortgaged property or rate is sufficient security for the payment of the principal and interest of the loan within the stipulated period.

Funds for Loans.

13. [Annual estimate of amounts required [1]].

Issue of money for purpose of loans.

14. When any money has been granted by Parliament for the purpose of loans by the loan commissioners, the Treasury may from time to time, as they think fit, issue out of the Consolidated Fund of the United Kingdom, or the growing produce thereof, the required sums, not exceeding in the whole the amount so granted.

The said sums shall be issued in such manner as the Treasury may from time to time direct during the period authorised by the Act granting the same, or if no period is authorised, during the financial year for which such Act was passed, and not subsequently.

Borrowing for the purpose of raising money.

15. If the Act granting money for the purpose of loans by the loan commissioners authorises the Treasury to borrow such money, or any part thereof, the Treasury may raise any sums (not exceeding the amount authorised by the said Act to be borrowed, and not exceeding in any one financial year the excess of the issues out of the Consolidated Fund under this Act during that year over the repayments to the Consolidated Fund during that year in respect of the principal of loans granted by the loan commissioners either before or after the commencement of this Act,) in such one or more of the following methods as may be directed by the Act authorising the money to be borrowed, and subject to any such direction as may be deemed most convenient for the public service, namely, by the creation of three pounds per centum per annum permanent annuities, or of annuities for any term not exceeding thirty years, or by the issue of Exchequer bonds or Exchequer bills, or by otherwise borrowing the same (for a period not exceeding six months) on the credit of the charge created by this Act on the Consolidated Fund, or by all of such means; and the sums so raised shall be placed to the credit of the account of Her Majesty's Exchequer, and form part of the Consolidated Fund.

The annuities created in pursuance of this section, and the principal moneys borrowed in pursuance of this section (otherwise than by the issue of Exchequer bonds), and all interest from time to time due thereon, or on Exchequer bonds issued under this section (not exceeding the rate of five per cent. per annum) shall be charged upon and be payable out of the Consolidated Fund, or out of the growing produce thereof, at such times in each year as may be fixed by the Treasury.

The principal of any Exchequer bonds issued under this section shall be paid out of moneys provided by Parliament.

The annuities, whether terminable or perpetual, shall be created by warrant of the

[1] Repealed by the Public Works Loans Act, 1882, 45 & 46 Vict. c. 62, s. 9, *post*.

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Treasury to the Bank of England, directing them to inscribe in their books the amount of such annuities in the names directed by the warrant.

The said annuities shall, in manner directed by the warrant, be consolidated in the said books, if terminable, with annuities payable at the same date, and, if permanent, with annuities at the same rate of interest, and payable at the same date, and shall be transferable in the said books in like manner as the annuities with which they are consolidated, and shall be subject to the enactments relating to those annuities so far as is consistent with the tenor of those enactments.

Issue of money to the National Debt Commissioners.

16. All money issued by the Treasury for the purposes of loans under this Act shall be issued to the National Debt Commissioners, and placed to such account as may be from time to time directed by the Treasury, and shall be held by the National Debt Commissioners in trust on the part of the public, but subject to the disposal of the loan commissioners for the purpose of loans by them under this Act.

Repayments to commissioners to go to Consolidated Fund.

17. All sums paid or applicable in or towards the discharge of the principal or interest of any loan granted by the loan commissioners, either before or after the passing of this Act, or of any other sum due in respect of such loan, shall be paid into the receipt of Her Majesty's Exchequer in such manner as the Treasury from time to time direct, and shall be carried to the Consolidated Fund; but where any security for any such loan is enforced, by taking possession, sale, levy of a rate, or otherwise, the net receipts only shall be paid into the receipt of Her Majesty's Exchequer in pursuance of this section.

Recovery of Loans.

Charge on property and priority of loan by the commissioners.

18. Where a loan is granted by the loan commissioners on the security of a mortgage of any property (whether with or without any other security), the property from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned, in priority, save so far as otherwise specified in the mortgage, over every other debt, mortgage, or charge whatsoever affecting the property, except any loan due to any creditor not assenting to such priority which has been advanced in good faith before the loan advanced by the commissioners and secured by a mortgage of the property executed to a person who is entitled as a *bonâ fide* creditor to the repayment thereof with interest.

Provided that if there is more than one such creditor and not less than four-fifths in value of such creditors consent in writing that the said charge shall have priority over the loans and mortgages of such creditors, in such case the loans and mortgages of all such creditors, as well those who have not agreed as those who have agreed, shall be postponed to the loan granted by the commissioners and to the said charge thereof, and to the security for the same.

Nothing in any special Act, and no rule of law or custom shall affect the priority given by this section, except so far as the special Act negative such priority in terms expressly referring to this Act (1).

Charges on rate of loan and loan not to be repudiated by locality having had the benefit of it.

19. Where a loan is granted by the loan commissioners on the security of a mortgage of any rate (whether with or without any other security) such rate from and after the date of the mortgage shall be charged with the payment to the use of Her Majesty of the loan with interest as in the mortgage mentioned.

Where the loan has been granted to any borrower who appeared to the commissioners to have power to levy and mortgage such rate and has been expended upon the work in respect of which or in or for the benefit of the locality in which such rate or any part thereof is levied, the mortgage of the rate for securing the repayment of the loan with interest shall be valid, and may be enforced in pursuance of this Act, notwithstanding any defect in the power or title of the borrower by whom the mortgage purports to be granted; and in particular the commissioners may, although such borrower was not legally constituted or is dissolved, or is otherwise incapable and always was incapable of making, levying, or mortgaging such rate, have the same power of making and levying and enforcing the making or levying the said rate for the purpose of repaying such loan

(1) See the Public Works Loans (Money) Act, 1876, 39 & 40 Vict. c. 31, s. 7, *post*.

and interest, and all other sums due under the mortgage, as if such borrower had been duly constituted, and was not dissolved, and had had full power to make, levy, and mortgage such rate.

Securities to be taken in name of secretary.

20. All securities for any loan granted by the loan commissioners in pursuance of this Act may be given to the secretary of the commissioners on their behalf. Every such security is in this Act referred to as a security given to the commissioners.

Taking possession by commissioners of property on default of payment.

21. Where a mortgage of property has been given to secure any loan granted by the loan commissioners, and default is made in making payment according to the terms of such mortgage, then at any time after such default and without any consent on the part of any person interested in the equity of redemption of the mortgaged property, the commissioners, without prejudice to any other remedy, shall have power to do all or any of the following things; namely,

(1.) Take possession of the mortgaged property, or any part thereof; and

(2.) Grant any lease of the mortgaged property, or any part thereof, for such term and upon such reasonable conditions as they may think expedient, and that either for a premium or rent, or both; and

(3.) Sell or mortgage the mortgaged property, or any part thereof.

Powers of commissioners when in possession.

22. The loan commissioners, when authorised to take possession of any mortgaged property, may take possession either by themselves or by any person appointed by them (whether such person is interested in the mortgaged property or not), and upon possession of any mortgaged property being so taken,—

(1.) All the estate, right, interest, powers, authorities, and privileges, of what nature or kind soever, which were at the time of the making of the mortgage or may for the time being be vested in or exerciseable by the mortgagor or any person claiming through or under the mortgagor, either in relation to the property or necessary for carrying on and managing the same, shall become vested in the secretary of the commissioners; and

(2.) The commissioners may by themselves or any person appointed as aforesaid manage and carry on the property, and receive the revenue arising therefrom, or in any way receivable in respect thereof, or otherwise, in pursuance of the mortgage, and exercise all or any of the powers and authorities vested in their secretary by this Act; and

(3.) The commissioners or their secretary or such person as aforesaid shall not be liable for the repairs or maintenance of the mortgaged property, but may apply any moneys received in respect thereof or raised from any rate towards such repairs or maintenance to such extent as the commissioners may think expedient; and

(4.) The commissioners may, with the consent of the Treasury, advance out of moneys at their disposal under this Act sums for the completion, repair, improvement, or security of the mortgaged property, and every such sum shall be deemed and shall be a loan secured on the property and repayable with the like interest from the time of the advance, and by the like person, and shall have the like priority and be recoverable in the like manner as if it were part of the original loan secured by the said mortgage(1); and

(5.) If the revenue received from or in respect of the property is insufficient to keep down the current expenses of working, maintaining, and repairing the same, together with the instalments of principal and the interest for the time being due on the mortgage, and no rate or no sufficient rate can be levied to meet the deficiency, the commissioners may, with the consent of the Treasury, destroy or cause to be destroyed, or (if they sell the same) authorise the purchaser with the like consent to destroy the same, and sell or authorise the purchaser to sell the materials thereof and other the articles, goods, and effects belonging thereto, and neither the commissioners, or their secretary, nor the purchaser so authorised, nor his representatives, shall be liable in damages or otherwise to any person whomsoever for such destruction; and the provisions of this Act with

(1) The rate of interest on sums so advanced shall be not less than five per cent. per annum. Public Works Loans Act, 1881, 44 & 45 Vict. c. 38, s. 7, *post*.

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respect to the sale of any mortgaged property shall apply to any sale under this section; and

(6.) Possession under this Act may be relinquished at such time and in such manner and upon such terms and conditions as the commissioners think fit, and upon such relinquishment all powers, authorities, and privileges which on the taking of possession became vested in the secretary of the commissioners shall, so far as they are not reserved, revert to and become vested in the person in whom same would have been vested if possession had not been taken, but the commissioners may, if they think fit, on the relinquishment of possession, reserve any of the said powers, authorities, and privileges, with a view to the payment of any sum due to them:

(7.) Every such relinquishment of possession of any mortgaged property shall be without prejudice to the power of again taking possession thereof under the provisions of this Act.

Powers in relation to rate where default made.

23. Where a loan made by the commissioners is secured by the mortgage of a rate (whether with or without any other security), and the commissioners might, if such loan were secured upon a mortgage of property, take possession of such property, the commissioners may, without prejudice to any other remedy, by notice in writing served at the office or last known place of address of the mortgagor, or where from any cause the same cannot be so served by notice in writing published in the prescribed manner, declare their intention to exercise the powers conferred by this Act, and thereupon the commissioners shall have and may exercise the same power as the mortgagor of making and levying the rate mortgaged, and for that purpose the commissioners or their secretary with their concurrence may appoint an officer who, subject to the direction of the commissioners, shall have and may exercise the same powers, authorities, and duties as if he had been appointed by the mortgagor.

The commissioners, in making an estimate of the rate to be levied for the purpose of paying any sum due, may add such sum as they think sufficient for defraying and may defray thereout all costs, charges, and expenses, including remuneration to any officer or other person employed, incurred by the commissioners in the execution of their powers under this section or otherwise by reason of the default in payment.

Any balance remaining in the hands of the commissioners shall be paid by them to the mortgagor.

The commissioners may, by a like notice, declare their intention to relinquish the powers conferred by this section, and that either absolutely or with reservations and conditions, and thereupon all such powers shall revest in the mortgagor, subject to the said reservations and conditions.

Liability of commissioners after taking possession or in default of payment.

24. When the loan commissioners have taken possession of any property under this Act, or exercised the powers conferred by this Act in relation to any rate, neither they nor their secretary, nor any person appointed by them in that behalf, shall be liable to account to any person interested in the equity of redemption in such property or rate for any moneys which, but for their wilful neglect or default, they or he might have received when so in possession or exercising such powers, or for any moneys other than those which have actually come to their or his hands.

Sale and mortgage by commissioners of mortgaged premises.

25. Where the loan commissioners have power to sell or mortgage, they shall have power to sell or mortgage either together or in parcels, by public auction or private contract, and subject to such conditions as to title or evidence of title or otherwise as the commissioners may think proper.

They may also buy in at any auction and rescind any contract for sale or mortgage, and resell or remortgage, without being responsible for any loss occasioned thereby.

Where a sale cannot be made in the ordinary way for a sum equal to the amount remaining due under the mortgage, the loan commissioners may, if they think fit, sell in such manner and subject to such conditions, stipulations, and agreements as they may think expedient for the purpose of ensuring the completion or carrying on of the work comprised in such mortgage by the purchaser thereof with a view to the public good or general benefit or for any other purpose, notwithstanding such conditions, stipulations, and agreements may be prejudicial to the sale, or may not be beneficial to the persons interested in the equity of redemption in the property.

The loan commissioners may for the purpose of any sale or mortgage execute all such agreements, conveyances, and instruments as they may think fit.

Purchaser not liable to see to the validity of sale or application of money.

26. Every sale or mortgage made by the commissioners or their secretary, and purporting to be made in pursuance of this Act, shall, so far as regards the interest of the purchaser and mortgagee, be deemed to be valid, and the purchaser or mortgagee shall not be bound to see or inquire whether the sale or mortgage is authorised, nor in the case of a mortgage whether the money raised is required to be raised, nor as to the necessity or expediency of or authority for making the conditions, stipulations, or agreements subject to which the sale or mortgage was made, nor otherwise as to the propriety or regularity of such sale or mortgage, nor be affected by express notice as to any matters into which he is not bound to see or inquire.

The receipt in writing of the Bank of England, or one of their cashiers or other prope officer for the purpose of the Bank of England, or other prescribed receipt, shall be a full discharge for the money paid on the sale or mortgage, and the person paying the same shall not be bound to see to the application of such money, or be liable or in any manner accountable for the mis-application or non-application thereof.

Terms of lease, sale, or mortgage.

27. Any lease, mortgage, conveyance, or other disposition made by the secretary of the commissioners under this Act of any mortgaged property may be in the prescribed form, and shall convey to the person in whose favour such lease, mortgage, conveyance, or other disposition is made, and according to the terms thereof, all or any part of the estate, right, interest, powers, authorities, and privileges, which under the mortgage and this Act are vested in or capable of being exercised by the loan commissioners, or their secretary, either before or after possession taken, and the same shall thereupon be vested in and may be exercised and put in force by such person accordingly.

Nothing in this Act shall operate to invalidate or affect the rights of any person entitled *bonâ fide* to any debt, estate, or interest, having priority over or ranking *pari passu* with the loan granted by the commissioners, or the security for such loan, or the rights of any lessee under any lease made either prior to such security or with the concurrence of the commissioners.

Application of money arising on taking possession, sale, mortgage, &c. by commissioners.

28. Any money arising from the taking possession, lease, sale, mortgage, or other disposition under this Act by or under the direction of the loan commissioners of any mortgaged property shall be applied first in discharge of all costs, charges, and expenses incurred by or under the direction of the commissioners in respect thereof, or otherwise by reason of the default in payment, and secondly in discharge of the whole of the principal of the loan secured by the mortgage and for the time being unpaid (notwithstanding that the same or any instalment thereof may not have become actually due), and in discharge of all interest accrued due on such principal, and of all other sums (if any) due under the mortgage.

The surplus (if any) of such money either shall be paid to the mortgagor or other person or persons entitled thereto, or, if the commissioners think fit, shall be paid by the secretary of the commissioners into the Court of Chancery in England in like manner as if he were a trustee of such money for the persons entitled thereto, and the court may make such orders for the payment and distribution of such money to or among those persons as may from time to time seem to the court just.

Payment of loan before it is due, and transfer of security for all or part of loan.

29. The loan commissioners may, if they think fit, at any time accept payment of the whole or any part of the principal and interest of any loan or other moneys secured by any mortgage under this Act before the time when the same is due; and may release or convey the mortgaged property or rate to the person paying the same, or as he may direct, upon such terms and conditions and in such manner and form as the commissioners may think expedient.

The person in whose favour any conveyance of the mortgaged property or rate under this section is made shall, subject to any limitations inserted therein, be entitled to the like priorities, powers, and authorities as the commissioners or their secretary were entitled to, either subject to or with priority over or concurrently with any priorities, powers, and authorities reserved to the commissioners by the conveyance.

The commissioners shall have full power to enter into and concur in all such arrangements as they may deem expedient for the purposes of carrying into effect a release or conveyance under this section.

Secs. 30–34.

Discharge of security and revesting of property on repayment of loan.

30. Upon all money due under a mortgage under this Act being fully paid the commissioners shall, when required, give in the prescribed manner to the person liable to the payment thereof a receipt in writing for the same, and such further sufficient discharge (if any) as may seem to the commissioners to be necessary, and upon such receipt being given the mortgage rate shall be released from the charge and the mortgaged property, or the part thereof not sold or disposed of under this Act shall (unless the commissioners, on the request and at the expense of the person paying the said money, make any other disposition thereof), revest in the person who would have been entitled thereto if the mortgage had not been made, subject nevertheless to any lease, mortgage, or other act previously made or done by or under the direction of the commissioners.

Bankruptcy of debtor.

31. Where an individual liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or insolvent, or enters into any composition or arrangement with his creditors, or has his affairs liquidated by arrangement, or takes the benefit of, or becomes subject to the provisions of any Act passed for the relief of persons in debt, or for enabling the property of such persons to be distributed among their creditors, or where any company liable to pay as principal or surety the principal or interest of any loan under this Act becomes bankrupt or is wound up, the whole of such loan shall become due immediately, notwithstanding that the date for the payment thereof or part thereof has not arrived, unless in the case of a surety the commissioners think fit to accept some other surety.

Form of mortgage.

32. Every security given under this Act may be in such form as may be prescribed, and the fact of the secretary of the loan commissioners being a party thereto shall be conclusive evidence that the same is in the prescribed form, and every such security shall be valid and effectual to pass all the estate, right, and interest purporting to be passed thereunder by the parties executing the same, subject to the provisions of this Act.

Recovery of debt on personal security.

33. Every sum payable under any security made in pursuance of this Act shall be made payable to the use of Her Majesty, her heirs and successors, and may be recovered as a specialty debt due to the Crown, in like manner as if the security had been made in the form provided by the Act of the thirty-third year of the reign of Henry the Eighth, chapter thirty-nine; but no person shall be liable for any larger sum than that which he is expressed to be bound to pay.

Every sum payable in respect of a loan granted by the loan commissioners (either before or after the passing of this Act) or under the security for such loan, shall be compounded for or released only under the authority of Parliament in each case [1].

The loan commissioners may issue a warrant to the proper officer forthwith to enforce payment of such debt to the Crown as aforesaid, and if necessary to enter satisfaction therefor, and shall have the control over any proceedings taken to enforce such debt, and such proceedings shall not be discontinued, quashed, or abated without the written authority of the loan commissioners.

The Court of Exchequer, or other competent court, or any judge thereof, may, upon the production of the said warrant, direct an immediate writ of extent, or of *diem clausit extremum*, to issue without any writ of *scire facias* or any affidavit or other proof of the cause of the proceeding.

Nothing in this Act shall render it the duty of the loan commissioners to issue such warrant or to register such writ or debt, unless they are of opinion that it is necessary for the purpose of securing the payment of the debt, or that otherwise under the particular circumstances it is expedient so to do.

Recovery of loan after the expiration of term for repayment.

34. The expiration of the period within which a loan under this Act is made repayable (whether such period is the full period allowed by this or the special Act or a shorter period) shall not in any way affect any power of the loan commissioners of recovering or enforcing payment of any sum due in respect of such loan.

[1] But as to the reduction of interest on loans to sanitary authorities, see now the Public Works Loans (Money) Act, 1876, 39 & 40 Vict. c. 31, s. 6, *post*.

Supplemental Provisions as to Loans and Securities.

Security for completion of works partly finished or not commenced.

35. Where the commissioners grant a loan in aid of any work which is either partly completed or not commenced, they may, by a bond to Her Majesty or othewise, take such security for the application of the loan to the work, and for the due completion of the work (including the raising of sufficient funds for that purpose), as they may think sufficient for securing the interest of the public.

Examination as to proper application of moneys lent.

36. Where the loan commissioners advance any loan for any purpose on the security of a rate, it shall be the duty of the Local Government Board to satisfy themselves that the loan is applied to such purpose; they may from time to time make such examination as they may think necessary with a view to ascertain that such loan has been so applied.

The Local Government Board may appoint any officer to conduct on their behalf any examination under this section and such officer shall have the same powers to require the attendance of persons and the production of accounts and other documents, so far as such attendance or production is required for the purpose of such examination, as an inspector of the Local Government Board has under the Acts relating to the relief of the poor (1).

Suspension of payment of principal and interest.

37. The Treasury may, on the recommendation of the loan commissioners, postpone for any time not exceeding five years the payment of the instalments of principal and interest, or either, due or to become due in respect of a loan granted by the commissioners for the purpose of any work, and that upon such terms and conditions for the completion and improvement of such work, and the ultimate payment of such principal and interest, as the Treasury may on the said recommendation authorise.

Change of security.

38. The loan commissioners may, subject to the prescribed regulations, if under the circumstances of the case they think fit, accept any security in lieu of any security previously given to them, or of any part of such security, and that subject to such terms and conditions as they direct; so, however, that the substituted security shall be of the character which the commissioners might take if the loan were originally granted at the time of such substitution, and that no change of security under this section shall extend the period for the repayment of the loan.

Concurrence by commissioners in leases, sales, &c. of mortgaged property.

39. The loan commissioners may concur in any lease, conveyance, release, or other disposition of any property mortgaged under this Act, or any part thereof, and in the arrangements relative thereto, upon such terms and conditions as they may think fit, and either with or without consideration, so that in their opinion the payment, with interest, of the loan charged on the mortgaged property is sufficiently secured or is not thereby made less secure.

Special Provisions as to Borrowers.

Power to various authorities to mortgage and levy rates.

40. The justices for any county, or any riding, division, parts, or liberty of a county, in general or quarter sessions assembled, may (if they resolve by a majority of not less than five justices so to do) borrow money from the loan commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or any increase of a county rate for the purpose of paying the principal and interest of such loan, and may mortgage such rate or the county rate to the loan commissioners in accordance with this Act.

[The council of any borough may borrow money from the loan commissioners for the purpose of building, rebuilding, enlarging, repairing, improving, and fitting up any police station and justices room, and offices connected therewith, or any of such purposes, and may levy a rate or an increase of the borough rate for the purpose of paying the

(1) As to the powers of the Local Government Board, where it appears that the moneys have not been applied for the proposed purpose, see the Public Works Loans Act, 1878, 41 Vict. c. 18, s. 4, *post*.

As to expenses of making examination, see Public Works Loans Act, 1881, 44 & 45 Vict. c. 38, s. 8, *post*.

Secs. 40–46.

principal and interest of such loan, and may mortgage such rate or the borough rate to the loan commissioners in accordance with this Act.]

The said justices [and council respectively] shall have power to give the mortgage in such manner and form as the loan commissioners may direct (1).

Miscellaneous.

Regulations by commissioners.

41. The loan commissioners may from time to time make regulations for carrying into effect this Act, and in particular with respect to the quorum and proceedings of the commissioners and the authentication of documents made or issued or directions given or acts done by them, and with respect to loans under this Act and applications therefor, and annual and quarterly statements of the amounts required to be borrowed, and the information to be given and conditions to be complied with by the applicants, and with respect to the forms to be used, including the forms of the securities, and with respect to any fees or sums to be paid by the applicants or by other persons dealing with such commissioners, and with respect to the relations between such commissioners and the National Debt Commissioners and the Bank of England.

Every such regulation shall be submitted for the approval of the Treasury, and as approved by them with such modifications and additions as they think fit, shall be published in the *London Gazette*, and when so published shall have effect as if it was enacted in this Act.

Every such regulation shall be laid before both Houses of Parliament as soon as may be after the making thereof if Parliament be then sitting, or if Parliament be not then sitting within one month after the then next meeting of Parliament. Every regulation, purporting to be made in pursuance of this section, shall after the expiration of six months after its publication in the *London Gazette* be deemed to have been duly made and to have been within the powers of this Act.

Regulations made under this section may be from time to time rescinded, altered, and added to in like manner as the original regulations.

42. [Payment of fees and other sums into the Exchequer (2).]

Accounts.

43. The loan commissioners shall keep at the Bank of England such account, and under such title as the Treasury may from time to time direct, and every such account shall be deemed to be a public account.

Such accounts as the Treasury may from time to time direct of all moneys issued from or payable to the Consolidated Fund in pursuance of this Act during every financial year, and of all transactions under this Act during that year, including all sums due for the time being from any person in respect of any loan granted by the loan commissioners either before or after the passing of this Act, shall be kept by the National Debt Commissioners and the loan commissioners respectively, and such other persons (if any), and be audited by the Comptroller and Auditor-General in such manner as the Treasury may from time to time direct.

Perjury.

44. Any person who, when examined by the loan commissioners in pursuance of this Act, or any regulation made under this Act, wilfully gives false evidence, or who, for the purpose of obtaining a loan under this Act, wilfully gives information to such commissioners which is false in any material particular, shall be guilty of perjury.

Authority, and laying before Parliament Treasury warrants.

45. The warrant of the Treasury issued under the authority of this Act shall be a sufficient authority to the Bank of England for doing the things thereby directed to be done for the purposes of this Act, and copies of any such warrant relating to the borrowing of money shall be laid before both Houses of Parliament, within one month of the date thereof, if Parliament be then sitting, and if not within one month after the then next meeting of Parliament.

Receipt for money payable on account of loan, &c.

46. The receipt in writing of the Bank of England, or one of their cashiers or other the proper officer for the purpose of the Bank of England, and any other prescribed receipt for any money paid in discharge of the principal or interest of any loan granted

(1) As to the words between brackets see the Municipal Corporations Act, 1882, ss. 5, 260 (2) and First Sched., Part II., *ante*, pp. 269, 349, 352.

(2) Repealed by Statute Law Revision Act, 1883.

under this Act, or of any sum due under any security made under this Act or otherwise payable to or by the direction of the loan commissioners or their secretary, shall be a complete discharge to the person paying the same.

Notices may be served by post.

47. Notices, directions, orders, and documents required by this Act, or by any regulation made under this Act, to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice, direction, order, or document was prepaid, and properly addressed, and put into the post.

Notices to and by commissioners.

48. Notices and documents required by this Act, or by any regulation made under this Act, to be served on the loan commissioners, may be so served by serving the same on their secretary, or by sending the same addressed to or delivering the same at the office of the commissioners.

Notices and documents required for the purposes of this Act, or of any regulation made thereunder, to be served by or on the loan commissioners, or to be made or issued by the loan commissioners, shall be in writing or in print, or partly in writing and partly in print.

Effect of schedules.

49. The schedules to this Act shall be construed and have effect as part of this Act.

Application of Act to loans under special Acts.

50. Except so far as a special Act, by express reference to some part of this Act, alters that part, every loan made by the loan commissioners shall, notwithstanding any provision in such special Act and any rule of law or custom, be made in accordance with and under the powers of this Act, and be repayable in manner provided by this Act, and by the security for the same granted under this Act, and every such loan, together with the security for the same, shall have the priority and be subject to the powers, authorities, and remedies mentioned in this Act; and although made in pursuance of a special Act, shall be deemed for all purposes to be a loan under this Act [1].

Definitions.

51. In this Act, if not inconsistent with the context,—

The expression "person" includes a body of persons, whether corporate or unincorporate:

The expression "the Treasury" means the Commissioners of Her Majesty's Treasury:

The expression "National Debt Commissioners" means the Commissioners for the Reduction of the National Debt:

The expression "Bank of England" means the Governor and Company of the Bank of England:

The expression "financial year" means the year ending the thirty-first day of March:

The expression "prescribed" means prescribed by the regulations made under this Act with the approval of the Treasury:

The expression "special Act" means any Act passed before the passing of this Act which authorises the loan commissioners to lend money for the purposes of any work mentioned in the first schedule to this Act and any Act passed after the passing of this Act, which authorises the loan commissioners to lend money for any purpose:

The expression "security" includes a mortgage:

The expression "mortgage" includes a charge and any instrument in the nature of a mortgage or charge, and in Scotland any heritable security:

The expression "conveyance" includes any grant, assignment, transfer, or other disposition or assurance; and the expression "convey" shall be construed accordingly:

The expression "rate" means a rate, cess, or assessment, the proceeds of which are applicable to public local purposes and leviable on the basis of a valuation of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate, as before defined, and the making and levy of a rate includes the issue and enforcement of any such precept, certificate, or instrument as aforesaid, and expressions relating to the making and levy of a rate shall be construed accordingly:

[1] See the Public Works Loans (Money) Act, 1876, 39 & 40 Vict. c. 31, s. 7.

Secs. 51–57.

Any toll, due, rent, imposition, and other sum not being a rate as above defined, shall be deemed to be property for the purposes of this Act.

All references to a mortgagor or borrower shall, if need be, be deemed to include a reference to the successors, heirs, executors, administrators, and assigns of, or other persons claiming through or under such mortgagor, or borrower.

Temporary Provisions and Repeal.

52. [First Commissioners (1).]

53. [Existing officers of Commissioners.]

54. [Sending of statements and making of regulations before commencement of Act (1).]

Reference in Acts to repealed Acts.

55. A reference in any Act to any enactment hereby repealed, or to the commissioners for the execution of any Act hereby repealed, shall, so far as is consistent with the tenor thereof, be deemed to refer to the corresponding enactment in this Act and to the Public Works Loan Commissioners under this Act.

Saving for loans and transactions under repealed Acts.

56. Save as otherwise provided by this Act, this Act shall apply only to loans granted and securities made after the commencement of this Act.

The loan commissioners shall have the same power of making further advances on any mortgage made before the commencement of this Act, and intended to secure more than the sum which has actually been advanced thereon as they would have had under the Acts repealed by this Act if they had not been repealed, but such advances shall be made out of money issued under this Act.

The loan commissioners, on granting any new loan to persons by whom a loan granted before the commencement of this Act is still owing, may make it a condition of the grant of such new loan that the old loan shall be deemed to have been granted in pursuance of this Act, and on such condition being accepted the old loan shall be deemed to be a loan under this Act.

For the purpose of any loans granted and securities made before the commencement of this Act, the loan commissioners under this Act and their secretary and other officers for the time being shall be deemed to be the same commissioners, secretary, and officers as the commissioners, secretary, and officers under the Acts in pursuance of which such loan was granted and securities made, and all securities and documents relating to such commissioners, secretary and officers shall be construed accordingly.

Repeal of Acts.

57. The Acts specified in the third schedule to this Act so far as they are unrepealed are hereby repealed from and after the commencement of this Act, and so much of any other enactment as authorises any loan by the Public Works Loan Commissioners for the purpose of any work other than a work mentioned in the first schedule to this Act, or as is otherwise inconsistent with this Act, is hereby repealed from and after the commencement of this Act.

Provided that—

(1.) The repeal of an enactment by this Act shall not affect—

(*a.*) The charge on the Consolidated Fund or moneys provided by Parliament of the principal and interest of Exchequer bonds issued under any enactment hereby repealed; nor any securities made or issued or anything duly done or suffered under any enactment hereby repealed; nor

(*b.*) Any power to make or levy rates, or any other power capable of being exercised for the purpose of enabling or compelling the repayment of any money due on account of any loan granted by the Public Works Loan Commissioners before the commencement of this Act, whether the same or any part thereof has been actually advanced before or after such commencement; nor

(*c.*) Any right, obligation, or liability acquired, accrued, or incurred under or in accordance with any enactment hereby repealed; nor

(*d.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; nor

(1) Repealed by Statute Law Revision Act, 1883.

(*e.*) Any powers, investigation, legal proceeding, or remedy in respect of any such security, thing, rate, power, right, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such powers, investigation, legal proceeding, and remedy may be exercised and carried on and had as if this Act had not passed; and **Section 57.**

(2.) (1).

SCHEDULES.

FIRST SCHEDULE. **Schedule 1.**

Works for the purpose of which the Commissioners may lend Money.

Baths and wash-houses provided by local authorities.

Burial grounds provided by burial boards, or (in Scotland) by burial boards or parochial boards.

Conservation or improvement of rivers or main drainage.

Docks.

Harbours and piers, and any work for which the Public Works Loan Commissioners are authorised to lend by section three of the Harbours and Passing Tolls, &c., Act, 1861.

Improvement of towns.

Labourers dwellings.

Lighthouses, floating and other lights for the guidance of ships, buoys and beacons.

Lunatic asylums of any county or borough in Great Britain, or of any district or parochial board in Scotland.

Police stations and justices rooms of any county or borough in Great Britain, and the offices connected therewith, also sheriff court buildings in Scotland.

Prisons.

Public libraries and museums.

Any schoolhouse or work for which a school board is authorised to borrow under the Elementary Education Acts, 1870 and 1873, or any Act amending the same, or under the Education (Scotland) Act, 1872. 33 & 34 Vict. c. 70.

Waterworks established or carried on by a sanitary or other local authority. 36 & 37 Vict. c. 80.

Workhouses or poorhouses, and any work for which guardians of the poor, or (in Scotland) any parochial board, are authorised to borrow under the general Acts relating to the relief of the poor.

Any work for which a sanitary authority are authorised to borrow under the Public Health Act, 1875.

Any work for which police commissioners are authorised to borrow under the General Police and Improvement (Scotland) Act, 1862, and any Act amending the same.

Any work for which a local authority are authorised to borrow under the Public Health (Scotland) Act, 1867, or any Act amending the same.

Any work for which the commissioners are authorised to lend by any Act passed after the passing of this Act.

SECOND SCHEDULE. **Schedule 2.**

Form of Declaration.

I, *A.B.*, do hereby declare that, according to the best of my judgment, I will faithfully and impartially execute the powers and duties of a Public Works Loan Commissioner, according to law.

THIRD SCHEDULE. **Schedule 3.**

ACTS REPEALED (2).

57 Geo. 3, c. 34; 57 Geo. 3, c. 124; 1 Geo. 4, c. 60; 3 Geo. 4, c. 86; 5 Geo. 4, c. 36; 5 Geo. 4, c. 77; 6 Geo. 4, c. 35; 7 & 8 Geo. 4, c. 47; 1 & 2 Will. 4, c. 24; 3 & 4 Will. 4, c. 32; 4 & 5 Will. 4, c. 72; 7 Will. 4, and 1 Vict. c. 51; 1 & 2 Vict. c. 88; 3 & 4 Vict. c. 10; 5 & 6 Vict. c. 9; 9 & 10 Vict. c. 80; 9 & 10 Vict. c. 83; 12 & 13 Vict. c. 86; 14 & 15 Vict. c. 23; 16 & 17 Vict. c. 40; 19 & 20 Vict. c. 17; 24 & 25 Vict. c. 80; 25 & 26 Vict. c. 30; 29 Vict. c. 72; 30 & 31 Vict. c. 32; 35 & 36 Vict. c. 71; 36 & 37 Vict. c. 49.

(1) This paragraph having reference to Ireland is repealed by Statute Law Revision Act, 1883.

(2) The "title or short title" of the Acts repealed is omitted.

PUBLIC WORKS LOANS (MONEY) ACT, 1876.

39 & 40 VICT. c. 31.

An Act to grant Money for the purpose of Loans by the Public Works Loan Commissioners, and to amend the Public Works Loans Act, 1875. [24*th July,* 1876.]

Secs. 1—6.

Whereas by the Public Works Loans Act, 1875, the Public Works Loan Commissioners are authorised to make loans for the purposes therein mentioned, and it is expedient to grant the money hereinafter mentioned for the purposes of such loans:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as the Public Works Loans (Money) Act, 1876.

Commencement of Act.

2. This Act shall come into operation on the first day of July one thousand eight hundred and seventy-six.

Issue of Money for Loans.

3. [Grant of £4,000,000 for loans during the period ending the 30th of June, 1877 (1).]

Amendment to Public Works Loans Act, 1875.

4. [Application of section fifty-six of 38 & 39 Vict. c. 89, to loan, Portpatrick, and Belfast and County Down Railways, under 31 & 32 Vict. c. 81.]

5. [Removal of doubt as to power to advance money for Colombo Harbour under 37 & 38 Vict. c. 24.]

Explanation of 38 & 39 Vict. c. 89, s. 33, as to reduction of interest on loans to sanitary authorities.

6. Whereas by section thirty-three of the Public Works Loans Act, 1875, it is enacted that every sum payable in respect of a loan by the loan commissioners shall be compounded for and released only under the authority of Parliament in each case, and doubts have arisen whether the said enactment prevents the reduction of interest in accordance with section two hundred and forty-three of the Public Health Act, 1875, and section three of the Public Health (Scotland) Act, 1867, Amendment Act, 1875, on loans to a local authority in pursuance of the Sanitary Acts, and it is expedient to remove such doubts, and to authorise the loan commissioners to reduce the interest on loans made before the commencement of the Public Works Loans Act, 1875: Be it therefore enacted as follows:

The Public Works Loan Commissioners may, on or before the 31st July, 1876, if they think it expedient, with the consent of the treasury, reduce the interest payable on any loan made before the commencement of the Public Works Loans Act, 1875, to any rate not less than four per centum per annum: Provided always, that nothing in the Public

(1) Repealed by Statute Law Revision Act, 1883.

Works Loans Act, 1875, shall be deemed to take away or abridge the power of the loan commissioners under section two hundred and forty-three of the Public Health Act, 1875, and section three of the Public Health (Scotland) Act, 1867, Amendment Act, 1875, to reduce, if they think fit, any interest payable on any such loan to a local authority as is in those sections mentioned.

Secs. 6—8.

38 & 39 Vict. c. 55.
38 & 39 Vict. c. 74.

7. Whereas by sections eighteen and fifty of the Public Works Loans Act, 1875, provisions are made for the application of that Act, notwithstanding any special Act or any rule of law or custom, and doubts have arisen whether such provisions extend to any Act relating to a person having power to borrow money from the Public Works Loan Commissioners, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Explanation of ss. 18, 50, of 38 & 39 Vict. c. 89.

Sections eighteen and fifty of the Public Works Loans Act, 1875, shall be construed as if "special Act" in those sections included any Act relating to any person having power to borrow money from the Public Works Loan Commissioners.

8. [Issue of £17,551 9*s.* 1*d.* for the purpose of adjustment of accounts prior to the 1st day of April, 1876 (1).]

(1) Repealed by Statute Law Revision Act, 1883.

PUBLIC WORKS LOANS ACT 1878.

41 VICT. c. 18.

An Act to grant money for the purpose of Loans by the Public Works Loan Commissioners and by the Commissioners of Public Works in Ireland, and to authorise the former Commissioners to compound and cancel certain loans and interest, and to amend the Public Works Loans Act, 1875. [27*th May*, 1878.]

Secs. 1—4.

38 & 39 Vict. c. 89.

Whereas by the Public Works Loans Act, 1875, and other Acts, the Public Works Loan Commissioners are authorised to make loans for the purposes therein mentioned, and it is expedient to grant the money hereinafter mentioned for the purpose of such loans:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Public Works Loans Act, 1878.

PART I.

Public Works Loan Commissioners.

2. [Grant of £6,000,000 for loans during the period ending the 30th June, 1879. 38 & 39 Vict. c. 89 (1).]

3. [Composition of debt due from the Epping rural sanitary authority. 29 & 30 Vict. c. 90; 34 & 35 Vict. c. 70; 38 & 39 Vict. c. 55.]

Amendment of 38 & 39 Vict. c. 89, s. 36 as to examination into proper application of loan advanced on rates.

4. Whereas by section thirty-six of the Public Works Loans Act, 1875, the Local Government Board are required to satisfy themselves that any loan advanced by the Public Works Loan Commissioners on the security of a rate is applied to the purpose for which it is advanced, and are authorised to appoint any officer to conduct on their behalf such examination as they may think necessary with a view to ascertaining that the loan has been so applied, and it is expedient to make further provision with respect to the powers of the Local Government Board for the purposes of the said section: Be it therefore enacted as follows:

38 & 39 Vict. c. 89.

Where upon any examination made in pursuance of section thirty-six of the Public Works Loans Act, 1875, with reference to a loan advanced by the Public Works Loan Commissioners for any purpose on the security of a rate, it appears to the Local Government Board that any sum, being the whole or part of the money raised by the loan, has not been applied for the said purpose, the Local Government Board may order that sum to be, within the time named in the order, applied either for the said purpose or towards the repayment to the Public Works Loan Commissioners of the principal of the loan, or partly in one of such ways and partly in the other, and further, if it appears to them

(1) Repealed by Statute Law Revision Act, 1883.

that the sum, or any part thereof, has been applied for some purpose other than that for which it was advanced, may by the same or any other order direct a sum equal to the amount so misapplied to be raised within the time and out of the fund or rate named in the order and to be applied as directed by the above-mentioned order.

An order made by the Local Government Board in pursuance of this section may be enforced by writ of mandamus.

5. [Cancellation of debt due in respect of Wigan church (1).]

Repeal of obligation of the Public Works Loan Commissioners to take securities under 38 & 39 Vict. c. 83.

6. So much of any Act as requires the Public Works Loan Commissioners to take in respect of any loan advanced by them under that Act in preference to any other securities, all or such one or more of the securities issuable under the Local Loans Act, 1875, as they may prefer, is hereby repealed, and the security for any such loan may be given and taken under and pursuant to the Public Works Loans Act, 1875.

38 & 39 Vict. c. 89.

PART II.

Public Works Commissioners, Ireland.

(1) Repealed by Statute Law Revision Act, 1883.

PUBLIC WORKS LOANS ACT, 1879.

42 & 43 VICT. c. 77.

An Act to amend the Acts relating to the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland, and to grant money for the purpose of loans by the said commissioners; and for other purposes in relation thereto.

[15*th August*, 1879.]

Secs. 1—4.

Whereas it is expedient to amend the Acts relating to the Public Works Loan Commissioners and the Commissioners of Public Works in Ireland, and to grant money for the purpose of loans by those commissioners:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Public Works Loans Act, 1879.

PART I.

Amendment of Acts.

Minimum rate of interest for loans.

2. Where a loan is granted by the Public Works Loan Commissioners, or by the Commissioners of Public Works in Ireland, and the rate of interest for such loan, fixed by the special Act which authorises the commissioners to grant the loan, is a special rate less than five per cent., such loan shall, notwithstanding anything in the special Act, bear interest at a rate not less than the rate in the special Act, and such other rate as may be necessary, in the judgment of the Lords Commissioners of the Treasury, in order to enable the loans to be made without loss to the Exchequer.

Restriction on amount of loan to one borrower.

3. The advances made by the Public Works Loan Commissioners, or by the Commissioners of Public Works in Ireland, under any one Act, in any one financial year to one borrower (notwithstanding anything in the Act authorising such loan) shall not exceed in the aggregate one hundred thousand pounds.

Act not to apply to old loans, to loans specially saved by 39 & 40 Vict. c. 31, ss. 4, 5, nor to loans under 33 & 34 Vict. c. 46.

4. Nothing in this Act shall apply to any loan granted before the passing of this Act, nor to any instalments subsequently advanced in respect of such loan, nor to any advance which the Public Works Loan Commissioners are authorised to make, by sections four and five of the Public Works Loans (Money) Act, 1876, and the Acts in those sections mentioned, to the Port Patrick and Belfast and County Down Railway Companies, and for improving the harbour of Colombo, nor to any advance under the Irish Land Act, 1870, or any act authorising loans for the improvement, drainage, or purchase of lands in Ireland.

Provided, that where though a loan has not been actually granted before the passing of this Act, negotiations for the same have proceeded so far as to make it in the opinion of the Commissioners of Her Majesty's Treasury inequitable for such loan to be subject

to the provisions of this Act or any of them, such loan shall, for the purposes of those provisions, be deemed to be a loan granted before the passing of this Act.

Secs. 4—7.

Power of Public Works Loan Commissioners to lend, and of Peabody trustees to borrow.

5. Whereas certain persons (in this Act referred to as the Peabody trustees) received certain sums from the late George Peabody upon trust to expend the same for constructing or improving dwellings for the labouring classes in London, and the Public Works Loan Commissioners, although empowered to lend money to associations established for the like purposes, have no power to lend to such trustees, and it is expedient to confer such power: Be it therefore enacted as follows:

The Public Works Loan Commissioners may lend to the Peabody trustees, and the Peabody trustees may borrow any sum or sums not exceeding in the whole three hundred thousand pounds, to be applied by the said trustees towards the construction of dwellings suitable for the labouring classes in accordance with their trust and towards the purchase of land for that purpose.

Every sum so advanced shall be repaid within a period not exceeding fifteen years from the time of the advance, with interest thereon at such rate, not less than three and a-half per centum per annum, as may be agreed upon between the said commissioners and trustees.

Every sum so advanced shall be advanced in accordance with the Public Works Loan Commissioners Act, 1875, and the Peabody trustees shall have full power to give such security as the Commissioners may require in pursuance of that Act, and to mortgage the estates vested in them to the commissioners.

38 & 39 Vict. c. 89.

Power of Public Works Loan Commissioners to lend to labourers dwellings companies.

6. The Public Works Loan Commissioners may lend to any company, society, or association established for the purpose of constructing or improving dwellings for the labouring classes, any sum or sums to be applied towards the construction of dwellings suitable for the labouring classes, and towards the purchase of land for that purpose.

Every sum so lent shall be repaid within a period not exceeding fifteen years from the time of the advance, with interest thereon at such rate not less than three and a-half per centum per annum, as may be agreed upon between the commissioners and the borrower.

Every sum so advanced shall be advanced in accordance with the Public Works Loan Commissioners Act, 1875.

38 & 39 Vict. c. 89.

Regulations as to advances by National Debt Commissioners to the Public Works Loan Commissioners.

7. If the Act granting money for the purpose of loans by the Public Works Loan Commissioners authorises the Commissioners for the Reduction of the National Debt to advance money for such purpose, those commissioners may, out of moneys in their hands on account of savings banks or Post Office savings banks, advance to the Public Works Loan Commissioners any sum or sums of money not exceeding in the whole the amount named in the said Act, during the period named in the said Act, or, if no period is named, during the financial year for which such Act was passed.

Every sum so advanced shall be placed to the account to which money issued by the Treasury to the National Debt Commissioners for the purpose of loans under the Public Works Loans Act, 1875, is, for the time being, required to be placed, and shall be held and disposed of accordingly.

38 & 39 Vict. c. 89.

Every sum so advanced shall be repaid with interest at such rate, not exceeding five per cent. per annum, within such number of years, not exceeding thirty, as may be agreed on, with the approval of the Commissioners of Her Majesty's Treasury, between the Public Works Loan Commissioners and the Commissioners for the Reduction of the National Debt.

Every sum so advanced shall be repaid, and the interest from time to time accruing thereon shall be paid, out of the sums paid or applicable in or towards the discharge of the principal or interest of any loan granted by the Public Works Loan Commissioners whether before or after the passing of this Act, and whether before or after the advance of the said sum, and, if such sums are insufficient, shall be charged on and paid out of the Consolidated Fund of the United Kingdom.

For the purpose of such repayment a sufficient portion of the sums so paid or applicable as aforesaid shall, under the direction of the Public Works Loan Commissioners, be paid to the Commissioners for the Reduction of the National Debt, and not into the receipt of the Exchequer.

The security for every sum advanced in pursuance of this section shall be given in

Secs. 7—10.

such form and manner as may be from time to time directed by the Commissioners of Her Majesty's Treasury, and may be given and executed by the secretary to the Public Works Loan Commissioners in the name of himself and his successors on behalf of the commissioners.

This section shall apply in the case of the Commissioners of Public Works in Ireland in like manner as if it were re-enacted, with the substitution of "the Commissioners of Public Works in Ireland" for "the Public Works Loan Commissioners," and of Part II. of the Public Works Loans (Ireland) Act, 1877, for the Public Works Loans Act, 1875.

40 & 41 Vict. c. 27.
38 & 39 Vict. c. 89.

Application of 38 & 39 Vict. c. 89, to money advanced by National Debt Commissioners.

8. For the purpose of the provisions of the Public Works Loans Act, 1875, relating to the grant of money for the purpose of loans by the Public Works Loan Commissioners, all money advanced by the Commissioners for the Reduction of the National Debt in pursuance of this Act shall be deemed to be money granted by Parliament for the purpose of the said loans.

Composition of Debt.

9. [Composition of debt on Port Erin, Isle of Man, 24 & 25 Vict. c. 47; 26 & 27 Vict. c. 86; 27 & 28 Vict. c. 62; 29 & 30 Vict. c. 23; 35 & 36 Vict. c. 23.]

Part II.

Provision of Money for Public Works Loan Commissioners.

10. [Grant of £6,000,000 for public works loans during the period ending 30th June, 1880, 38 & 39 Vict. c. 89.]

Part III.

Grant of Money for Public Works Commissioners, Ireland.

PUBLIC WORKS LOANS ACT, 1881.[1]

44 & 45 VICT. c. 38.

Amendment of Acts.

Secs. 7—9.

Amendment of 38 & 39 Vict. c. 89, s. 22, as to rate of interest for loan.

7. Where the Public Works Loan Commissioners have, either before or after the passing of this Act, in pursuance of the Public Works Loans Act, 1875, or of any enactment repealed by that Act, taken possession of any mortgaged property, and after the passing of this Act advance any sum for the completion, repair, improvement, or security of that property, the rate of interest on such sum shall, notwithstanding anything in section twenty-two of the Public Works Loans Act, 1875, or any like enactment repealed by that Act, be not less than five per cent. per annum.

Expenses of ascertaining (under 38 & 39 Vict. c. 89, s. 36), that loans advanced by the Public Works Loans Commissioners have been properly applied.

8. The Local Government Board may make orders as to the expenses incurred by them or by any officer appointed by them in making or conducting any examination in pursuance of section thirty-six of the Public Works Loans Act, 1875, for the purpose of ascertaining that any loan or part of a loan advanced by the Public Works Loan Commissioners either before or after the passing of this Act, on the security of a rate, has been applied to the purpose for which the same was advanced.

Any such order may contain directions as to the parties by whom and the rates out of which such expenses shall be borne, and on the application of the Local Government Board may be made a rule of the High Court of Justice in England, or of the High Court of Session in either division of the Inner House thereof in Scotland.

Application of surplus balances of loans made by the Public Works Loans Commissioners. 41 Vict. c. 18.

9. The unapplied balance of any loan advanced by the Public Works Loan Commissioners, either before or after the passing of this Act, on the security of a rate, may, with the consent of the said commissioners, and of the central authority or department, if any, with whose sanction or consent such loan was authorised to be raised, be applied to any purpose to which moneys borrowed on the security of such rate are properly applicable; and in construing section thirty-six of the Public Works Loans Act, 1875, and section four of the Public Works Loans Act, 1878, the purpose to which any such unapplied balance as aforesaid is so applied, shall be deemed to be the purpose for which that portion of the loan was advanced.

[1] The sections of the Act beyond those here given deal only with grants of money and remissions, &c., of loans.

PUBLIC WORKS LOANS ACT, 1882.[1]

45 & 46 VICT. c. 62.

PART IV.

Amendment of Acts.

Section 7.

Amendment of 24 & 25 Vict. c. 45, as to provision for loans in Provisional Order repecting harbours.

7. Whereas under the General Pier and Harbour Act, 1861, the Board of Trade can make a Provisional Order, subject to confirmation by Parliament, authorising the construction of a harbour, pier, or other works within the meaning of the said Act, and authorising the promoters to raise a loan to the amount specified in the order for the purpose of such harbour, pier, or works, and in many cases where the promoters are a public body difficulties arise in raising such loan on account of the defective security, while the construction of the said harbour, pier, or works is of so great importance to the inhabitants of the town or place where the same are to be constructed that they would be willing to guarantee the loan, if power were given for this purpose, and it is expedient to provide for the conferring of such power by the Provisional Order: Be it therefore enacted as follows:

(1.) Where a Provisional Order under the General Pier and Harbour Act, 1861, authorises any public body to raise a loan for the construction of any works as defined by that Act in any place, the same or any other order may authorise any rating authority as hereinafter defined in that place, under the circumstances and subject to the conditions specified in the order, to charge, if they think it expedient for the inhabitants at large of such place, any fund or rate under their control for the purpose of aiding the public body in raising the said loan, or any part thereof, from the Public Works Loan Commissioners, and to give such aid by guaranteeing the principal and interest of the loan or by borrowing the sum required and advancing it to the public body, or partly in one way and partly in the other, or otherwise in manner provided by the order.

(2.) The order shall provide that the resolution of the rating authority to give the guarantee shall be a special resolution, that is to say, a resolution passed at one meeting of such authority and published in manner directed by the order, so as to give notice to all persons interested, and confirmed at a second meeting of the rating authority held not less than fourteen days after the first of such public notices has been given, and not less than three months after the meeting at which the resolution was passed.

(3.) The order shall provide for the time within which and the mode in which any money borrowed by the rating authority is to be repaid, and for the effectual recovery out of the said fund or rate of any sum payable under the guarantee, and of the principal and interest of any money borrowed by the said authority,

[1] The sections beyond these here given deal only with grants of money, Ireland, and power to postpone debt due in respect of Pulteney Harbour.

and for the reimbursement of the fund or rate out of the income of the said works, or otherwise by the said public body, and shall contain such incidental provisions as seem necessary or proper for carrying this section into effect.

(4.) The promoters of an order proposing to confer power under this section on any rating authority shall, a reasonable time before they apply to the Board of Trade to settle the order, submit to the Local Government Board, or as regards Scotland to the Secretary of State for the Home Department, a statement of such proposal, and if the Local Government Board, or Secretary of State for the Home Department, declare that in their opinion, having regard to the financial condition of the rating authority, or to the necessity for such rating authority to provide a water supply or drainage for the inhabitants of the said place, or otherwise to fulfil the original duties of such authority, it is inexpedient to burden such rating authority with any such charge as is mentioned in such proposal, the Board of Trade in settling the order shall omit any provision conferring power on the rating authority under this section.

In this section,—

The expression "public body" means any rating authority, also any commissioners, or trustees, or other body or person who manage or undertake the works without any view to the payment of any dividend or profits out of the revenue from such works:

The expression "rating authority" means—

(1.) As regards England, any authority being an urban sanitary authority under the Public Health Act, 1875, and the Acts amending the same; and — 38 & 39 Vict. c. 55.

(2.) As regards Scotland, the town council or commissioners of police of, or other local authority having power to levy assessments in, any royal or parliamentary burgh, or in any populous place the boundaries whereof have been fixed and ascertained under the General Police and Improvement (Scotland) Act, 1862, or under the Act therein recited or under any local Act; and — 25 & 26 Vict. c. 101.

(3.) As regards Ireland, any urban sanitary authority under the Public Health (Ireland) Act, 1878, and the Acts amending the same. — 41 & 42 Vict. c. 52.

Account in case of loan on security of rate.

8. Where after the passing of this Act any money is advanced by the Public Works Loan Commissioners on the security of a rate as defined by the Public Works Loans Act, 1875, the borrowers shall cause their treasurer to keep a separate account under the title of the Public Works Loan Commissioners Loan Account, or such other title as may be approved by the Local Government Board, and shall cause all the said advances to be carried to the credit of that account, and all orders or other documents directing payments out of such account shall show on the face of them that the payment is to be made out of that account, and an order or other document for a payment out of the said account shall not be made or given except the payment is for a purpose for which the said advances were made.

Repeal of 38 & 39 Vict. c. 89, s. 13, and 40 & 41 Vict. c. 27, s. 11, as to annual and quarterly statements of amounts required by borrowers.

9. Section thirteen of the Public Works Loans Act, 1875, and section eleven of the Public Works Loans (Ireland) Act, 1877 (which provided for annual and quarterly statements from borrowers of the amounts which they will probably apply to borrow) are hereby repealed.

LOCAL TAXATION RETURNS ACT, 1860. [1]

23 & 24 VICT. c. 51.

An Act to provide for an annual return of rates, taxes, tolls, and dues levied for local purposes in England. [23*rd July*, 1860.]

Secs. 1, 2.

Whereas rates, taxes, tolls, and dues to a large amount are levied for purposes of local government and improvements in England, and it is proper that Parliament should be informed annually of all sums so levied, and the expenditure thereof, but in many cases no sufficient provision has been made for that purpose: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Clerks of bodies empowered to levy rates, &c., to make annual returns to Secretary of State.

1. The clerk to any corporation [1], justices, commissioners, district or other board, vestry, inspectors, trustees, or other body or persons authorised to levy or to order to be levied any of the rates, taxes, tolls, or dues mentioned in the Schedule to this Act, or any other compulsory rates, taxes, tolls, or dues in England (other than such as are levied for the public revenue of the United Kingdom) shall make a return of the sums levied or received by or in respect of such rates, taxes, tolls, and dues, and of the expenditure thereof, to one of Her Majesty's principal Secretaries of State [2] in the month of June in every year; [the first return to be made in the month of June one thousand eight hundred and sixty-one [3].]

Returns to be made for the latest year for which accounts are made up.

2. Such return shall be made for the latest period of twelve months preceding the month of June in each year for which the accounts of the corporation, justices, commissioners, board, inspectors, trustees, or other body or persons, shall be made up, and shall show the amounts levied and expended respectively, with such other particulars and in such form as shall from time to time be ordered by such Secretary of State [4].

Who are to make re-

3. Where no clerk is appointed or acting, the treasurer or other officer keeping the accounts of the receipts and expenditure of the corporation, justices, commissioners,

(1) This Act, and the Local Taxation Returns Act, 1877, *post*, are repealed so far as they relate to the receipts and expenditure of a municipal corporation. See the Municipal Corporations Act, 1882, s. 5, and Sched. I., *ante*, pp. 269, 352, 353. See now section 28 of this latter Act, *ante*, p. 276.

Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor; a return of the receipts and expenditure stated to him by the local authority need not be made under this and the Local Taxation Returns Act, 1877, unless the Local Government Board so require. District Auditors Act, 1879, 42 Vict. c. 6, s. 3, *post*.

As to application of this Act, and the Local Taxation Returns Act, 1877, *post*, to receipts and expenditure as regards highways, see the Highways Accounts Returns Act, 1879, 42 & 43 Vict. c. 39, s. 2, *post*.

(2) Now the Local Government Board, 34 & 35 Vict. c. 70, s. 7, *ante*, p. 394; and see the Local Taxation Returns Act, 1877, 40 & 41 Vict. c. 66, s. 1, *post*.

(3) The part between brackets is repealed by the Statute Law Revision Act, 1875.

(4) See now the Local Taxation Returns Act, 1877, 40 & 41 Vict. c. 66, s. 1, *post*.

board, vestry, inspectors, trustees, or other body or persons by whom any rates, taxes, tolls, or dues hereinbefore mentioned are levied or ordered to be levied shall make the returns in relation thereto; and where any such rates, taxes, tolls, or dues are levied and expended or to be accounted for by churchwardens, chapelwardens, or any officers or persons not authorised to act as a board, such returns as hereinbefore mentioned in respect of such rates, taxes, tolls, or dues, and the expenditure thereof, shall be made by such churchwardens, chapelwardens, or other officers or persons, and they shall be severally liable in respect of any neglect to make the same.

turns in certain cases.

4. Any clerk, treasurer, churchwarden, officer, or other person required as aforesaid to make such return who neglects so to do in the month of June in any year shall be liable to a penalty not exceeding twenty pounds for every such offence, to be recoverable on summary conviction thereof before two justices.

Penalty for default.

5. Where any annual return is now by law required to be made to the Secretary of State (1), or to any public department, under any Act of Parliament, this Act shall not render necessary any further or other return in respect of the same matters: provided always, that the said Secretary of State (1) may, by his order published in the *London Gazette*, direct that all or any of such returns now required as aforesaid shall in future be made under this Act, and shall be subject to the provisions and penalties thereof.

Saving for returns already required.

6. The said Secretary of State (1) shall every year cause the returns transmitted to him under this Act to be abstracted, and the abstract thereof to be laid before both Houses of Parliament.

Abstracts of returns to be laid before Parliament.

7. This Act shall not extend to the rates levied for the relief of the poor, or the expenditure thereof, but the returns thereof shall continue to be made to the Poor Law Board, as by the orders of such board shall from time to time be directed.

Poor rate returns to be made to Poor Law Board as heretofore.

8. This Act shall not extend to any tolls or dues taken by any railway, canal, or joint stock company as profits of their undertaking, or to any tolls or dues taken by prescription or otherwise as private property.

Saving for joint stock companies and private rights of toll, &c.

SCHEDULE.

Church rates and chapel rates; whether made by the common law or under the Church Building Acts, or under any other Act of Parliament.

Sewers rates and "General Sewers Tax," and all rates, scots, and taxes levied by courts or commissioners of sewers; whether levied under the Acts of the 3 & 4 Will. 4, c. 22, and 4 & 5 Vict. c. 45, or under any other Act of Parliament, or by charter, usage, or custom.

Rates under the Act for the lighting and watching of parishes, 3 & 4 Will. 4, c. 90.

Rates levied by improvement commissioners or other commissioners, or by any trustees or corporation acting under any local Act for the paving, draining, cleansing, or watching, improvement or regulation of any town or district.

Rates levied by or under the order of any vestry or district board, under the Act 18 & 19 Vict. c. 120, for the better local management of the metropolis.

Tolls and dues levied under the authority of Parliament in respect of markets, bridges, or harbours.

(1) See note (2) on preceding page

LOCAL TAXATION RETURNS ACT, 1877.[1]

40 & 41 VICT. c. 66.

An Act to amend the Law with respect to the Annual Returns of Local Taxation in England, and for other purposes relating to such Taxation. [14*th August*, 1877.]

Secs. 1, 2.

23 & 24 Vict. c. 51.

Whereas by the Local Taxation Returns Act, 1860, and other Acts, local authorities or their officers are required to make annually to one of Her Majesty's principal Secretaries of State, or to the Local Government Board, returns of their receipts and expenditure, and of any rates, taxes, tolls, or dues levied by them, and it is expedient to make further provision respecting such returns:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Date for annual return of local taxation.

1. The annual return required by law to be made of any receipts or expenditure of a local authority, or of any rates, taxes, tolls, or dues, shall be made for the financial year ending on the twenty-fifth day of March, or on such other day as the Local Government Board may from time to time prescribe, upon the application of any particular authority in respect of their receipts and expenditure, or of any rates, taxes, tolls, or dues levied by them, or in respect of the receipts and expenditure and of the rates, taxes, tolls, or dues levied by any class of authorities.

Every such return shall be sent to the Local Government Board and not to one of Her Majesty's principal Secretaries of State, and shall be so sent within one month after the audit of the receipts and expenditure to which the return relates is completed, or if the audit is not completed within six months after the end of the financial year for which the return is to be made, then on the expiration of such six months, or if there is no audit, then within one month after the end of the said financial year.

For the purpose of any such return the date to which the accounts of any local authority are required by law to be made up, and the date at which such accounts are required by law to be audited, and auditors are required to be elected or appointed, may be altered by the local authority, with the approval of the Local Government Board: Provided that nothing in this section shall prevent any accounts being made up and audited at shorter periods than twelve months, so that one of such shorter periods ends on the last day of the financial year for which the return of such accounts is to be made.

Obligation of clerk of local authority to send return.

2. Every return to which this Act applies shall be made by the clerk of the local authority, or where no clerk is appointed or acting, by the treasurer or other officer keeping the accounts of the receipts and expenditure, rates, taxes, tolls, or dues, to which the return relates, and any such clerk, treasurer, or other officer who makes default in making any such return shall be liable to a penalty not exceeding twenty pounds for

(1) See note (1) to Local Taxation Returns Act, 1860, *ante*, p. 1240.

each offence, to be recovered by action on behalf of Her Majesty in th High Court of Justice.

Secs. 2—5.

3. The expression "local authority" in this Act means any justices, municipal or other corporation, board, guardians, sanitary authority, vestry, commissioners, inspectors, trustees, or other body of persons required by law to make to one of Her Majesty's principal Secretaries of State, or to the Local Government Board, a return of their receipts and expenditure, or of any rates, taxes, tolls, or dues levied by them or under their direction.

Definition of "local authority."

4. The first return under this Act shall be made for the financial year ending in the year one thousand eight hundred and seventy-eight, and the Local Government Board shall make such provision as may seem to them necessary for any change of the date of the accounts and audit of the accounts of any local authority which may be rendered necessary by the provisions of this Act, so as to cause as little inconvenience as possible to the local authority.

First return under Act.

5. This Act may be cited as the Local Taxation Returns Act, 1877.

Short title.

The Act of the session of the twenty-third and twenty-fourth years of the reign of Her present Majesty, chapter fifty-one, intituled "An Act to provide for an annual return of rates, taxes, tolls, and dues levied for local purposes in England," may be cited as the Local Taxation Returns Act, 1860 (1), and that Act and this Act may be cited as the Local Taxation Returns Acts, 1860 and 1877.

(1) *Ante*, p. 1240.

HIGHWAY ACCOUNTS RETURNS ACT, 1879.

42 & 43 VICT. c. 39.

An Act to amend the law with respect to Returns of Receipts and Expenditure as regards Highways, and to dispense with the verification before Justices of the accounts of Surveyors of Highways. [11*th August*, 1879.]

Secs. 1—3.

Whereas by divers Acts provisions differing from each other are made respecting the transmission to the Local Government Board and the laying before Parliament of annual returns of the receipts and expenditure on account of highways in parishes, certain urban sanitary districts, and highway districts:

And whereas it is expedient that one return only in each case should be required, and that such return should be made and laid before Parliament in like manner as other returns under the Local Taxation Returns Acts, 1860 and 1877 (1), subject to being dispensed with in like manner as such other returns:

23 & 24 Vict. c. 51.
40 & 41 Vict. c. 66.

And whereas by the Highways Act, 1835 (2), the surveyor of highways of every parish is required, among other matters, to verify his accounts before justices at special sessions, and the said verification of accounts has been rendered unnecessary by the Highways and Locomotives Amendment Act, 1878 (3), which requires the accounts of the surveyors of highways to be audited by the district auditor, and it is expedient to dispense with such verification:

5 & 6 Will. 4, c. 50, s. 45.
41 & 42 Vict. c. 77, s. 9.

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Highway Accounts Returns Act, 1879.

Return of receipts and expenditure as regards highways.
23 & 24 Vict. c. 51.
40 & 41 Vict. c. 66.

2. The Local Taxation Returns Acts, 1860 and 1877 (1), shall apply to returns of rates, receipts, and expenditure as regards highways in like manner as if they were specifically mentioned in the said Acts, and highway boards and surveyors of highways were mentioned as local authorities in those Acts, and the surveyor of highways were an officer keeping the accounts of the rates, receipts, and expenditure within the meaning of those Acts:

Provided that a return under the said Acts may be dispensed with upon the delivery to the auditor of a financial statement of the said receipts and expenditure in like manner as in any other case (4).

Repeal and temporary provision.

3. The Acts specified in the schedule of this Act are hereby repealed to the extent in the third column of that schedule mentioned.

Where in pursuance of any enactment hereby repealed the accounts of a surveyor of highways for a parish for the period ending on the twenty-fifth day of March, one thousand eight hundred and seventy-nine have been verified, and a statement of the

(1) *Ante*, pp. 1240, 1242. (2) *Ante*, p. 789. (3) *Ante*, p. 881.
(4) See the District Auditors Act, 1879, 42 Vict. c. 6, s. 3, *post;* and note (1) to the Local Taxation Returns Act, 1860, *ante*, p. 1240.

receipts and expenditure of such parish as regards highways for the said period has been transmitted to the Local Government Board, the board may, if they think fit, dispense with the submission of a financial statement and dispense wholly or partly with the audit by the district auditor of the accounts for the said period of such parish as regards highways.

Section 3.

SCHEDULE.

ACTS REPEALED.

Year and Chapter.	Title of Act.	Extent of Repeal.
5 & 6 Will. 4, c. 50.	Highway Act, 1835 - - - -	In section forty-five from and including the words "and at the said special session" to the end of the section.
12 & 13 Vict. c. 35.	An Act for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the Secretary of State and afterwards laid before Parliament.	The whole Act.
25 & 26 Vict. c. 61.	The Highway Act, 1862 - - -	Section twenty-seven, section twenty-eight, and section twenty-nine.

DISTRICT AUDITORS ACT, 1879.

42 VICT. c. 6.

An Act to amend the law with respect to District Auditors. [28*th March*, 1879.]

Secs. 1—3.

31 & 32 Vict. c. 122, s. 24. 22 Vict. c. 26.

Whereas the auditors of the accounts relating to the relief of the poor (in this Act referred to as district auditors) are under the Poor Law Amendment Act, 1868, appointed by the Local Government Board, and are by that Act declared to be civil servants of the State within the operation of the Superannuation Act, 1859, but the remuneration and expenses of such auditors which are by law payable out of local rates are in fact paid partly out of moneys annually provided by Parliament, and partly out of local rates; and whereas it is expedient that in future the whole of such remuneration and expenses should be paid out of moneys voted by Parliament, and that in lieu of the amount now so paid out of local rates an equivalent sum should be raised by means of stamps, in manner herein-after mentioned, and also that further provision should be made respecting such payment and otherwise respecting such auditors:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the District Auditors Act, 1879.

Provision as to contribution by Treasury and out of local rate for payment of district auditors.

2. After the twenty-fifth day of March one thousand eight hundred and seventy-nine all payments to district auditors out of any local rate shall cease, and the whole of the salaries or remuneration and of the expenses of district auditors, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament; and for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty for the use of Her Majesty, according to the scale contained in the First Schedule to this Act, and such duty shall be levied by a stamp on the certificate of the auditor hereinafter mentioned.

Financial statement with stamped certificate of district auditor. 29 & 30 Vict. c. 113, s. 6.

3. Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of section six of the Poor Law Amendment Act, 1866), a financial statement in duplicate in the prescribed form and containing the prescribed particulars (1); one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement.

(1) See the general orders for accounts among the circulars, &c., of the Local Government Board, *post*.

He shall forthwith send the duplicate so stamped and certified by him to the Local Government Board; and in such case a return of the receipts or expenditure comprised in such statement need not, unless the Local Government Board so require, be sent to the Board in pursuance of the Local Taxation Returns Act, 1860 and 1877 (1).

23 & 24 Vict. c. 51. 40 & 41 Vict. c. 66.

4. The Local Government Board may from time to time appoint such number of district auditors as they may, with the sanction of the Treasury, think necessary for the performance of the duties of auditing the accounts which are for the time being by law subject to be audited by district auditors, and may from time to time remove such auditors.

Appointment and districts of district auditors

The Board may from time to time assign to district auditors their duties, and the districts in which such auditors respectively are to act, and may from to time change wholly or in part such duties or districts; and every district so assigned to a district auditor, whether originally or upon any change, shall be deemed to be an audit district within the meaning of any enactment relating to district auditors or their districts, and the auditor to whom any district is assigned shall be deemed to be the district auditor for that district.

The Board may also, with the consent of the Treasury, appoint from time to time a person or persons, either temporarily or otherwise, to assist a district auditor in the performance of his duties, and any person so appointed shall, subject to any exceptions made by the terms of his appointment, have the same powers and duties and be subject to the same obligations as the district auditor whom he is appointed to assist.

The Board, with the like consent, may assign to a person so appointed such salary or remuneration and such sum for his expenses as may seem fit, and such salary, remuneration, and expenses shall be paid out of moneys provided by Parliament.

Regulations as to audit.

5. Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834 (2).

4 & 5 Will. 4, c. 76.

Stamp duties under Inland Revenue.

6. The duties charged under this Act shall be deemed to be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, shall apply accordingly; and such duties may, if the commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by this Act.

Failure to submit financial statement.

7. If a local authority fail to comply with the provisions of this Act with respect to a financial statement, such local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer shall be liable to a fine not exceeding twenty pounds for each offence, to be recovered by action on behalf of Her Majesty in the High Court of Justice.

Definitions.

8. In this Act,—

The expression "local rate" means the poor rate, the general district rate, and every rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of a poundage assessment of the value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

(1) *Ante*, pp., 1240, 1242.

(2) See the general orders for accounts amongst the circulars, &c., issued by the Local Government Board, *post*.

Secs. 8—12

The expression "local authority" means any person or body of persons who receive and expend any local rate, but does not include overseers of the poor.

The expression "prescribed" means prescribed from time to time by the Local Government Board.

The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

Provision for existing auditors.

9. The Local Government Board, with the approval of the Treasury, shall as soon as may be after the passing of this Act determine the salary or remuneration to be paid to the district auditors holding office at the passing of this Act, and the amount to be allowed for their expenses, regard being had to the sums which such officers have heretofore received out of local rates, as well as out of moneys provided by Parliament, and to any change of their duties which may be made in pursuance of this Act.

Provision for first year

10. If in the year one thousand eight hundred and seventy-nine the audit of the accounts of the receipts and expenditure of any local authority for any period ending on some day of the month of March has been completed before the expiration of two months after the passing of this Act, the local authority shall submit the financial statement required by this Act to the auditor within the said two months.

Repeal of Acts.

11. The Acts specified in the Second Schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned.

Provided that—

(1.) This repeal shall not affect anything done or suffered, or any right acquired or accrued, under any enactment hereby repealed; and

(2.) Any auditor appointed in pursuance of any enactment hereby repealed shall (save as may be prescribed) have the same powers and duties and be subject to the same obligations as if such enactment had not been repealed.

Saving of certain fees and expenses.

12. Nothing in this Act shall prevent a district auditor from recovering any sum in respect of an audit held by him prior to the twenty-fifth day of March one thousand eight hundred and seventy-nine, or in respect of an audit of accounts made up to some day prior to that day, and the audit of which might have been held before the said day, or from recovering any expenses incurred, or which he may hereafter incur, in any proceedings which he is authorised or required to take or defend under the statutes in that behalf.

SCHEDULES.

Schedule 1.

FIRST SCHEDULE.

Scale of Stamp Duties payable by Local Authorities.

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under 20*l.*	5*s.*
20*l.* and under 50*l.*	10*s.*
50*l.* and under 100*l.*	1*l.*
100*l.* and under 500*l.*	2*l.*
500*l.* and under 1000*l.*	3*l.*
1000*l.* and under 2500*l.*	4*l.*
2500*l.* and under 5000*l.*	5*l.*
5000*l.* and under 10,000*l.*	10*l.*
10,000*l.* and under 20,000*l.*	15*l.*
20,000*l.* and under 50,000*l.*	20*l.*
50,000*l.* and under 100,000*l.*	30*l.*
100,000*l.* and upwards	50*l.*

For the purpose of this schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept.

SECOND SCHEDULE.

Acts repealed.

A description or citation of a portion of a statute is inclusive of the words, section, or other part first and last-mentioned or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Session and Chapter.	Title.	Extent of Repeal.
4 & 5 Will. 4 c. 76.	The Poor Law Amendment Act, 1834.	Section forty-six, so far as relates to officers for the examining, auditing, allowing, and disallowing of accounts.
7 & 8 Vict. c. 101.	The Poor Law Amendment Act, 1844.	Section thirty-two down to "Union therefrom." Section thirty-seven. Section forty-nine, from "being at the time the auditor of" down to "may be appointed," and from "and the salary of every such auditor" down to "board of guardians."
12 & 13 Vict. c. 103	The Poor Law Amendment Act, 1849.	Section eight.
30 & 31 Vict. c. 6.	The Metropolitan Poor Act, 1867.	Section thirty-six and section thirty-seven.
31 & 32 Vict. c. 122	The Poor Law Amendment Act, 1868.	Section twenty-four. Section twenty-five, except as regards existing auditors.
33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section sixty, from "for the audit district" down to "in a summary manner" at the end sub-section one.
38 & 39 Vict. c. 55.	The Public Health Act, 1875	Section two hundred and forty-seven, from "for the union" in sub-section one down to "from the place of audit" at the end of sub-section two.
41 & 42 Vict. c. 77.	The Highways and Locomotives (Amendment) Act, 1878.	Section nine, from "for the audit district" down to "is situate," and from "the auditor shall receive such remuneration" down to "in a summary manner."

SETTLED ESTATES ACT, 1877.

40 & 41 VICT. c. 18.

Secs. 20, 21.

20. It shall be lawful for the court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not; and the court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or be conveyed to or vested in any other trustees upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the court shall be deemed advisable.

21. Where any part of any settled estates is directed to be laid out for such purposes as aforesaid, the court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains or watercourses, including all necessary or proper fences, pavings, connections, and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates or any part thereof, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income; and the court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, or other works, out of any such rents, profits, income or accumulations during such period or periods of time as to the court shall seem advisable.

STATUTES RELATING TO ARTIZANS' DWELLINGS.

LABOURING CLASSES LODGING HOUSES ACT, 1851.

14 & 15 VICT. c. 34.

An Act to encourage the Establishment of Lodging Houses for the Labouring Classes (1).
[24*th July*, 1851.]

Act may be adopted in certain boroughs and parishes.

2. That this Act may be adopted for any incorporated borough in England regulated under an Act passed in the sixth year of the reign of His late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also for any place being the district of any local board of health regulated under the Public Health Act, 1848, or any Act passed for the amendment thereof (2), and also for any place being the district within the limits of any Act for the paving, lighting, watching, draining, or otherwise improving of such place, and also, with the approval of one of Her Majesty's principal Secretaries of State, for any parish in England, having, according to the then last census, a population of not less than ten thousand, or being a parish in any such incorporated borough, having, according to the then last census, a population of not less than ten thousand, and also with the like approval for each of several parishes as by this Act in that behalf provided.

Interpretation of terms.

3. That in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say),

"Parish" shall mean every place maintaining its own poor, and having a vestry:

"Borough" shall mean city, borough, port, cinque port, or town corporate:

"District" shall mean any place being the district of such a local board of health, and shall also mean any place being the district within the limits of such an improvement Act:

"Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish:

"Churchwardens" shall mean also chapelwardens or other persons discharging the duties of churchwardens:

"Overseers" shall mean also any persons authorised and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor:

(1) By section 10 of the Public Health Act, 1875, *ante*, p. 50, where the Labouring Classes Lodging Houses Acts, or any of them, are in force within the district of any urban authority such authority shall have all the powers, rights, duties, capacities, liabilities, and obligations in relation to such Acts, exerciseable by or attaching to the council, incorporated commissioners, local board, improvement commissioners, and other commissioners or persons acting in the execution of the said Acts, or any of them. And where the Labouring Classes Lodging Houses Acts are not in force within the district of any urban authority, such authority may adopt such Acts.

By section 4 of the Public Health Act, 1875, *ante*, p. 47, the "Labouring Classes Lodging Houses Acts," as used in that Act, means 14 & 15 Vict. c. 34 (Labouring Classes Lodging Houses Act, 1851); 29 & 30 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1866); 30 & 31 Vict. c. 28 (Labouring Classes Dwelling Houses Act, 1867).

(2) See note to the title of this Act.

Secs. 3—8.

59 Geo. 3, c. 12. 1 & 2 Will. 4, c. 60.

"Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry [*elected under an Act passed in the fifty-ninth year of the reign of King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor, or* (1)] elected under an Act passed in the second year of the reign of His late Majesty, intituled "An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain parishes of England and Wales," or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, and shall also mean any body of persons, by whatever name distinguished, acting, by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry:

"Board" shall mean, as regards the district of such a local board of health, such local board of health for the time being in office and acting as such local board of health, and, as regards the district within the limits of such an improvement Act, the commissioners, trustees, or other body of persons by whatever name distinguished for the time being in office and acting in the execution of such Act:

"Commissioners" shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners:

"Clerk" shall mean, as regards an incorporated borough, the town clerk of such borough, and, as regards a district, the clerk of the board of such district, and, as regards a parish, the clerk appointed pursuant to this Act by the commissioners:

"Justice" shall mean justice of the peace for the county, riding, division, liberty, borough, district, parish, or place where the matter requiring the cognizance of justices shall arise:

"Improvement rates" shall mean the rates, tolls, rents, income, and other moneys whatsoever which under the provisions of any such improvement Act shall be applicable for the general purposes of such Act:

"Lands" shall mean lands, tenements, and hereditaments, of whatsoever nature or tenure:

Words importing the masculine gender shall include the feminine:

Words of the plural number shall include the singular, and words of the singular number shall include the plural.

4. [Council of any borough may adopt the provisions contained in this Act if they think fit (2).]

Expenses of carrying this Act into execution in a borough shall be charged upon the borough fund, and income arising to be carried to the same.

5. . . . . . the income arising from the lodging houses in any borough shall be paid to the credit of the borough fund thereof; and the council shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, to be called "The Lodging Houses Account (3)."

Any local board of health may adopt the provisions of this Act if they think fit.

6. That the board of any such district, being the district of a local board of health, may, if they think fit, determine that this Act shall be adopted for such district (4), and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such district, and this Act shall be carried into execution in such district, in accordance with such provisions and the laws for the time being in force relating to such board.

On requisition of ratepayers board to postpone proceedings till after next day for election of members of board.

7. Provided always, that the board shall give not less than twenty-eight nor more than forty-two days public notice of their intention to take into consideration the propriety of adopting this Act, and of the time and place for holding the meeting at which they will take it into consideration; and if there be presented to the board at that meeting a memorial in writing, signed by not less than one-tenth in value of the persons liable to be rated to a general district rate made by the board, and requesting the board to postpone such consideration until after the then next yearly day for the election of members of the board, then and in such case such consideration shall be postponed until after that day, and shall be entered on as soon after that day as the board think fit.

Expenses of carrying this Act into execu-

8. That the expenses of carrying this Act into execution in any such district, being the district of a local board of health in which the board shall have resolved to adopt this Act for their

(1) These words in italics have been repealed by the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

(2) This section has been repealed by section 1 of the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

(3) The first part of this section was repealed by Statute Law Revision Act, 1875.

(4) See note to the title of this Act, *ante*.

district, shall be chargeable upon and paid out of the moneys from time to time carried to the credit of the district fund account of such district, and for that purpose the board may levy with and as part of the general district rate of such district, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as the general rate of such district, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expense of carrying this Act into execution were an expense necessarily incurred in carrying into effect the provisions of the Public Health Act, 1848 (1); and the income arising from the lodging houses in any such district shall be paid to the credit of the district fund account thereof; and the board shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, to be called "The Lodging Houses Account."

tion by local board of health shall be charged on the district fund, and income arising to be carried to the same.

9. That the board of any such district, being the place within the limits of any Act for the paving, lighting, watching, draining, or otherwise improving of such place, may, if they think fit, determine that this Act shall be adopted for such district (2), and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such district, and this Act shall be carried into execution in such district in accordance with such provisions and the laws for the time being in force relating to such board.

Any improvement board may adopt the provisions of this Act if they think fit.

10. Provided always, that the board shall give not less than twenty-eight days nor more than forty-two days public notice of their intention to take into consideration the propriety of adopting this Act, and of the time and place for holding the meeting at which they will take it into consideration; and if there be presented to the board at that meeting a memorial in writing, signed by not less than one tenth in value of the persons liable to be rated to an improvement rate made by the board, and requesting the board to postpone such consideration until after the then next yearly or other day for the election or appointment of members of the board, then and in such case such consideration shall be postponed until after that day, and shall be entered on as soon after that day as the board think fit.

On requisition of ratepayers board to postpone proceedings till after next day for election of members of board.

11. Provided always, that in any case in which the major part in number of the members of the board of any such district are elected or appointed in any manner other than by or with the concurrence of the persons liable to be rated to improvement rates made by the board, the board shall not determine that this Act shall be adopted for the district, except with the sanction of the major part in value of the persons so liable present at a meeting specially convened for the purpose by the board, by not less than twenty-eight days nor more than forty-two days public notice of the intention of holding such meeting, and of the time and place for holding the same; and such meeting shall be held at such convenient place within the district, and at such convenient time, as the board think fit; and the procedure thereat shall be regulated by the board.

If majority of board not elected by ratepayers, consent of ratepayers to be obtained.

12. That the expenses of carrying this Act into execution in any such district, being the place within the limits of any such improvement Act in which the board shall have resolved to adopt this Act for their district, shall be chargeable upon and paid out of the improvement rate of such district, and for that purpose the board may levy with and as part of such improvement rate, or by a separate rate to be assessed, levied, paid, and recovered in like manner and with the like powers and remedies in all respects as such improvement rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expenses of carrying this Act into execution were an expense necessarily incurred in carrying into effect the general provisions of such improvement Act; and the income arising from the lodging-houses in any such district shall be paid to the credit of the improvement rate thereof; and the board shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, to be called "The Lodging Houses Account."

Expenses of carrying this Act into execution by improvement commissioners shall be charged on general improvement rate, and income arising to be carried to the same.

13. That in every case in which any such improvement Act contains provisions for the auditing of accounts thereunder, the accounts of the board with respect to this Act shall be audited in accordance with those provisions (3); and in every case in which any such improvement Act does not contain any such provisions, the accounts of the board with respect to this Act shall be audited yearly by the poor law auditor within whose district the district of the board lies;

Auditing accounts of improvement commissioners with respect to Act.

(1) The Public Health Act, 1848, was repealed by section 343 of the Public Health Act, 1875, *ante*, p. 224. By section 313 of the latter Act, *ante*, p. 215, sections 207, *et seq.*, *ante*, p. 157, *et seq.*, would seem to apply.

(2) See section 10 of the Public Health Act, 1875, *ante*, p. 51, by which urban authorities may adopt this Act.

(3) But see the last clause of section 247 of the Public Health Act, 1875, *ante*, p. 180.

Secs. 13–23.

and the board shall produce to him their accounts, with sufficient vouchers for all moneys received and paid, and he shall examine such accounts and vouchers, and report thereon to the board, and every such report shall be open at all reasonable times without charge to the inspection of every person liable to be rated to an improvement rate made by the board.

On the requisition of ten ratepayers, churchwardens, &c. to convene vestry meeting, to determine whether this Act shall be adopted.

If vestry resolve to adopt the Act, a copy of resolution to be sent to Secretary of State, &c.

14. That, upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given, in each of three successive weeks before the day to be appointed for holding such vestry; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of Her Majesty's principal Secretaries of State, for his approval, and as soon as such approval shall have been signified in writing under the hand of any such Secretary of State such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish: Provided always, that such resolution of the vestry shall not be deemed to be carried unless at least two-thirds in value of the votes given on the question, according to the usual manner of voting at such vestry, shall have been given for such resolution.

Resolution not deemed to be carried unless two-thirds vote for it.

Where Act adopted vestry to appoint commissioners for carrying the same into execution.

15. That in such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly (the year being reckoned from and exclusive of the day of the first appointment of commissioners), but shall be eligible for immediate re-appointment.

Resignation of commissioners.

16. That any commissioner may at any time resign his office as a commissioner, on giving seven days notice in writing of his intention to resign, to the clerk, and also to the churchwardens.

Vacancies to be filled up by vestry.

17. That any vacancies in the commissionership may be filled up by the vestry, when and as the vestry shall think fit, but at the latest at the then next yearly meeting for the appointment of commissioners.

Meetings of the commissioners.

18. That the commissioners shall meet at least once in every calendar month, and at such other times as they think fit, at their office, or some other convenient place, public notice of the times and place of meeting being previously given.

Special meetings of commissioners.

19. That it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours notice, the commissioners for any special purpose therein named, and to meet at such time as shall be therein named; and the commissioners may meet accordingly without further notice.

Quorum of meetings of commissioners.

20. That at all meetings of the commissioners any number, not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed, then any number not less than two commissioners, shall be a sufficient number for transacting business, and for exercising all the powers of the commissioners.

Commissioners may appoint and remove officers, &c.

21. That the commissioners, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for a clerk and such other officers and servants as shall be necessary for the purposes of this Act, and shall appoint and may remove at pleasure such clerk, officers, and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

Minutes of proceedings of commissioners to be entered in books.

22. That all orders and proceedings of the commissioners shall be entered in books to be kept by them for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings, so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any court of law or equity whatsoever.

Commissioners to keep accounts, which shall be open to inspection.

Penalty for refusing to allow inspection.

23. That the commissioners shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books or any part thereof, without paying for the same; and in case the commissioners or any of them, or any of their officers or servants, having the custody of such books, being thereunto reasonably requested, shall refuse to permit or shall

not permit any churchwarden, overseer, or ratepayer to examine the same, or to take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds.

Auditors to be appointed yearly, who shall examine the accounts and report to vestries.

24. That the vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners; and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint, the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry: Provided always, that if the general accounts of the parish be audited by a poor law auditor, the accounts of the commissioners shall be audited by such poor law auditor.

Expenses of executing Act in any parish to be paid out of the poor's rate.

25. That the expenses of carrying this Act into execution in any parish to such amount as shall be from time to time sanctioned by the vestry shall be chargeable upon and paid out of the moneys to be raised or applicable for the relief of the poor of the parish; provided always, that the vestry shall be convened in the manner usual in the parish, and the amount for the time being proposed to be raised or applied for such expenses shall be expressed in the notice convening the vestry.

Overseers to levy as part of the poor's rate such sums as vestry shall deem necessary to pay expenses.

26. That for defraying the expenses so sanctioned the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid, and recovered in like manner, and with the like powers and remedies in all respects, as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts: Provided always, that in the notices requiring the payment of the rate the proportion which the amount to be thereby raised for the purposes of this Act shall bear to the total amount to be thereby raised shall be stated as accurately as circumstances may admit.

Moneys raised, and the income arising from lodging houses in the parish, to be applied towards defraying expenses.

27. That the money raised for defraying the expenses of carrying this Act into execution, and the income arising from the lodging houses in the parish, shall be applied by the commissioners in or towards defraying the expenses of carrying this Act into execution in the parish; and whenever, after repayment of all moneys borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish.

Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of Secretary of State.

28. That the vestries of any two or more neighbouring parishes having, according to the then last census, an aggregate population of not less than ten thousand may, for the purpose of concurring in carrying this Act into execution, respectively adopt this Act in like manner as if the population of each of those parishes were, according to the then last census, not less than ten thousand; and the vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes, in such manner, not inconsistent with the provisions of this Act, and for such time, as they shall mutually agree; and for that purpose it may, with the approval of such Secretary of State, be agreed on between such vestries that any lodging houses shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly; and, according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall in the management of the said lodging houses form one body of commissioners, and shall act accordingly in the execution of this Act; and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes, and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively, in the same proportions as those in which such parishes shall be liable to such expenses.

Incorporation of commissioners.

29. That for the more easy execution of the purposes of this Act the commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of "The Commissioners for Lodging Houses in the Parish of ( ) in the County of ( )," and by that name may sue and be sued in all courts, and before all justices

Secs. 29–36.

and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act.

Acts of commissioners to be good notwithstanding informalities.

30. That all acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, shall, notwithstanding his disqualification or want of qualification for, or any defect or irregularity in, or in any way concerning his appointment to such office, be as valid and effectual as if he were duly qualified, or there had not been any such defect or irregularity.

Councils, &c. may borrow money for the purposes of the Act, with the approval of the Treasury.

31. That for carrying this Act into execution in any borough, district, or parish respectively, the council, with the approval of the Commissioners of Her Majesty's Treasury, and the board, with the approval of the Commissioners of Her Majesty's Treasury, and the commissioners, with the sanction of the vestry, and also with the approval of the Commissioners of Her Majesty's Treasury, may from time to time borrow, at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the general district rates, or of the improvement rates, or of the rates for the relief of the poor of the parish, the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly (1).

32. [The Public Works Loan Commissioners may advance money for the purposes of this Act (2).]

Certain provisions of 8 & 9 Vict. c. 16, incorporated with this Act.

33. That the provisions of the Companies Clauses Consolidation Act, 1845, with respect to the borrowing of money by any company on mortgage (3), and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of byelaws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act; and the expressions in such provisions applicable to the company and the directors shall apply, as regards a borough, to the council, and as regards a parish, to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall, in the application of such provisions to this Act, be deemed to be required or directed to be made or executed, as regards a borough, under the common seal of the mayor, aldermen, and burgesses; and, as regards a parish, under the common seal of the commissioners; and so much of such provisions as are applicable to the secretary of the company shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts, as regards a borough, the burgesses, and, as regards a parish, the ratepayers, shall have the privileges of shareholders.

Provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

34. The Lands Clauses Consolidation Act, 1845, shall be incorporated with this Act (4): Provided always, that the council, the board, and the commissioners respectively shall not purchase or take any lands otherwise than by agreement (5).

In boroughs the council may appropriate, with consent of the Treasury, lands vested in the mayor, &c.

In parishes the commissioners may, with the approval of vestry, &c., appropriate lands belonging to parish;

or contract for purchase of the same.

35. That in any such borough the council, with the approval of the Commissioners of Her Majesty's Treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen, and burgesses; and in any such district the board may from time to time appropriate for the purposes of this Act in the district any lands vested in the board or at the disposal of the board: and in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the poor law board, may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; and in any such parish the commissioners, and in any such borough the council, and in any such district the board, may from time to time, with the like approval, contract for the purchasing or renting of any lands necessary for the purposes of this Act; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the board in the case of a district, or in the commissioners in the case of a parish (6).

Councils and commissioners may erect lodging houses.

36. That the council and board and commissioners respectively may from time to time, on any lands so appropriated, purchased, or rented, or contracted so to be, respectively, erect any buildings suitable for lodging houses for the labouring classes, and convert any buildings into lodging houses for the labouring classes, and may from time to time alter, enlarge, repair, an

(1) Portions of this section have been repealed by the Statute Law Revision Act, 1875.

(2) This section has been repealed by section 1 of the Statute Law Revision Act, 1875, 38 & 39 Vict. c. 66.

(3) See sections 38, *et seq.* of the Companies Clauses Consolidation Act, 1845.

(4) See the Lands Clauses Consolidation Act, 1845, *ante*, p. 894.

(5) See sections 6—15 of the Lands Clauses Consolidation Act, 1845, *ante*, pp. 896—899.

(6) A portion of this section, repealed by the Statute Law Revision Act, 1875, is omitted.

improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Councils and commissioners may enter into contracts for the purposes of this Act.

37. That the council and board and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving, such lodging houses, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purpose of this Act, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of nonperformance; and all such contracts, or true copies thereof, shall be entered in the books to be kept for that purpose: provided always, that a contract above the value or sum of one hundred pounds shall not be entered into by the council or the board or the commissioners for the purposes of this Act unless previous to the making thereof fourteen days notice shall be given in one or more of the public newspapers published in the county in which the borough or district or parish shall be situated expressing the intention of entering into such contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or board or commissioners at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the council or board or commissioners to accept any of the proposals so offered.

No contract above 100*l.* to be entered into without notice.

Council or commissioners may purchase existing lodging houses.

38. That the council of any such borough, and the board of any such district, and the commissioners, with such approval as is by this Act required with respect to the purchasing or renting in any other case of any lands necessary for the purposes of this Act, may, if they shall think fit, contract for the purchase or lease of any lodging houses for the labouring classes already or hereafter to be built and provided in any such borough or district or parish, and appropriate the same to the purposes of this Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any lodging houses for the labouring classes which have been already or may hereafter be provided in any such borough or district or parish, by private subscriptions or otherwise, may, with the consent of the council of any such borough, or with the consent of the board of any such district, or with the consent of the commissioners, and with the like approval, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said lodging houses to the said council or board or commissioners respectively, or make over to them the management of such lodging houses; and in all such cases the lodging houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act, as fully as if they had been built or provided by the council or board or commissioners, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the board in the case of a district, or in the commissioners in the case of a parish [1].

Power to water and gas companies to supply water and gas to lodging houses.

39. That any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, reservoirs, wells, springs, and streams of water, and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for such lodging houses, either without charge or on such other favourable terms as they shall think fit.

Councillors and commissioners not to be personally liable.

40. That anything in this Act contained shall not render any member of the council of any borough, or any member of any such board, or any commissioner, personally, or any of their lands, goods, chattels, or moneys, (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the council or board or commissioners respectively in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of anything done or suffered in due pursuance of this Act.

Persons may appeal against orders of councils and commissioners.

41. That every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the council or board or commissioners shall have the like power of appeal to the general quarter sessions as under the provisions of the Companies Clauses Consolidation Act, 1845 [2], incorporated with this Act, he might have, if feeling aggrieved by any determination of any justice with respect to any penalty.

Council, &c., empowered to make sale and exchange of lands, with consent

42. That the council, with the approval of the Commissioners of Her Majesty's Treasury, and the board, and the commissioners appointed under this Act, with the approval of the vestry and of the Commissioners of Her Majesty's Treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the board, or in the

[1] This section is printed as amended by the Statute Law Revision Act, 1875.
[2] See sections 159, 160, of the Companies Clauses Consolidation Act, 1845, 8 Vict. c. 16.

Secs. 42–51.

commissioners respectively, for the purposes of this Act, and apply the proceeds, or a sufficient part thereof, in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the board, or the commissioners, may convey the lands so sold or exchanged accordingly [1].

When lodging houses are considered too expensive, they may, with approval of Treasury, be sold, and proceeds of sale carried to borough fund or poor's rate.

43. That whenever any lodging houses which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council, or by the board, or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the Commissioners of Her Majesty's Treasury, may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the board, or the commissioners, shall convey the same accordingly, and the purchase money shall be paid to such person as the council or board or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same, and the net proceeds of such sale shall be applied in the first instance in or towards payment or satisfaction of all the debts, liabilities, and engagements whatsoever, with respect to the purposes of this Act, of the council, the board or the commissioners, and the surplus, if any, of such net proceeds paid to the credit of the borough fund, or of the general district rate, or of the improvement rate, or of the rate for the relief of the poor of the parish.

Commissioners to cease to be a corporation when their duties have ceased.

44. Provided always, that whenever by reason of the sale of all the lodging houses provided under this Act for a parish, and the application as by this Act required of the net proceeds of such sale, and the performance of all other the duties under this Act of the commissioners for the parish, or by any other reason, it becomes needless for the commissioners for a parish to continue to be a corporation, such commissioners shall thereupon cease to be a corporation, and their office as commissioners for the parish shall thereupon cease, and this Act shall thereupon cease to be in force in the parish, but nevertheless this Act may thereafter be adopted for the parish.

Management to be vested in council and parish commissioners.

45. That the general management, regulation, and control of the lodging houses established under this Act shall, subject to the provisions of this Act, be, as to any borough, vested in and exercised by the council, and as to any district vested in and exercised by the board, and as to any parish vested in and exercised by the commissioners.

Council, &c., may make bye-laws for regulating the lodging houses.

46. That the bye-laws which the council and board and commissioners respectively may from time to time make, alter, repeal, and enforce shall include such bye-laws for the management, use, and regulation of the lodging houses, and of the tenants or occupiers, thereof, and for determining from time to time the charges for the tenancy or occupation of the lodging houses, as the council and board and commissioners respectively shall think fit, and they respectively may appoint any penalty not exceeding five pounds for any and every breach, whether by their officers or servants or by other persons, of any bye-law made by them respectively, and such bye-law shall make sufficient provision for the several purposes respectively expressed in the schedule to this Act: provided always, that a bye-law made under the authority of this Act shall not be of any legal force until the same shall have received the approval of one of her Majesty's principal Secretaries of State.

Byelaws to be approved by the Secretary of State.

Bye-laws to be hung up in every room in the lodging houses.

47. That a printed copy or sufficient abstract of the bye-laws relating to the management, use, and regulation of the lodging houses shall be put up and at all times kept in every room therein.

Charges for occupation, &c. to be fixed by councils and commissioners.

48. That the council and the board and the commissioners respectively may from time to time make such reasonable charges for the tenancy or occupation of the lodging houses provided under this Act as they shall think fit.

As to tenants of lodging houses receiving parochial relief.

49. That any person who, or whose wife or husband, at any time while such person is a tenant or occupier of any such lodging house or any part of such a lodging house, receives any such relief, other than such relief granted on account only of accident or temporary illness, shall thereupon be disqualified for continuing to be such a tenant or occupier.

Lodging-houses to be open to inspection of local boards of health.

50. That every lodging house established under this Act which shall be within the district of a local board of health shall at all times be open to the inspection of such board, and the officers thereof from time to time authorised by such board to make such inspection.

Penalty on council, commissioners, or officers taking fees beyond

51. That if any clerk or other officer or any servant who shall be in anywise employed by any council or board or commissioners in pursuance of this Act shall exact or accept any fee or reward whatsoever for or on account of anything done or forborne, or to be done or forborne, in pursuance of this Act, or on any account whatsoever relative to putting this Act into execution,

[1] A portion of this section, repealed by the Statute Law Revision Act, 1875, is omitted.

other than such salaries, wages, or allowances as shall have been appointed by the council or board or commissioners, or shall in anywise be concerned or interested in any bargain or contract made by the council or board or commissioners for or on account of anything done or forborne, or to be done or forborne, in pursuance of this Act, or on any account whatsoever relative to the putting of this Act into execution, or if any person during the time he holds the office of member of the council, or member of the board, or commissioner, shall exact or accept any such fee or reward, or shall accept or hold any office or place of trust created by virtue of this Act, or be concerned directly or indirectly in any such bargain or contract, every such person so offending shall be incapable of ever serving or being employed under this Act, and shall for every such offence also forfeit not exceeding the sum of fifty pounds.

Secs. 51, 52.

salaries, or being interested in contracts.

52. That such part of any penalty recovered under this Act as shall not be awarded to the informer shall be paid to the credit, as regards a borough, of the borough fund, and, as regards a district, of the general district rate thereof or the improvement rate thereof, and, as regards a parish, of the rate for the relief of the poor thereof.

Application of penalties.

SCHEDULE.

SCHEDULE referred to by the foregoing Act.

1. *Bye-laws to be made in all cases.*

For securing that the lodging houses shall be under the management and control of the officers, servants, or others appointed or employed in that behalf by the council or board or commissioners.

For securing the due separation at night of men, and boys above eight years old, from women and girls.

For preventing damage, disturbance, interruption, and indecent and offensive language and behaviour, and nuisances.

For determining the duties of the officers, servants, and others appointed by the council or board or commissioners.

2. *Bye-laws to be made in boroughs, districts, and parishes wholly or partially within the districts of local boards of health.*

For carrying out the regulations of the local boards of health.

3. *Bye-laws to be made in parishes.*

For regulating the procedure of the commissioners.

LABOURING CLASSES DWELLING HOUSES ACT, 1866.

29 VICT. c. 28.

An Act to enable the Public Works Loan Commissioners to make advances towards the erection of Dwellings for the Labouring Classes (1). [18*th May*, 1866.]

2. This Act shall be deemed to be incorporated with and shall be taken as part of "The Labouring Classes Lodging Houses Act, 1851," and the two Acts shall be read and construed together as if they were one Act.

Section 2.

Act incorporated with 14 & 15 Vict. c. 34.

(1) See the Public Works Loans Act, 1875, 38 & 39 Vict. c. 89, *ante*, p. 1216.

By section 6 of the Public Works Loans Act, 1879, 42 & 43 Vict. c. 77, the Public Works Loan Commissioners may lend to any company established for the purpose of constructing or improving dwellings for the labouring classes, any sums to be applied towards the construction of dwellings suitable for the labouring classes, and towards the purchase of land for that purpose, and every sum so lent is to be repaid within fifteen years from the time of the advance, with interest thereon at such rate not less than three and a half per cent. per annum, as may be agreed on between the commissioners and the borrower. Every sum so advanced shall be advanced in accordance with the Public Works Loan Commissioners Act, 1875.

By section 11 of the Public Works Loans Act, 1881, 44 & 45 Vict. c. 38, any company, society, or association established for the purpose of constructing or improving dwellings for the labouring classes, shall be deemed to be and always to have been a company, society, or association, to which a loan may be made in pursuance of the Labouring Classes Dwelling Houses Act, 1866, and the period and rate of interest may be such as is mentioned either in the Act, or in section 6 of the Public Works Loans Act, 1879, with respect to the like loans by the Public Works Loan Commissioners.

Secs. 3, 4.

Application of 24 & 25 Vict. c. 80 to this Act.

3. All the clauses, powers, authorities, provisoes, enactments, directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures contained in and conferred and imposed by the Act of the session of the twenty-fourth and twenty-fifth years of Her Majesty's reign, chapter eighty, "Public Works and Harbours Act" (1), and the Acts therein referred to, or any of them, so far as the same can be made applicable and are not varied by this Act, shall be taken to extend to this Act, and to everything to be done in pursuance of this Act, and as if the same were herein repeated and set forth.

Authorities and persons to whom loans may be made.

4. For the purpose hereinafter mentioned, the Public Works Loan Commissioners, as defined by the said Act of the twenty-fourth and twenty-fifth years of Her Majesty (2), may out of the funds for the time being at their disposal from time to time advance on loan to any such local or other authority as hereinafter mentioned, namely,

Any council, board, or commissioners authorised to carry into execution "The Labouring Classes Lodging Houses Act, 1851;"

Any local or other authority invested with powers of town or local government and rating under any public general or any local Act; by whatever name such local or other authority may be called;

18 & 19 Vict. c. 121.

Any local authority acting under the "Nuisances Removal Act, 1855" (3), or any Act or Acts amending the same;

or to any such body or proprietor as hereinafter mentioned, namely,

Any railway company, or dock or harbour company, or any other company, society, or association established for the purposes of this Act or for trading or manufacturing purposes;

Any private person entitled to any land for an estate in fee simple, or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired;

And any such local or other authority, or any such body or proprietor, may from time to time borrow from the Public Works Loan Commissioners such money as may be required for the purpose of this Act (4), subject and according to the following provisions:

Objects of loans.

1. Such advance on loan shall be made for the purpose of assisting in the purchase of land and buildings, or in the erection, alteration, and adaptation of buildings to be used as dwellings for the labouring classes, and in providing all conveniences which may be deemed proper in connection with such dwellings:

2. Any such advance may be made whether the local or other authority or body or proprietor receiving the same has or has not power to borrow on mortgage or otherwise, independently of this Act; but nothing in this Act contained shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up:

3. No sum shall be advanced without the approval of the Commissioners of Her Majesty's Treasury of the borrowing thereof, signified by some writing under the hand of one of their secretaries or assistant secretaries:

Rules and regulations.

4. It shall be lawful for the said Commissioners of Her Majesty's Treasury to make such rules and regulations as they shall from time to time think proper with respect to applications for advances under this Act, and the terms and conditions upon which such advances are to be made, and to issue such instructions and forms as they may think proper for the guidance of and observance by persons applying for or receiving loans, or executing works, or rendering accounts of moneys expended under this Act; or regarding the class of dwellings towards the providing of which such loans may be made, and the adaptation thereof to the purposes intended, and as to the mode of providing for their maintenance, repair, and insurance:

Currency of loans.

5. The period for the repayment of the sums advanced shall not exceed forty years:

6. The repayment of the money advanced, with interest thereon at such rate as shall be agreed upon, but not at a less rate than four pounds per centum per annum, shall be secured as follows; namely, in the case of an advance to any such local or other authority as aforesaid, either by a mortgage solely of the rates leviable by such authority, or by such other

(1) This Act was repealed by section 57 of the Public Works Loans Act, 1875, 38 & 39 Vict. c. 89, *post*, p. 1228. See sections 55, 9, 49, and Sched. I. of that Act, *post*, pp. 1228, 1218, 1227 and 1229.

(2) Now the Public Works Loans Act, 1875, 38 & 39 Vict. c. 89, see the preceding note. See also the note to the title of this Act, *ante*, p. 1251.

(3) This Act was repealed, except as to the metropolis, by section 343 of the Public Health Act, 1875, *ante*, p. 224.

(4) These loans will now be made according to the provisions of the Public Works Loans Act, 1875, by section 50 of that Act, *ante*, p. 1227. Labourer's dwellings are included in the works enumerated in Sched. I. of that Act, for the purpose of which the commissioners may lend money. See also the note to the title to this Act.

mortgage as hereinafter mentioned, or by both; and in any other case by a mortgage of the estate or interest of any such local or other authority, or of any such body or proprietor as aforesaid, in the land or dwellings for the purposes of which the advance is made (1); and in the case of an advance to a company any part of whose capital remains uncalled up or unpaid, by a mortgage also of all capital so remaining uncalled up or unpaid; and any such mortgage as aforesaid may be taken either alone or together with any other security which may be agreed upon; but it shall not be incumbent on the Public Works Loan Commissioners to require any other security:

7. No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be mortgaged shall be either an estate in fee simple or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance:

8. The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid; and a mortgage may be accordingly made to secure such advances so to be made from time to time:

9. For the purposes of this Act every such local or other authority or body as aforesaid is hereby authorised to purchase, take, and hold land, and if not already a body corporate shall, for the purpose of holding such land under this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

Incorporation of 8 & 9 Vict. cc. 18 and 19 with this Act.

5. The Lands Clauses Consolidation Act, 1845 (2), and the Lands Clauses Consolidation (Scotland) Act, 1845, and any Act amending the same, except the clauses in the said Acts respectively with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with this Act, and for the purposes of those Acts this Act shall be deemed the special Act; and any such local or other authority or body or proprietor as aforesaid exercising the powers of this Act shall be deemed the promoters of the undertaking.

Incorporation of 10 & 11 Vict. c. 16 with this Act.

6. The clauses of the Commissioners Clauses Act, 1847, with respect to the mortgages to be executed by the commissioners (3), except so far as the same may be inconsistent with the provisions of the said Act of the twenty-fourth and twenty-fifth years of Her Majesty, chapter eighty (4), or of any of the Acts therein recited, shall be incorporated with this Act; and in the construction of this Act and of the said incorporated clauses this Act shall be deemed the special Act; and the local or other authority, or the body or proprietor, to whom the loan is made, shall be deemed to be the commissioners; but the said incorporated clauses shall not, so far as they prescribe the manner of executing mortgages, or so far as they require a register to be kept of mortgages, or transfers of mortgages, apply to any mortgage made under this Act by any proprietor being a private person; and all mortgages executed by any proprietor being a private person shall be executed in the usual manner.

Special powers of mortgagees.

7. Every mortgage under this Act shall confer on the mortgagee thereunder for the time being all the rights, powers, and privileges conferred on mortgagees by Part II. of the Act of the session of the twenty-third and twenty-fourth years of Her Majesty, chapter one hundred and forty-five, intituled "An Act to give to Trustees, Mortgagees, and others certain Powers now commonly inserted in Settlements, Mortgages, and Wills;" and any such mortgage may confer on the mortgagee such further powers of sale and other powers, and may also contain all such covenants and provisions, as may be agreed upon; and nothing contained in this Act or in any clauses incorporated in the "Labouring Classes Lodging Houses Act, 1851," or in this Act, shall be deemed to limit or prevent the enforcement of any rights or remedies which, at law or in equity or by statute, may be otherwise incidental to any such mortgage, either under the Acts relating to the Public Works Loan Commissioners, or otherwise.

Powers to companies.

8. Any railway company, or dock or harbour company, or any other company, society, or association, established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the labouring class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the

(1) By section 2 of the Labouring Classes Dwelling Houses Act, 1867, *post*, p. 1265, the words in this section "land or dwellings for the purposes of which the advance is made," include any land, buildings, or premises held together with and for the same estate and interest, as the lands, buildings, or premises, upon which the money advanced is to be expended.

(2) See the Lands Clauses Consolidation Act, 1845, *ante*, p. 894.

(3) These clauses are sections 75—88 of the Commissioners Clauses Act, 1847, *ante*, pp. 1077—1080.

(4) This Act has been repealed, see note to section 3, *ante*.

Secs. 8, 9.

contrary) authorised at any time or from time to time to erect, either on their own land or on any other land (which they are hereby authorised to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the labouring class employed by them, and shall have all the like powers of borrowing and other powers which are hereinbefore conferred on any such body or proprietor as hereinbefore mentioned.

Rules to be laid before Parliament.

9. All rules and regulations made by the Lords Commissioners of the Treasury under the provisions of this Act shall be laid before Parliament.

LABOURING CLASSES DWELLING HOUSES ACT, 1867.

30 & 31 VICT. c. 28.

An Act to amend "The Labouring Classes Dwellings Acts, 1866." [17*th June,* 1867.]

Secs. 2, 3.

Defining meaning of certain terms in 29 & 30 Vict. cc. 28 and 44.

2. In the fourth section of the "Labouring Classes Dwelling Houses Act, 1866," the words "land or dwellings for the purposes of which the advance is made," and in the twelfth section of the "Labouring Classes Lodging Houses and Dwellings Act (Ireland), 1866," the words "lands, buildings, or premises for the purpose of which such advance shall be made," shall respectively be construed to include any land, buildings, or premises held together with and for the same estate and interest as the lands, buildings, or premises upon which the money advanced is to be expended under the provisions of the said Acts respectively.

In case of advances to company, part of whose capital is unpaid, loan commissioners may dispense with mortgage

3. In the case of an advance under the provisions of either of the said Acts to a company or society, any part of whose capital remains uncalled up or unpaid, it shall be lawful, in England for the Public Works Loan Commissioners, and in Ireland for the Public Works Commissioners, to dispense with a mortgage of such capital remaining uncalled up or unpaid, or of such part thereof as they may think fit.

STATUTES RELATING TO MUNICIPAL CORPORATIONS.

PARLIAMENTARY REGISTRATION ACT, 1843.

7 & 8 VICT. c. 18.

An Act to amend the Law for the Registration of Persons entitled to Vote, and to define certain rights of voting, and to regulate certain proceedings in the Election of Members to serve in Parliament for England and Wales. [31*st May*, 1843.]

85. And for the more effectual detection of the personation of voters at elections, be it enacted that it shall be lawful for any candidate at any election of a member or members to serve in Parliament for any county, city, or borough, previous to the time fixed for taking the poll at such election to nominate and appoint an agent or agents on his behalf to attend at each or any of the booths appointed for taking the poll at such election for the purpose of detecting personation; and such candidates shall give notice in writing to the returning officer, or his respective deputy, of the name and address of the person or persons so appointed by him to act as agents for such purpose; and thereupon it shall be lawful for every such agent to attend during the time of polling at the booth or booths for which he shall have been so appointed.

86. And be it enacted, that if at the time any person tenders his vote at such election, or after he has voted, and before he leaves the polling booth, any such agent so appointed as aforesaid shall declare to the returning officer, or his respective deputy presiding therein, that he verily believes and undertakes to prove that the said person so voting is not in fact the person in whose name he assumes to vote, or to the like effect, then and in every such case it shall be lawful for the said returning officer, or his said deputy, and he is hereby required immediately after such person shall have voted by word of mouth, to order any constable or other peace officer to take the said person so voting into his custody, which said order shall be a sufficient warrant and authority to the said constable or peace officer for so doing: Provided always, that nothing herein contained shall be construed or taken to authorise any returning officer, or his deputy, to reject the vote of any person who shall answer in the affirmative the questions authorised by this Act to be put to him at the time of polling, and shall take the oaths or make the affirmations authorised and required of him; but the said returning officer, or his deputy, shall cause the words, "protested against for personation," to be placed against the vote of the person so charged with personation when entered in the poll book.

87. And be it enacted, that every such constable or peace officer shall take the person so in his custody, at the earliest convenient time, before some two justices of the peace acting in and for the county, city, or borough within which the said person shall have so voted as aforesaid: Provided always, that in case the attendance of two such justices as aforesaid cannot be procured within the space of three hours after the close of the poll on the same day on which such person shall have been so taken into custody, it shall be lawful for the said constable or peace officer, and he is hereby required, at the request of such person so in his custody, to take him before any one justice of the peace acting as aforesaid, and such justice is hereby authorised and required to liberate such person on his entering into a recognizance with one sufficient surety, conditioned to appear before any two such justices as aforesaid, at a time and place to be specified in such recognizance, to answer the said charge, and if no such justice shall be found within four hours after the closing of the said poll, then such person shall forthwith be discharged

Secs. 87–89.

from custody: Provided also, that if in consequence of the absence of such justices as aforesaid, or for any other cause, the said charge cannot be inquired into within the time aforesaid, it shall be lawful nevertheless for any two such justices as aforesaid to inquire into the same on the next or some other subsequent day, and, if necessary, to issue their warrant for the apprehension of the person so charged.

88. And be it enacted, that if on the hearing of the said charge the said two justices shall be satisfied, upon the evidence on oath of not less than two credible witnesses, that the said person so brought before them has knowingly personated and falsely assumed to vote in the name of some other person within the meaning of this Act, and is not, in fact, the person in whose name he voted, then it shall be lawful for the said two justices to commit the said offender to the gaol of the county, city, or borough within which the offence was committed, to take his trial according to law, and to bind over the witnesses in their respective recognizances to appear and give evidence on such trial, as in the case of other misdemeanours.

89. And be it enacted, that if the said justices shall, on the hearing of the said charge, be satisfied that the said person so charged with personation is really and in truth the person in whose name he voted, and that the charge of personation has been made against him without reasonable or just cause, or if the agent so declaring as aforesaid, or some one on his behalf shall not appear to support such charge before the said justices, then it shall be lawful for the said justices, and they are hereby required to make an order in writing under their hands, on the said agent so declaring as aforesaid, to pay to the said person so falsely charged (if he shall consent to accept the same) any sum not exceeding the sum of ten pounds nor less than five pounds, by way of damages and costs; and if the said sum shall not be paid within twenty-four hours after such order shall have been made, then the same shall be levied by warrant under the hand and seal of any justice of the peace acting as aforesaid, by distress and sale of the goods and chattels of the said agent, and in case no sufficient goods or chattels of the said agent can be found on which such levy can be made, then the same shall be levied in like manner on the goods and chattels of the candidate by whom such agent was so appointed to act; and in case the said sum shall not be paid or levied in the manner aforesaid, then it shall be lawful for the said person to whom the said sum of money was so ordered to be paid to recover the same from the said agent or candidate, with full costs of suit in an action of debt to be brought in any one of Her Majesty's superior courts of record at Westminster: Provided always, that if the person so falsely charged shall have declared to the said justices his consent to accept such sum as aforesaid by way of damages and costs, and if the whole amount of the sum so ordered to be paid shall have been paid or tendered to such person in every such case, but not otherwise, the said agent, candidate, and every other person shall be released from all actions or other proceedings, civil or criminal, for or in respect of the said charge and apprehension.

THE BALLOT ACT, 1872[1].

35 & 36 VICT. c. 33.

An Act to amend the law relating to Procedure at Parliamentary and Municipal Elections.
[18*th July*, 1872.]

PART I.

Parliamentary Elections.

Procedure at Elections.

Section 1.

Nomination of candidates for parliamentary elections.

1. A candidate for election to serve in Parliament for a county or borough shall be nominated in writing. The writing shall be subscribed by two registered electors of such county or borough as proposer and seconder, and by eight other registered electors of the same county or borough as assenting to the nomination, and shall be delivered during the time appointed for the election to the returning officer by the candidate himself, or his proposer or seconder.

If at the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer shall forthwith declare the candidates who may stand nominated to be elected, and return their names to the clerk of the crown in chancery; but if at the expiration of such hour more candidates stand nominated than there are vacancies to be filled up, the returning officer shall adjourn the election and shall take a poll in manner in this Act mentioned.

(1) See the Municipal Corporations Act, 1882, s. 58, *ante*, p. 285.

A candidate may, during the time appointed for the election, but not afterwards, withdraw from his candidature by giving a notice to that effect, signed by him, to the returning officer: Provided that the proposer of a candidate nominated in his absence out of the United Kingdom may withdraw such candidate by a written notice signed by him and delivered to the returning officer, together with a written declaration of such absence of the candidate (1).

If after the adjournment of an election by the returning officer for the purpose of taking a poll one of the candidates nominated shall die before the poll has commenced, the returning officer shall, upon being satisfied of the fact of such death, countermand notice of the poll, and all the proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received by the returning officer on the day on which proof was given to him of such death; provided that no fresh nomination shall be necessary in the case of a candidate who stood nominated at the time of the countermand of the poll.

Poll at elections.

2. In the case of a poll at an election the votes shall be given by ballot. The ballot of each voter shall consist of a paper (in this Act called a ballot paper) showing the names and description of the candidates. Each ballot paper shall have a number printed on the back, and shall have attached a counterfoil with the same number printed on the face (2). At the time of voting, the ballot papers shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of such voter on the register of voters shall be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up so as to conceal his vote, shall place it in a closed box in the presence of the officer presiding at the polling station (in this Act called "the presiding officer") after having shown to him the official mark at the back (3).

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back, is written or marked by which the voter can be identified, shall be void and not counted (4).

After the close of the poll the ballot boxes shall be sealed up so as to prevent the introduction of additional ballot papers, and shall be taken charge of by the returning officer, and that officer shall, in the presence of such agents, if any, of the candidates as may be in attendance, open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and shall forthwith declare to be elected the candidates or candidate to whom the majority of votes have been given, and return their names to the clerk of the crown in chancery (5). The decision of the returning officer as to any question arising in respect of any ballot paper shall be final, subject to reversal on petition questioning the election or return.

Where an equality of votes is found to exist between any candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer, if a registered elector of such county or borough, may give such additional vote, but shall not in any other case be entitled to vote at an election for which he is returning officer (6).

Offences at Elections.

Offences in respect of nomination papers, ballot papers, and ballot boxes.

3. Every person who,—(7).

(1.) Forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper, knowing the same to be forged; or

(2.) Forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper; or

(3.) Without due authority supplies any ballot paper to any person; or

(4.) Fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in; or

(5.) Fraudulently takes out of the polling station any ballot paper; or

(6.) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

(1) As to nomination for election of councillors at municipal election, see the Municipal Corporations Act, 1882, Third Schedule, Part II., *ante*, p. 356.

(2) See *Pickering* v. *Startin*, 28 L. T. N. S. 111.

(3) See *Pickering* v. *James*, L. R. 8 C. P. 489, 42 L. J. C. P. 217, 21 W. R. 786, 37 J. P. 679, *S. C. nom.; Jones* v. *Pickering*, 29 L. T. N. S. 210.

(4) *Woodward* v. *Sarsons*, L. R. 10 C. P. 733, 44 L. J. C. P. 293, 32 L. T. N. S. 867.

(5) No return shall be made as to municipal election. Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, Third Schedule, Part III. r. 6, *ante*, p. 358.

(6) Does not apply to municipal election. Municipal Corporations Act, 1882, Third Schedule, Part III. r. 1, *ante*, p. 357.

(7) As to municipal elections, see the Municipal Corporations Act, 1882, s. 74, *ante*, p. 288.

Secs. 3—5.

shall be guilty of a misdemeanor, and be liable, if he is a returning officer or an officer or clerk in attendance at a polling station, to imprisonment for any term not exceeding two years, with or without hard labour, and if he is any other person, to imprisonment for any term not exceeding six months, with or without hard labour.

Any attempt to commit any offence specified in this section shall be punishable in the manner in which the offence itself is punishable.

In any indictment or other prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, and marking instruments at an election, the property in such papers, boxes, and instruments may be stated to be in the returning officer at such election, as well as the property in the counterfoils.

Infringement of secrecy.

4. Every officer, clerk, and agent in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate, except for some purpose authorised by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark (1), and no such officer, clerk, or agent, and no person whosoever, shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station. Every officer, clerk, and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper. No person shall directly or indirectly induce any voter to display his ballot paper after he shall have marked the same, so as to make known to any person the name of the candidate for or against whom he has so marked his vote.

Every person who acts in contravention of the provisions of this section shall be liable, on summary conviction before two justices of the peace, to imprisonment for any term not exceeding six months, with or without hard labour.

Amendment of Law.

Division of counties and boroughs into polling districts.

5. [The local authority (as herein-after defined) of every county shall by order, as soon as may be practicable after the passing of this Act, divide such county into polling districts, and assign a polling place to each district, in such manner that, so far as is reasonably practicable, every elector resident in the county shall have a polling place within a distance not exceeding four miles from his residence, so, nevertheless, that a polling district need not in any case be constituted containing less than one hundred registered electors (2).]

The local authority (as herein-after defined) of every borough shall take into consideration the division of such borough into polling districts, and, if they think it desirable, by order, divide such borough into polling districts in such manner as they may think most convenient for taking the votes of the electors at a poll.

The local authority of every county and borough shall, on or before the first day of May one thousand eight hundred and seventy-three, send to one of Her Majesty's principal Secretaries of State, to be laid by him before both Houses of Parliament, a copy of any order made by such authority in pursuance of this section, and a report, in such form as he may require, stating how far the provisions of this Act with respect to polling districts have been complied with in their county or borough; and if they make any order after the first day of May one thousand eight hundred and seventy-three, with respect to polling districts or polling places in their county or borough, they shall send a copy of such order to the said Secretary of State, to be laid by him before both Houses of Parliament.

The local authority of a county or borough in this section means the authority having power to divide such county or borough into polling districts under section thirty-four of the Representation of the People Act, 1867, and any enactments amending that section; and such authority shall exercise the powers thereby given to them for the purposes of this section; and the provisions of the said section as to the local authority of a borough constituted by the combination of two or more municipal boroughs shall apply to a borough constituted by the combination of a municipal borough and other places, whether municipal boroughs or not; and in the case of a

(1) See *Stannanought* v. *Hazeldine*, L. R. 4 C. P. D. 191, 48 L. J. M. C. 89, 40 L. T. N. S. 589, 27 W. R. 620.

(2) This paragraph is repealed by 46 & 47 Vict. c. 57, s. 66.

borough of which a town council is not the local authority and which is not wholly situate within one petty sessional division, the justices of the peace for the county in which such borough or the larger part thereof in area is situate, assembled at some court of general or quarter sessions, or at some adjournment thereof, shall be the local authority thereof, and shall for this purpose have jurisdiction over the whole of such borough; and in the case of such borough and of a county, a court of general sessions shall be assembled within twenty-one days after the passing of this Act, and any such court may be assembled and adjourned from time to time for the purpose [1].

No election shall be questioned by reason of any non-compliance with this section or any informality relative to polling districts or polling places, and any order made by a local authority in relation to polling districts or polling places shall apply only to lists of voters made subsequently to its date, and to registers of voters formed out of such lists, and to elections held after the time at which a register of voters so formed has come into force: Provided that where any such order is made between the first day of July and the first day of November in any year, and does not create any new division between two or more polling districts of any parish for which a separate poor rate is or can be made, such order shall apply to the register of voters which comes into force next after such order is made, and to elections held after that register so comes into force; and the clerk of the peace or town clerk, as the case may be, shall copy, print, and arrange the lists of voters for the purpose of such register in accordance with such order.

6. [Use of school and public room for poll [2].]

Conclusiveness of register of voters.

7. At any election for a county or borough, a person shall not be entitled to vote unless his name is on the register of voters [3] for the time being in force for such county or borough, and every person whose name is on such register shall be entitled to demand and receive a ballot paper and to vote: Provided that nothing in this section shall entitle any person to vote who is prohibited from voting by any statute, or by the common law of Parliament, or relieve such person from any penalties to which he may be liable for voting.

Duties of Returning and Election Officers.

General powers and duties of returning officer.

8. Subject to the provisions of this Act, every returning officer shall provide such nomination papers, polling stations, ballot boxes, ballot papers, stamping instruments, copies of register of voters, and other things, appoint and pay such officers, and do such other acts and things as may be necessary for effectually conducting an election in manner provided by this Act.

All expenses properly incurred by any returning officer in carrying into effect the provisions of this Act, in the case of any parliamentary election, shall be payable in the same manner as expenses incurred in the erection of polling booths at such election are by law payable.

Where the sheriff is returning officer for more than one county as defined for the purposes of parliamentary elections, he may, without prejudice to any other power, by writing under his hand, appoint a fit person to be his deputy for all or any of the purposes relating to an election in any such county, and may, by himself or such deputy, exercise any powers and do any things which the returning officer is authorised or required to exercise or do in relation to such election. Every such deputy, and also any under sheriff, shall in so far as he acts as returning officer, be deemed to be included in the term returning officer in the provisions of this Act relating to parliamentary elections, and the enactments with which this part of this Act is to be construed as one.

Keeping of order in station.

9. If any person misconducts himself in the polling station, or fails to obey the lawful orders of the presiding officer, he may immediately, by order of the presiding officer, be removed from the polling station by any constable in or near that station, or any other person authorised in writing by the returning officer to remove him; and the person so removed shall not, unless with the permission of the presiding officer, again be allowed to enter the polling station during the day.

Any person so removed as aforesaid, if charged with the commission in such station of any offence, may be kept in custody until he can be brought before a justice of the peace.

Provided that the powers conferred by this section shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of voting at such station.

Powers of presiding officer and administration of oaths, &c.

10. For the purpose of the adjournment of the poll, and of every other enactment relating to the poll, a presiding officer shall have the power by law belonging to a deputy returning officer; and any presiding officer and any clerk appointed by the returning officer to attend at a polling

(1) See Municipal Corporations Act, 1882, s. 64, *ante*, p. 287.
(2) Does not apply to municipal election, 45 & 46 Vict. c. 50, Third Sched. Part III. r. 1, *ante*, p. 357.
(3) *I.e.*, burgess roll; see First Schedule, r. 64, *post*, p. 1274.

Secs. 10–23.

station shall have the power of asking the questions (1) and administering the oath authorised by law to be asked of and administered to voters, and any justice of the peace and any returning officer may take and receive any declaration authorised by this Act to be taken before him.

Liability of officers for misconduct.

11. Every returning officer, presiding officer, and clerk who is guilty of any wilful misfeasance or any wilful act or omission in contravention of this Act shall, in addition to any other penalty or liability to which he may be subject, forfeit to any person aggrieved by such misfeasance, act, or omission a penal sum not exceeding one hundred pounds (2).

30 & 31 Vict. c. 102.

Section fifty of the Representation of the People Act, 1867 (which relates to the acting of any returning officer, or his partner or clerk, as an agent for a candidate), shall apply to any returning officer or officer appointed by him in pursuance of this Act, and to his partner or clerk.

Miscellaneous.

Prohibition of disclosure of vote.

12. No person who has voted at an election shall, in any legal proceeding to question the election, or return, be required to state for whom he has voted (3).

Non-compliance with rules.

13. No election shall be declared invalid by reason of a non-compliance with the rules contained in the First Schedule to this Act, or any mistake in the use of the forms in the Second Schedule to this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of this Act, and that such non-compliance or mistake did not affect the result of the election.

Use of municipal ballot boxes, &c. for parliamentary election, and *vice versa*.

14. Where a parliamentary borough and municipal borough occupy the whole or any part of the same area, any ballot boxes or fittings for polling stations and compartments provided for such parliamentary borough or such municipal borough may be used in any municipal or parliamentary election in such borough free of charge, and any damage other than reasonable wear and tear caused to the same shall be paid as part of the expenses of the election at which they are so used.

Construction of Act.

15. This part of this Act shall, so far as is consistent with the tenor thereof, be construed as one with the enactments for the time being in force relating to the representation of the people, and to the registration of persons entitled to vote at the election of members to serve in Parliament, and with any enactments otherwise relating to the subject matter of this part of this Act, and terms used in this part of this Act shall have the same meaning as in the said enactments; and in construing the said enactments relating to an election or to the poll or taking the votes by poll, the mode of election and of taking the poll established by this Act shall for the purposes of the said enactments be deemed to be substituted for the mode of election or poll, or taking the votes by poll, referred to in the said enactments; and any person applying for a ballot paper under this Act shall be deemed "to tender his vote," or "to assume to vote," within the meaning of the said enactments; and any application for a ballot paper under this Act, or expressions relative thereto shall be equivalent to "voting" in the said enactments and any expressions relative thereto; and the term "polling booth" as used in the said enactments shall be deemed to include a polling station; and the term "proclamation" as used in the said enactments shall be deemed to include a public notice given in pursuance of this Act.

16. [Alterations for application of Part I. to Scotland.]

17. [Alterations for application of Part I. to Ireland.]

18. [Provisions as to polling districts and polling places in Ireland.]

PART II.

Municipal Elections.

20. [Application to municipal elections of enactments relating to the poll at parliamentary elections (4).]

21. [Abolition of ward assessors (5).]

22. [Alterations for application of Part II. to Scotland.]

23. [Alterations for application of Part II. to Ireland.]

(1) As to municipal elections, see 45 & 46 Vict. c. 50, s. 59, *ante*, p. 285.

(2) See *Pickering* v. *James*, *ante*, p. 1265.

(3) See 45 & 46 Vict. c. 50, s 104, *ante*, p. 299.

(4) Repealed by Municipal Corporations Act, 1882, s. 5, and First Schedule, Part I., *ante*, pp. 269 and 351. See now, section 58, sub-sections (1), (6), and Third Schedule, Part III., of this latter Act, *ante*, pp. 285 and 357.

(5) Repealed by Municipal Corporations Act, 1882, s. 5, First Schedule, Part I,, *ante*, pp. 269 and 351.

PART III.

PERSONATION.

Definition and punishment of personation

24. The following enactments shall be made with respect to personation at parliamentary and municipal elections:

A person shall for all purposes of the laws relating to parliamentary and municipal elections be deemed to be guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who having voted once at any such election applies at the same election for a ballot paper in his own name.

[The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, shall be a felony, and any person convicted thereof shall be punished by imprisonment for a term not exceeding two years together with hard labour (1).] It shall be the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case, together with compensation for their trouble and loss of time shall be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The provisions of the Registration Acts, specified in the Third Schedule to this Act, shall in England and Ireland respectively apply to personation under this Act in the same manner as they apply to a person who knowingly personates and falsely assumes to vote in the name of another person as mentioned in the said Acts.

[The offence of personation shall be deemed to be a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

If, on the trial of any election petition questioning the election or return for any county or borough, any candidate is found by the report of the judge by himself or his agents to have been guilty of personation, or by himself or his agents to have aided, abetted, counselled, or procured the commission at such election of the offence of personation by any person, such candidate shall be incapable of being elected or sitting in Parliament for such county or borough during the Parliament then in existence (2).]

Vote to be struck off for bribery, treating, or undue influence.

25. Where a candidate, on the trial of an election petition claiming the seat for any person, is proved to have been guilty, by himself or by any person on his behalf, of bribery, treating, or undue influence in respect of any person who voted at such election, or where any person retained or employed for reward by or on behalf of such candidate for all or any of the purposes of such election, as agent, clerk, messenger, or in any other employment, is proved on such trial to have voted at such election, there shall, on a scrutiny, be struck off from the number of votes appearing to have been given to such candidate one vote for every person who voted at such election and is proved to have been so bribed, treated, or unduly influenced, or so retained or employed for reward or otherwise (3).

26. [Alterations in Act as applying to Scotland.]

Construction of part of Act.

27. This part of this Act, so far as regards parliamentary elections, shall be construed as one with "The Parliamentary Elections Act, 1868," and shall apply to an election for a university or combination of universities.

PART IV.

MISCELLANEOUS.

Effect of schedules.

28. The schedules to this Act, and the notes thereto, and directions therein, shall be construed and have effect as part of this Act.

Definitions.

29. In this Act—

"Municipal borough:"

The expression "municipal borough" means any place for the time being subject to the Municipal Corporation Acts, or any of them:

"Municipal Corporation Acts:"

The expression "Municipal Corporation Acts" means—

(*a.*) As regards England, the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same (4).

(1) The portion within brackets is repealed by 46 & 47 Vict. c. 51, s. 66.
(2) The two paragraphs within brackets are repealed by 46 & 47 Vict. c. 51, s. 66.
(3) See *Boston Election, Re Malcolm* v. *Ingram*, L. R. 9 C. P. 610, 43 L. J. C. P. 331, 31 L. T. N. S. 331.
(4) See now, 45 & 46 Vict. c. 50, *ante*, p. 259.

Secs. 29–33.

"Municipal election."

The expression "municipal election" means—

(*a.*) As regards England, an election of any person to serve the office of councillor, auditor, or assessor of any municipal borough, or of councillor for a ward of a municipal borough.

Application of Act.

30. This Act shall apply to any parliamentary or municipal election which may be held after the passing thereof.

Saving.

31. Nothing in this Act, except Part III. thereof, shall apply to any election for a university or combination of universities.

Repeal.

Repeal of Acts in schedules.

32. The Acts specified in the fourth, fifth, and sixth schedules to this Act, to the extent specified in the third column of those schedules, and all other enactments inconsistent with this Act, are hereby repealed.

Provided that this repeal shall not affect—

(*a.*) Anything duly done or suffered under any enactment hereby repealed; or,

(*b.*) Any right or liability acquired, accrued, or incurred under any enactment hereby repealed; or,

(*c.*) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or,

(*d.*) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Short title.

33. This Act may be cited as The Ballot Act, 1872, and shall continue in force till the thirty-first day of December, one thousand eight hundred and eighty, and no longer, unless Parliament shall otherwise determine; and on the said day the Acts in the fourth, fifth, and sixth schedules shall be thereupon revived; provided that such revival shall not affect any act done, any rights acquired, any liability or penalty incurred, or any proceeding pending under this Act, but such proceeding shall be carried on as if this Act had continued in force.

SCHEDULES.

Schedule 1

FIRST SCHEDULE.

PART I.

RULES FOR PARLIAMENTARY ELECTIONS.

Election.

1—13 (1).

The Poll.

14. The poll shall take place on such day as the returning officer (2) may appoint, not being in the case of an election for a county or a district borough less than two nor more than six clear days, and not being in the case of an election for a borough other than a district borough more than three clear days after the day fixed for the election.

15. At every polling place the returning officer shall provide a sufficient number of polling stations for the accommodation of the electors entitled to a vote at such polling place, and shall distribute the polling stations amongst those electors in such manner as he thinks most convenient, provided that in a district borough there shall be at least one polling station at each contributory place of such borough (3).

16. Each polling station shall be furnished with such number of compartments, in which the voters can mark their votes screened from observation, as the returning officer thinks necessary, so that at least one compartment be provided for every one hundred and fifty electors entitled to vote at such polling station.

17. A separate room or separate booth may contain a separate polling station, or several polling stations may be constructed in the same room or booth.

18. No person shall be admitted to vote at any polling station except the one allotted to him.

19. The returning officer shall give public notice of the situation of polling stations and the description of voters entitled to vote at each station, and of the mode in which electors are to vote.

20. The returning officer shall provide each polling station with materials for voters to mark the ballot papers, with instruments for stamping thereon the official mark, and with copies of the

(1) These rules do not apply to municipal elections. See 45 & 46 Vict. c. 50, ss. 50—58, and Third Schedule, Parts II. and III., *ante*, pp. 283—285, 356, 357.

(2) See 45 & 46 Vict. c. 50, s. 53, *ante*, p. 284.

(3) As to municipal elections, see 45 & 46 Vict. c. 50, Third Schedule, Part III., *ante*, p. 357.

register of voters, or such part thereof as contains the names of the voters allotted to vote at such station. He shall keep the official mark secret, and an interval of not less than seven years shall intervene between the use of the same official mark at elections for the same county or borough.

21. The returning officer shall appoint a presiding officer to preside at each station, and the officer so appointed shall keep order at his station, shall regulate the number of electors to be admitted at a time, and shall exclude all other persons except the clerks, the agents of the candidates, and the constables on duty.

22. Every ballot paper shall contain a list of the candidates described as in their respective nomination papers, and arranged alphabetically in the order of their surnames, and (if there are two or more candidates with the same surname) of their other names: it shall be in the form set forth in the second schedule to this Act or as near thereto as circumstances admit, and shall be capable of being folded up.

23. Every ballot box shall be so constructed that the ballot papers can be introduced therein, but cannot be withdrawn therefrom, without the box being unlocked. The presiding officer at any polling station, just before the commencement of the poll, shall show the ballot box empty to such persons, if any, as may be present in such station, so that they may see that it is empty, and shall then lock it up, and place his seal upon it in such manner as to prevent its being opened without breaking such seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

24. Immediately before a ballot paper is delivered to an elector it shall be marked on both sides with the official mark, either stamped or perforated, and the number, name, and description of the elector as stated in the copy of the register shall be called out, and the number of such elector shall be marked on the counterfoil, and a mark shall be placed in the register against the number of the elector, to denote that he has received a ballot paper, but without showing the particular ballot paper which he has received.

25. The elector, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station, and there mark his paper, and fold it up so as to conceal his vote, and shall then put his ballot paper, so folded up, into the ballot box; he shall vote without undue delay, and shall quit the polling station as soon as he has put his ballot paper into the ballot box.

26. The presiding officer, on the application of any voter who is incapacitated by blindness or other physical cause from voting in manner prescribed in this Act, or (if the poll be taken on Saturday) of any voter who declares that he is of the Jewish persuasion, and objects on religious grounds to vote in manner prescribed by this Act, or of any voter who makes such a declaration as hereinafter mentioned that he is unable to read, shall, in the presence of the agents of the candidates, cause the vote of such voter to be marked on a ballot paper in manner directed by such voter, and the ballot paper to be placed in the ballot box, and the name and number on the register of voters of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list in this Act called "the list of votes marked by the presiding officer."

The said declaration, in this Act referred to as "the declaration of inability to read," shall be made by the voter at the time of polling, before the presiding officer, who shall attest it in the form hereinafter mentioned, and no fee, stamp, or other payment shall be charged in respect of such declaration, and the said declaration shall be given to the presiding officer at the time of voting.

27. If a person, representing himself to be a particular elector named on the register, applies for a ballot paper after another person has voted as such elector, the applicant shall, upon duly answering the questions and taking the oath permitted by law to be asked of and to be administered to voters at the time of polling, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper (in this Act called a tendered ballot paper) shall be of a colour differing from the other ballot papers, and instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of voters, and set aside in a separate packet, and shall not be counted by the returning officer. And the name of the voter and his number on the register shall be entered on a list, in this Act called the tendered votes list.

28. A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper, may, on delivering to the presiding officer the ballot paper so inadvertently dealt with, and proving the fact of the inadvertence to the satisfaction of the presiding officer, obtain another ballot paper in the place of the ballot paper so delivered up (in this Act called a spoilt ballot paper), and the spoilt ballot paper shall be immediately cancelled.

29. The presiding officer of each station, as soon as practicable after the close of the poll, shall, in the presence of the agents of the candidates, make up into separate packets sealed with his own seal and the seals of such agents of the candidates as desire to affix their seals,—

(1.) Each ballot box in use at his station, unopened but with the key attached; and
(2.) The unused and spoilt ballot papers, placed together; and
(3.) The tendered ballot papers; and
(4.) The marked copies of the register of voters, and the counterfoils of the ballot papers; and
(5.) The tendered votes list, and the list of votes marked by the presiding officer, and a statement of the number of the voters whose votes are so marked by the presiding officer under the heads "physical incapacity," "Jews," and "unable to read," and the declarations of inability to read;

and shall deliver such packets to the returning officer.

Schedule 1.

30. The packets shall be accompanied by a statement made by such presiding officer, showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers in the ballot box, unused, spoilt, and tendered ballot papers, which statement is in this Act referred to as the ballot paper account.

Counting Votes.

31. The candidates may respectively appoint agents to attend the counting of the votes.

32. The returning officer shall make arrangements for counting the votes in the presence of the agents of the candidates as soon as practicable after the close of the poll, and shall give to the agents of the candidates appointed to attend at the counting of the votes notice in writing of the time and place at which he will begin to count the same.

33. The returning officer, his assistants and clerks, and the agents of the candidates, and no other person, except with the sanction of the returning officer, may be present at the counting of the votes.

34. Before the returning officer proceeds to count the votes, he shall, in the presence of the agents of the candidates, open each ballot box, and, taking out the papers therein, shall count and record the number thereof, and then mix together the whole of the ballot papers contained in the ballot boxes. The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards, and take all proper precautions for preventing any person from seeing the numbers printed on the backs of such papers.

35. The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, and excluding (except so far as he and the agents otherwise agree) the hours between seven o'clock at night and nine o'clock on the succeeding morning. During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the agents of the candidates as desire to affix their seals, and shall otherwise take proper precautions for the security of such papers and documents.

36. The returning officer shall endorse "rejected" on any ballot paper which he may reject as invalid, and shall add to the endorsement "rejection objected to," if an objection be in fact made by any agent to his decision. The returning officer shall report to the clerk of the crown in chancery the numbers of ballot papers rejected and not counted by him under the several heads of—

(1.) Want of official mark;
(2.) Voting for more candidates than entitled to;
(3.) Writing or mark by which voter could be identified;
(4.) Unmarked or void for uncertainty;

and shall on request allow any agents of the candidates before such report is sent, to copy it.

37. Upon the completion of the counting, the returning officer shall seal up in separate packets the counted and rejected ballot papers. He shall not open the sealed packet of tendered ballot papers or marked copy of the register of voters and counterfoils, but shall proceed, in the presence of the agents of the candidates, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded by him as aforesaid, and the unused and spoilt ballot papers in his possession and the tendered votes list, and shall reseal each sealed packet after examination. The returning officer shall report to the clerk of the crown in chancery the result of such verification, and shall, on request, allow any agents of the candidates, before such report is sent, to copy it [1].

38. Lastly, the returning officer shall forward to the clerk of the crown in chancery (in manner in which the poll books are by any existing enactment required to be forwarded to such clerk, or as near thereto as circumstances admit) all the packets of ballot papers in his possession, together with the said reports, the ballot paper accounts, tendered votes lists, lists of votes marked by the presiding officer, statements relating thereto, declarations of inability to read, and packets of counterfoils, and marked copies of registers, sent by each presiding officer, endorsing on each packet a description of its contents and the date of the election to which they relate, and the name of the county or borough for which such election was held; and the term poll book in any such enactment shall be construed to include any document forwarded in pursuance of this rule.

39. The clerk of the crown shall retain for a year all documents relating to an election forwarded to him in pursuance of this Act by a returning officer, and then, unless otherwise directed by an order of the House of Commons, or of one of Her Majesty's superior courts, shall cause them to be destroyed [1].

40. No person shall be allowed to inspect any rejected ballot papers in the custody of the clerk of the crown in chancery, except under the order of the House of Commons or under the order of one of Her Majesty's superior courts [2], to be granted by such court on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition questioning an election or return [3]; and any such order for the inspection or production of ballot papers may be made subject to such conditions as to persons,

[1] As to municipal elections, see r. 64 (b), *post*, and 45 & 46 Vict. c. 50, Third Schedule, Part III. r. 6, *ante*, p. 358.

[2] As to municipal elections, see r. 64 (b), (a), *post*, p. 1274.

[3] As to municipal elections, r. 64 (b), (a), *post*, and *R.* v. *Beardsall*, cited in the note thereto.

time, place, and mode of inspection and production as the House or court making the same may think expedient, and shall be obeyed by the clerk of the crown in chancery. Any power given to a court by this rule may be exercised by any judge of such court of chambers.

41. No person shall, except by order of the House of Commons or any tribunal having cognizance of petitions complaining of undue returns or undue elections, open the sealed packet of counterfoils after the same has once been sealed up, or be allowed to inspect any counted ballot papers in the custody of the clerk of the crown in chancery; such order may be made subject to such conditions as to persons, time, place, and mode of opening or inspection as the House or tribunal making the order may think expedient; provided that on making and carrying into effect any such order, care shall be taken that the mode in which any particular elector has voted shall not be discovered until he has been proved to have voted, and his vote has been declared by a competent court to be invalid.

42. All documents forwarded by a returning officer in pursuance of this Act to the clerk of the crown in chancery, other than ballot papers and counterfoils, shall be open to public inspection at such time and under such regulations as may be prescribed by the clerk of the crown in chancery, with the consent of the Speaker of the House of Commons, and the clerk of the crown shall supply copies of or extracts from the said documents to any person demanding the same, on payment of such fees and subject to such regulations as may be sanctioned by the Treasury.

43. Where an order is made for the production by the clerk of the crown in chancery of any document in his possession relating to any specified election, the production by such clerk or his agent of the document ordered, in such manner as may be directed by such order, or by a rule of the court having power to make such order, shall be conclusive evidence that such document relates to the specified election; and any endorsement appearing on any packet of ballot papers produced by such clerk of the crown or his agent shall be evidence of such papers being what they are stated to be by the endorsement. The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked thereon in writing, shall be *primâ facie* evidence that the person who voted by such ballot paper was the person who at the time of such election had affixed to his name in the register of voters at such election the same number as the number written on such counterfoil.

General Provisions.

44. The return of a member or members elected to serve in Parliament for any county or borough shall be made by a certificate of the names of such member or members under the hand of the returning officer endorsed on the writ of election for such county or borough, and such certificate shall have effect and be dealt with in like manner as the return under the existing law, and the returning officer may, if he think fit, deliver the writ with such certificate endorsed to the postmaster of the principal post office of the place of election, or his deputy, and in that case he shall take a receipt from the postmaster or his deputy for the same; and such postmaster or his deputy shall then forward the same by the first post, free of charge, under cover, to the clerk of the crown, with the words "Election Writ and Return" endorsed thereon.

45. The returning officer shall, as soon as possible, give public notice of the names of the candidates elected, and, in the case of a contested election, of the total number of votes given for each candidate, whether elected or not.

46. Where the returning officer is required or authorised by this Act to give any public notice, he shall carry such requirement into effect by advertisements, placards, handbills, or such other means as he thinks best calculated to afford information to the electors.

47. The returning officer may, if he think fit, preside at any polling station, and the provisions of this Act relating to a presiding officer shall apply to such returning officer with the necessary modifications as to things to be done by the returning officer to the presiding officer, or the presiding officer to the returning officer.

48. In the case of a contested election for any county or borough, the returning officer may, in addition to any clerks, appoint competent persons to assist him in counting the votes.

49. No person shall be appointed by a returning officer for the purposes of an election who has been employed by any other person in or about the election.

50. The presiding officer may do, by the clerks appointed to assist him, any act which he is required or authorised to do by this Act at a polling station except ordering the arrest, exclusion, or ejection from the polling station of any person.

51. A candidate may himself undertake the duties which any agent of his if appointed might have undertaken, or may assist his agent in the performance of such duties, and may be present at any place at which his agent may, in pursuance of this Act, attend.

52. The name and address of every agent of a candidate appointed to attend the counting of the votes shall be transmitted to the returning officer one clear day at the least before the opening of the poll; and the returning officer may refuse to admit to the place where the votes are counted any agent whose name and address has not been so transmitted, notwithstanding that his appointment may be otherwise valid, and any notice required to be given to an agent by the returning officer may be delivered at or sent by post to such address.

53. If any person appointed an agent by a candidate for the purposes of attending at the polling station or at the counting of the vote dies, or becomes incapable of acting during the time of the election, the candidate may appoint another agent in his place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent so appointed.

54. Every returning officer, and every officer, clerk, or agent authorised to attend at a polling station, or at the counting of the votes, shall, before the opening of the poll, make a statutory

Schedule 1.

declaration of secrecy, in the presence, if he is the returning officer, of a justice of the peace, and if he is any other officer or an agent, of a justice of the peace or of the returning officer; but no such returning officer, officer, clerk, or agent as aforesaid shall, save as aforesaid, be required, as such, to make any declaration or take any oath on the occasion of any election.

55. Where in this Act any expressions are used requiring or authorising or inferring that any act or thing is to be done in the presence of the agents of the candidates, such expressions shall be deemed to refer to the presence of such agents of the candidates as may be authorised to attend, and as have in fact attended, at the time and place where such act or thing is being done, and the non-attendance of any agents or agent at such time and place shall not, if such act or thing be otherwise duly done, in anywise invalidate the act or thing done.

56. In reckoning time for the purposes of this Act, Sunday, Christmas Day, Good Friday, and any day set apart for a public fast or public thanksgiving, shall be excluded; and where anything is required by this Act to be done on any day which falls on the above-mentioned days such thing may be done on the next day, unless it is one of the days excluded as above-mentioned.

57. In this Act—

The expression "district borough" means the borough of Monmouth and any of the boroughs specified in Schedule E. to the Act of the session of the second and third years of the reign of King William the Fourth, chapter forty-five, intituled "An Act to amend the Representation of the People in England and Wales;" and

The expression "polling place" means, in the case of a borough, such borough or any part thereof in which a separate booth is required or authorised by law to be provided; and

The expression "agents of the candidates," used in relation to a polling station, means agents appointed in pursuance of section eighty-five of the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen.

58—63. [Modifications in application of Part I. of Schedule to Scotland and Ireland.]

PART II.

Rules for Municipal Elections.

64. In the application of the provisions of this schedule to municipal elections, the following modifications shall be made:—

(*a.*) The expression "register of voters" means the burgess roll of the burgesses of the borough, or, in the case of an election for the ward of a borough, the ward list; and the mayor shall provide true copies of such register for each polling station:

(*b.*) All ballot papers and other documents which, in the case of a parliamentary election, are forwarded to the clerk of the crown in chancery, shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of Part I. of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, and to the copies of such documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with these modifications; namely,

(*a.*) An order of the county court having jurisdiction in the borough, or any part thereof, or of any tribunal in which a municipal election is questioned, shall be substituted for an order of the House of Commons or of one of Her Majesty's superior courts; but an appeal from such county court may be had in like manner as in other cases in such county court [1];

(*b.*) The regulations for the inspection of documents and the fees for the supply of copies of documents of which copies are directed to be supplied, shall be prescribed by the council of the borough with the consent of one of Her Majesty's principal Secretaries of State; and, subject as aforesaid, the town clerk, in respect of the custody and destruction of the ballot papers and other documents coming into his possession in pursuance of this Act, shall be subject to the directions of the council of the borough:

(*c.*) Nothing in this schedule with respect to the day of the poll shall apply to a municipal election.

65, 66. [Modifications in application of Part II. of Schedule to Scotland and Ireland.]

Schedule 2.

SECOND SCHEDULE.

Note.—The forms contained in this schedule, or forms as nearly resembling the same as circumstances will admit, shall be used in all cases to which they refer and are applicable, and when so used shall be sufficient in law [2].

[1] See *R.* v. *Beardsall*, L. R. 1 Q. B. D. 452, 45 L. J. M. C. 157, 34 L. T. N. S. 660, 13 Cox, C. C. 193.

[2] The forms of writ, notice of election, and nomination paper at parliamentary elections are omitted here. As to municipal elections, see 45 & 46 Vict. c. 50, Eighth Schedule, Part II., Forms H., I., *ante*, p. 364.

Form of Ballot Paper. **Schedule 2.**

Form of Front of Ballot Paper.

Counterfoil No.

NOTE: *The counterfoil is to have a number to correspond with that on the back of the Ballot Paper.*

1	BROWN (John Brown, of 52, George Street, Bristol, merchant.)	
2	JONES (William David Jones, of High Elms, Wilts, Esq.)	
3	MERTON (Hon. George Travis, commonly called Viscount Merton, of Swanworth, Berks.)	
4	SMITH (Henry Sydney Smith, of 72, High Street, Bath, attorney.)	

Form of Back of Ballot Paper.

No. .

Election for county [*or* borough, *or* ward]. 18 .

Note.—The number on the ballot paper is to correspond with that in the counterfoil.

Directions as to printing Ballot Paper.

Nothing is to be printed on the ballot paper except in accordance with this schedule.

The surname of each candidate, and if there are two or more candidates of the same surname, also the other names of such candidates, shall be printed in large characters, as shown in the form, and the names, addresses, and descriptions, and the number on the back of the paper, shall be printed in small characters.

Form of Directions for the Guidance of the Voter in voting, which shall be printed in conspicuous characters, and placarded outside every Polling Station and in every Compartment of every Polling Station.

The voter may vote for candidate .

The voter will go into one of the compartments, and, with the pencil provided in the compartment, place a cross on the right-hand side, opposite the name of each candidate for whom he votes, thus X

The voter will then fold up the ballot paper so as to show the official mark on the back, and leaving the compartment will, without showing the front of the paper, to any person, show the official mark on the back to the presiding officer, and then, in the presence of the presiding officer, put the paper into the ballot box, and forthwith quit the polling station.

If the voter inadvertently spoils a ballot paper, he can return it to the officer, who will, if satisfied of such inadvertence, give him another paper.

If the voter votes for more than candidate , or places any mark on the paper by which he may be afterwards identified, his ballot paper will be void, and will not be counted.

If the voter takes a ballot paper out of the polling station, or deposits in the ballot box any other paper than the one given him by the officer, he will be guilty of a misdemeanor, and be subject to imprisonment for any term not exceeding six months, with or without hard labour.

Note.—These directions shall be illustrated by examples of the ballot paper.

Form of Statutory Declaration of Secrecy.

I solemnly promise and declare, that I will not at this election for do anything forbidden by section four of the Ballot Act, 1872, which has been read to me.

Note.—The section must be read to the declarant by the person taking the declaration.

Schedule 2.

Form of Declaration of inability to read.

I, *A.B.*, of , being numbered on the Register of Voters for the county [*or* borough] of , do hereby declare that I am unable to read.

A.B., his mark.

day of .

I, the undersigned, being the presiding officer for the polling station for the county [*or* borough] of , do hereby certify, that the above declaration, having been first read to the above-named *A.B.*, was signed by him in my presence with his mark.

Signed *C.D.*,
Presiding officer for polling station for the county [*or* borough] of .

day of .

Schedule 3.

THIRD SCHEDULE.

Provisions of Registration Acts referred to in Part III. of the foregoing Act.

Session and Chapter.	Title.	Part applied.
	As to England.	
6 & 7 Vict. c. 18 - -	An Act to amend the law for the registration of persons entitled to vote, and to define certain rights of voting, and to regulate certain proceedings in the elections of members to serve in Parliament for England and Wales.	Sections eighty-five to eighty-nine, both inclusive.

Schedule 4.

FOURTH SCHEDULE.

Acts relating to England.

Note.—This schedule, so far as respects Acts prior to the tenth year of the reign of George the Third, refers to the edition prepared under the direction of the Lord Chancellor, intituled "The Statutes, Revised Edition."

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

Portions of Acts which have already been specifically repealed, are in some instances included in the repeal in this schedule, in order to preclude henceforth the necessity of looking back to previous Acts.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
7 Hen. 4 - - -	Statute of the seventh year -	Chapter fifteen.
8 Hen. 6 - - -	Statutes of the eighth year of King Henry VI.	Chapter seven, from "and such as have the greatest number" to "shall lose their wages" and from "and that in every writ that shall hereafter go forth" to the end of the chapter.
23 Hen. 6 - - -	Here begin the statutes made at Westminster in the twenty-third year.	Chapter fourteen.
7 & 8 Will. 3, c. 25 -	An Act for the further regulating elections of members to serve in Parliament, and for the preventing irregular proceedings of sheriffs and other officers in the electing and returning such members.	Sections three and four, and section five down to "writing the same."

Schedule 4.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
(1) 10 Will. 3, c. 7 -	An Act for preventing irregular proceedings of sheriffs and other officers in making the returns of members chosen to serve in Parliament.	So much as is unrepealed.
2 Geo. 2, c. 24 - -	An Act for the more effectual preventing bribery and corruption in the elections of members to serve in Parliament.	Sections three and nine.
18 Geo. 2, c. 18 - -	An Act to explain and amend the laws touching the elections of knights of the shire to serve in Parliament for that part of Great Britain called England.	Section five from "or shall vote more than once," to the end of that section, and sections nine to sixteen.
19 Geo. 2, c. 28 - -	An Act for the better regulating of elections of members to serve in Parliament for such cities and towns in that part of Great Britain called England as are counties of themselves.	Section four, from "or shall vote more than once," to end of that section, and sections six to twelve.
3 Geo. 3, c. 15 - -	An Act to prevent occasional freemen from voting at elections of members to serve in Parliament for cities and boroughs.	Section seven.
11 Geo. 3, c. 55 - -	*An Act the title of which begins with the words* "An Act to incapacitate," *and ends with the words* "New Shoreham, in the county of Sussex."	The whole Act.
21 Geo. 3, c. 54 - -	An Act for the better regulating elections of citizens to serve in Parliament for the city of Coventry.	Sections seven to nine and fourteen.
22 Geo. 3, c. 31 - -	An Act for the preventing of bribery and corruption in the election of members to serve in Parliament for the borough of Cricklade in the county of Wilts.	The whole Act.
25 Geo. 3, c. 84 - -	*An Act the title of which begins with the words* "An Act to limit the duration," *and ends with the words* "to serve in Parliament."	The whole Act, except section one down to "make a return of such person or persons," and section three in so far as that part of a section and section relate to the universities.
33 Geo. 3, c. 64 - -	*An Act the title of which begins with the words* "An Act to explain and amend an Act," *and ends with the words* "time and place of election."	The whole Act, except so far as it relates to the universities.
34 Geo. 3, c. 73 - -	An Act for directing the appointment of Commissioners to administer certain oaths and declarations required by law to be taken and made by persons offering to vote at the election of members to serve in Parliament.	The whole Act.

(1) 10 & 11 Will. 3, in running headings in ordinary editions.

Schedule 4.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
42 Geo. 3, c. 62 - -	An Act for extending the provisions of an Act made in the thirty-fourth year of the reign of His present Majesty, intituled "An Act for directing the appointment of commissioners to administer certain oaths and declarations required by law to be taken and made by persons offering to vote at the election of members to serve in Parliament," to all oaths now required by law to be taken by voters at elections for members to serve in Parliament.	The whole Act.
43 Geo 3, c. 74 - -	An Act for further regulating the administration of the oath or affirmation required to be taken by electors of members to serve in Parliament, by an Act passed in the second year of King George the Second, intituled "An Act for the more effectual preventing bribery and corruption in the election of members to serve in Parliament."	The whole Act.
44 Geo. 3, c. 60 - -	An Act for the preventing of bribery and corruption in the election of members to serve in Parliament for the borough of Aylesbury in the county of Buckingham.	The whole Act.
11 Geo. 4, & 1 Will. 4, c. 74. - - -	An Act to prevent bribery and corruption in the election of burgesses to serve in Parliament for the borough of East Retford.	The whole Act.
2 & 3 Will. 4, c. 45 -	An Act to amend the representation of the people in England and Wales.	Sections fifty-eight to sixty; sections sixty-two, sixty-three, sixty-five, sixty-seven; part of section sixty-eight, namely, from "shall if required thereby" down to "poll at each compartment, and," and from "and in case the booths shall be situated in different places" to "lawfully closed;" and section sixty-nine; and section seventy-one from "and that all deputies" to "candidates at such election," and from "provided also, that the sheriff" to the end of the section; and sections seventy-two, seventy-three, and seventy-four.
2 & 3 Will. 4, c. 64 -	An Act to settle and describe the divisions of counties and the limits of cities and boroughs in England and Wales, in so far as respects the election of members to serve in Parliament.	Sections twenty-nine to thirty-three, and so much of section thirty-four as relates to taking the poll.
5 & 6 Will. 4, c. 36 -	An Act to limit the time of taking the poll in boroughs at contested elections of members to serve in Parliament to one day.	The whole Act, except section two, down to "in the forenoon," and from "and the polling" to "in the afternoon;" and sections seven to nine.

Schedule 4.

Session and Chapter.	Title or abbreviated Title.	Extent of Repeal.
5 & 6 Will. 4, c. 76 -	An Act to provide for the regulation of municipal corporations in England and Wales.	The words "openly assemble and" in section thirty; section thirty-two from "by delivering to the mayor and assessors" to the end of that section, and so much of the rest of that section as relates to assessors; section thirty-three from "and shall be so divided" to "poll at each compartment, and," and from "and in case the booths" to "at each place;" the words "Are you the person whose name is signed as A. B. to the voting paper now delivered in by you" in section thirty-four, and section thirty-five from "and the mayor shall cause the voting papers" to end of that section, and so much of the rest of that section as relates to assessors; and so much of sections forty-three, forty-four, and forty-six as relates to assessors.
6 & 7 Will. 4, c. 102 -	An Act for rendering more easy the taking the poll at county elections.	The whole Act.
6 & 7 Vict. c. 18 - -	An Act to amend the law for the registration of persons entitled to vote and to define certain rights of voting and to regulate certain proceedings in the election of members to serve in Parliament for England and Wales.	Section seventy-nine from "Provided always, that it shall not be lawful" to end of that section; section eighty; so much of section eighty-one as relates to a commissioner or commissioners; sections eighty-three, eighty-four, and ninety-one, sections ninety-four to ninety-six, and sections ninety-eight and ninety-nine.
16 & 17 Vict. c. 15 -	An Act to limit the time of taking the poll in counties at contested elections for knights of the shire to serve in Parliament in England and Wales to one day.	The whole Act, except section two, down to "in the afternoon of such day," and section three.
16 & 17 Vict. c. 68 -	An Act to limit the time for proceeding to election in counties and boroughs in England and Wales, and for polling at elections for the Universities of Oxford and Cambridge, and for other purposes.	Sections two, three, seven, and eight.
17 & 18 Vict. c. 102 -	"The Corrupt Practices Prevention Act, 1854."	Section eleven and Schedule B.
22 Vict. c. 35 - -	"The Municipal Corporation Act, 1859."	So much of section seven as relates to the form of nomination paper and so much of section eight as relates to assessors.
25 & 26 Vict. c. 95 -	An Act to amend the law relating to polling places in the boroughs of New Shoreham, Cricklade, Aylesbury, and East Retford.	The whole Act.
30 & 31 Vict. c. 102. -	"The Representation of the People Act, 1867."	Section thirty-five; section thirty-seven from "where in any place" to end of that section; section thirty-nine.
31 & 32 Vict. c. 58 -	"The Parliamentary Electors Registration Act, 1868."	Sections four to sixteen, twenty-four, twenty-six, thirty-four, and thirty-six.
31 & 32 Vict. c. 125 -	"The Parliamentary Elections Act, 1868."	Section forty from "provided always," to the end of that section.

PARLIAMENTARY AND MUNICIPAL REGISTRATION ACT, 1878.

41 & 42 VICT. c. 26.

An Act to amend the Law relating to the Registration of Voters in Parliamentary Boroughs and the Enrolment of Burgesses in Municipal Boroughs, and relating to certain rights of voting and proceedings before and appeals from Revising Barristers. [22*nd July*, 1878.]

Secs. 3—6.

Commencement of Act.

3. This Act shall come into operation on the first day of February one thousand eight hundred and seventy-nine, which date is in this Act referred to as the commencement of this Act.

Definitions.

4. In this Act—

The term "Reform Act, 1832," means the Act of the session of the second and third years of the reign of King William the Fourth, chapter forty-five, "to amend the representation of the people in England and Wales:"

5 & 6 Will. 4, c. 76. 40 & 41 Vict. c. 69.

The term "Municipal Corporation Acts" means the Municipal Corporation Act, 1835, and the Acts amending the same [1]:

The term "Parliamentary Registration Act, 1843," means the Act of the session of the sixth and seventh years of the reign of Her present Majesty, chapter eighteen, "to amend the law for the registration of persons entitled to vote, and to define certain rights of voting and to regulate certain proceedings in the election of members to serve in Parliament for England and Wales:"

The term "Parliamentary Registration Acts" means the Parliamentary Registration Act, 1843, and any enactment amending the same or otherwise relating to the registration of Parliamentary electors:

The term "parliamentary borough" means any borough, city, county of a city, county of a town, place, or combination of places returning a member or members to serve in Parliament, and not being a county at large, or riding, part, or division of a county at large:

The term "municipal borough" means any place for the time being subject to the Municipal Corporation Acts:

The term "parliamentary voter" means a person entitled to be registered as a voter and when registered to vote at the election of a member or members to serve in Parliament for a parliamentary borough:

The term "burgess" has the same meaning as in the Municipal Corporation Acts:

The term "parish" means a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed:

Other terms used in this Act have the same meaning as in the Parliamentary Registration Acts.

Explanation of terms. "House," &c. 2 & 3 Will. 4, c. 45, s. 27.

5. In and for the purposes of the Reform Act, 1832, and the Municipal Corporation Acts, the terms "house, warehouse, counting-house, shop, or other building," shall include any part of a house where that part is separately occupied for the purpose of any trade, business, or profession; and any such part may for the purpose of describing the qualification be described as "office," "chambers," "studio," or by any like term applicable to the case.

30 & 31 Vict. c. 102. "Dwelling-house." "Lodgings."

In and for the purposes of the Representation of the People Act, 1867, the term "dwelling-house" shall include any part of a house where that part is separately occupied as a dwelling, and the term "lodgings" shall include any apartments or place of residence, whether furnished or unfurnished, in a dwelling-house.

Separate occupation of part notwithstanding joint occupation of other part.

For the purposes of any of the Acts referred to in this section, where an occupier is entitled to the sole and exclusive use of any part of a house, that part shall not be deemed to be occupied otherwise than separately by reason only that the occupier is entitled to the joint use of some other part.

30 & 31 Vict. c. 102, s. 61.

The interpretation contained in this section of "dwelling-house" shall be in substitution for the interpretation thereof contained in section sixty-one of the Representation of the People Act, 1867, but not so as to affect any of the other provisions of the said Act relating to rating.

Additional lodgings.

6. (1.)—Lodgings occupied by a person in any year or two successive years shall not be deemed to be different lodgings by reason only that in that year or in either of those years he has occupied some other rooms or place in addition to his original lodgings.

[1] Now 45 & 46 Vict. c. 50, *ante*, p. 259.

(2.) For the purpose of qualifying a lodger to vote, the occupation in immediate succession of different lodgings of the requisite value in the same house shall have the same effect as continued occupation of the same lodgings.

Successive lodgings in the same house.

(3.) Where lodgings are jointly occupied by more than one lodger, and the clear yearly value of the lodgings if let unfurnished is of an amount which when divided by the number of the lodgers gives a sum of not less than ten pounds for each lodger, then each lodger, if otherwise qualified and subject to the conditions of the Representation of the People Act, 1867, shall be entitled to be registered, and when registered to vote as a lodger, provided that not more than two persons being such joint lodgers shall be entitled to be registered in respect of such lodgings.

Joint occupation of lodgings.

30 & 31 Vict. c. 102.

7. In every parliamentary borough and in every municipal borough every period of qualification for parliamentary voters and burgesses respectively which is now computed by reference to the last day of July, shall, instead of being so computed, be computed by reference to the fifteenth day of July [1].

Period of qualification.

The term "period of qualification" in this section shall include any period of occupation, residence, possession, receipt of rents and profits, and non-receipt of parochial relief or other alms.

8. In every parliamentary borough and in every municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, the forms in the schedule to this Act, or forms to the like effect, varied as circumstances require, shall be used for the purposes for which the same are applicable respectively, and shall for the purposes of the Parliamentary Registration Acts and this Act be deemed to be substituted for any corresponding forms in the schedules to the Parliamentary Registration Acts.

Forms relating to registration in parliamentary boroughs and burgess lists in certain municipal boroughs.

The said schedule and the notes thereto shall be construed and have effect as if enacted in the body of this Act.

All precepts, instructions, proceedings, notices, and lists relating to the registration of parliamentary voters or enrolment of burgesses shall be expressed in such manner and form as may be necessary to carry the provisions of this Act into effect.

9. In every parliamentary borough and in every municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, any notice or list which is by the Parliamentary Registration Acts or this Act directed to be published by overseers shall be published by them not only in the manner directed by those Acts, but also by being affixed and kept in some public and conspicuous position in or near every post office and telegraph office occupied by or on behalf of Her Majesty's Postmaster-General, and in or near every public or municipal or parochial office within the parish to which the list relates [2].

Publication of notices and list in post and telegraph offices &c.

All the provisions of those Acts with respect to the publication of notices or lists shall apply to the publication to be made under this section.

10. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, section eleven of the Parliamentary Registration Act, 1843, and section twenty-eight of the Representation of the People Act, 1867 (which relate to the notices to be published and given with respect to rates and taxes in arrear), shall, as amended by this Act, extend with the necessary modifications to the rates of which the payment is required as a condition of enrolment on the burgess roll, and all the provisions of those sections as so amended shall apply to the overseers of parishes situate wholly or partly in a municipal borough accordingly.

Notice of rates in arrear.

6 & 7 Vict. c. 18, s. 11.

30 & 31 Vict. c. 102, s. 28.

Any notice required to be given under this section shall be deemed to be duly given if delivered to the occupier or left at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable.

In case no such person can be found, then the notice required to be given under this section or under section twenty-eight of the Representation of the People Act, 1867, shall be deemed to be duly given if affixed upon some conspicuous part of the premises.

30 & 31 Vict. c. 102, s. 28.

Any overseer who with intent to keep an occupier off the list or register of voters for a parliamentary borough, or off the burgess lists or burgess roll of a municipal borough, shall wilfully withhold any notice required by this section to be given to such occupier, shall be deemed guilty of a breach of duty in the execution of this Act.

Section twenty-nine of the Representation of the People Act, 1867, shall extend and be applicable to every parish situate wholly or partly within a municipal borough whose burgess lists are revised under this Act.

30 & 31 Vict. c. 102, s. 29.

[1] See 45 & 46 Vict. c. 50, s. 9, *ante*, p. 271.

[2] Now, by Post-Office (Protection) Act, 1884, 47 & 48 Vict. c. 76, s. 5 (1), a notice or list shall not be affixed in or on any post-office, post-office letter-box, telegraph post, or other property belonging to or used by or on behalf of the Postmaster-General, without authority from him.

Secs. 11–14.

Registrars to furnish returns of deaths to overseers.

11. Every registrar of births and deaths whose sub-district includes the whole or part of any parliamentary borough or any municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, shall transmit by post or otherwise to the overseers of every parish, the whole or any part of which is included in the parliamentary borough or municipal borough, and also in his sub-district, a return certified under his hand to be a true return of the names, ages, and residences of all male persons of full age dying within that parish or part, and also when and as required by those overseers of the names, ages, and residences of all women of full age dying within that parish or part.

The returns shall state the names of all such persons in full (where the names are known) and the dates of their deaths, and the names and residences of the persons by whom information of the deaths was given to the registrar.

The returns shall be made four times a year; that is to say,

On or before the seventh day of April for the three months ending with the preceding thirty-first day of March;

On or before the twenty-second day of July for the period beginning with the preceding first day of April and ending with the fifteenth day of July;

On or before the fifteenth day of September, or at such other time before the completion of the revision of the lists of the parliamentary borough or municipal borough to the area of which the return relates as the barrister revising the same shall appoint in that behalf for the period beginning with the preceding sixteenth day of July, and ending with the time when such return is made, or as near thereto as practicable;

And on or before the seventh day of January for the period beginning with the preceding fifteenth day of September or from the time for which the last preceding return was made, and ending with the thirty-first day of December:

37 & 38 Vict c. 88, s. 28

The registrar making any such return shall be entitled to fees at the rate specified in the twenty-eighth section of the Births and Deaths Registration Act, 1874, in respect of the returns therein mentioned, and such fees shall be paid by the overseers as part of the expenses of carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists.

The overseers shall omit from any list made by them the name of any person who appears from such returns to be dead, and shall allow any person who is registered as a parliamentary voter of the parliamentary borough or enrolled as a burgess of the municipal borough to which the returns relate to inspect any such returns in their custody at all reasonable times free of charge.

List of persons disqualified by parochial relief

12. The overseers of every parish situate wholly or partly either in a parliamentary borough or in a municipal borough, the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, shall ascertain from the relieving officer acting for that parish the names of all persons who are disqualified for being inserted in the lists of parliamentary voters or burgess lists for that parish by reason of having received parochial relief, and the relieving officer, upon application from the overseers, shall produce to them at such place within the parish, and at such time as is required by them, the books in his possession containing the names of those persons.

Inspection of rate books

13. In every parish situate wholly or partly either in a parliamentary borough or in a municipal borough the whole or part of the area whereof is co-extensive with or included in the area of a parliamentary borough, the books containing the poor rates made for the parish within the previous two years shall at all reasonable times be open, free of charge, to the inspection of any person who is registered as a parliamentary voter for the parliamentary borough, or enrolled as a burgess of the municipal borough, and any such voter or burgess may make any copy thereof or take any extract therefrom [1].

Explanation of 32 & 33 Vict. c. 41, s. 19, as to entering occupier's name in rate book

14. Whereas by section nineteen of the Poor Rate Assessment and Collection Act, 1869, the overseers, in making out the poor rate, are required in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, to enter in the occupier's column of the rate-book the name of the occupier of every rateable hereditament, and it is thereby declared that every such occupier shall be deemed to be duly rated for any qualification or franchise as therein mentioned; and whereas doubts have been entertained as to the application of this enactment, and it is expedient to remove them: Be it therefore enacted that the recited enactment shall not be deemed to apply exclusively to cases where an agreement has been made under section three of the same Act, or where an order has been made under section four of the same Act, but shall be of general application.

[1] As to boroughs purely municipal, see 45 & 46 Vict. c. 50, s. 144 (7), (12), *ante*, pp. 313, 314, and Third Schedule, Part I., r. 21, *ante*, p. 355.

Secs. 15–18.

15. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the lists of parliamentary voters and the burgess lists shall so far as practicable be made out and revised together.

Preparation of lists of parliamentary voters and burgess lists together in certain cases.

In every such case the overseers of every parish situate wholly or partly either in the parliamentary borough or in the municipal borough shall, on or before the last day of July (1) in every year, make out a list of all persons entitled under any right conferred by the Reform Act, 1832, or by section three of the Representation of the People Act, 1867, to be registered as voters for the parliamentary borough in respect of the occupation of property situate wholly or partly within that parish, or entitled to be enrolled as burgesses of the municipal borough in respect of the occupation of any property so situate.

2 & 3 Will. 4, c. 45.
30 & 31 Vict. c. 102, s. 3.

With respect to every list so made out, the following provisions shall have effect:

(1.) The lists shall be in substitution for the lists of persons so entitled, which are required to be made out under the Parliamentary Registration Acts and the Municipal Corporation Acts:

(2.) Where the parish is situate wholly or partly both in the parliamentary borough and in the municipal borough, the list for the parish shall be made out in three divisions:

Division One shall comprise the names of the persons entitled both to be registered as parliamentary voters under a right conferred as aforesaid and to be enrolled as burgesses;

Division Two shall comprise the names of the persons entitled to be registered as parliamentary voters under a right conferred as aforesaid, but not to be enrolled as burgesses;

Division Three shall comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary voters under a right conferred as aforesaid:

(3.) Each list shall state the surname and other name or names of every person whose name is inserted therein, his place of abode, the nature of his qualification, and the situation and description of the property in respect of which he is entitled:

(4.) Each list shall be signed and otherwise dealt with in manner directed by the Parliamentary Registration Acts with respect to the alphabetical lists mentioned in section thirteen of the Parliamentary Registration Act, 1843:

6 & 7 Vict. c. 18. 13.

(5.) Where no part of the parish is situate within the municipal borough, the list for the parish shall be deemed to be a list of voters for the parliamentary borough:

(6.) Where no part of the parish is situate within the parliamentary borough, the list for the parish shall be deemed to be a burgess list for the municipal borough:

(7.) Where the list is made out in divisions, Divisions One and Two shall be deemed to be lists of voters for the parliamentary borough, and Divisions One and Three shall be deemed to be burgess lists for the municipal borough:

(8.) The lists, and if the lists are made out in divisions, each division thereof, shall, if and so far as the local authority from time to time direct, according to convenience for use, be framed in parts for polling districts or wards; and where the polling districts and wards are not conterminous, in such manner that the parts may be conveniently compiled or put together to serve either as lists for polling districts or as ward lists.

16. In the case of any parliamentary borough in which any persons are entitled to be registered as freemen, or under any right other than a right conferred by the Reform Act, 1832, or the third section of the Representation of the People Act, 1867, the registration of such persons shall be carried out in the manner directed by the Parliamentary Registration Acts, as modified by this Act.

Freemen's and other rights.
2 & 3 Will. 4, c 45.
30 & 31 Vict. c. 102, s. 3.

17. In the case of a parliamentary borough which includes in whole or in part more municipal boroughs than one, each such municipal borough shall, for the purposes of this Act, be dealt with separately and as if each were the only municipal borough included in whole or in part in such parliamentary borough, and if any parish is partly in one and partly in another or others of such municipal boroughs, so much thereof as is in any one of such municipal boroughs shall, for the purposes of this Act, be dealt with as a separate parish.

Provision where several municipal boroughs included in one parliamentary borough.

The town clerk of each such municipal borough shall, so far as regards the area of such municipal borough, issue the precepts and perform the other duties to be performed by the town clerk under and shall be the town clerk for the purposes of the Parliamentary Registration Acts and this Act.

18. The Municipal Corporation Acts shall not, as to anything prior to the completion of the

Application of Parliamentary

(1) As to purely municipal boroughs, see 45 & 46 Vict. c. 50, Third Schedule, Part I., r. 1, *ante*, p. 354.

Secs. 18–24.

Registration Acts to burgess lists made out under this Act.

revision of the burgess lists, apply to any burgess list made out under this Act, and instead thereof the Parliamentary Registration Acts, as modified by this Act, shall. up to the completion of the revision of the burgess lists, apply to every such burgess list, as if it were a list of parliamentary voters made out under those Acts, and as if the municipal borough to which such burgess lists relate were a parliamentary borough: Provided as follows:

(1.) Nothing in this Act shall authorise a person entered on a burgess list, not being also entered on a list of parliamentary voters, to make any objection in respect of a list of parliamentary voters, or authorise any person entered on a list of parliamentary voters, not being also entered on a burgess list, to make any objection in respect of a burgess list;

(2.) The last day for revising a burgess list made out under this Act shall be the twelfth day of October (1); and

(3.) The burgess lists when revised shall be copied for the burgess roll in manner directed by the Municipal Corporation Acts.

Lists of persons qualified to be aldermen or councillors, but not to be burgesses

19. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the separate lists of the persons entitled to be elected councillors or aldermen of the municipal borough, though not entitled to be on the burgess roll, shall be made out at the same time and in the same manner as the burgess lists, and all the provisions of this Act with regard to the burgess lists shall apply to those separate lists.

20. [Abolition of assessors in certain municipal boroughs (2).]

Lists and registers may be arranged according to streets.

21. If and so far as the local authority so direct, the lists of parliamentary voters and registers of parliamentary voters in parliamentary boroughs, and the burgess lists and burgess rolls in municipal boroughs, and the lists of claimants and persons objected to in parliamentary boroughs and municipal boroughs respectively, or any of those documents, shall, so far as they relate to persons qualified in respect of the ownership or occupation of property (including persons qualified in respect of lodgings), be arranged in the same order in which the qualifying premises appear in the rate book for the parish in which those premises are situate, or as nearly thereto as will cause those lists, registers, and rolls to record the qualifying premises in successive order in the street or other place in which they are situate, subject in the case of a municipal borough divided into wards to the division of the burgess roll into ward lists. The local authority in this Act means as regards a parliamentary borough the authority having power to divide the parliamentary borough into polling districts, and as regards a municipal borough the council of the municipal borough.

Claim by lodger retaining same lodgings in successive years.

22. Where a person is entered in respect of lodgings on the register of voters for the time being in force, and desires to be entered on the next register in respect of the same lodgings, he may claim to be so entered by sending notice of his claim to the overseers of the parish in which his lodgings are situate on or before the twenty-fifth day of July.

The overseers shall on or before the last day of July make out a list of all persons so claiming, and if they have reasonable cause to believe that any person whose name is entered on the list is not entitled to be registered or is dead, shall add in the margin of the list opposite his name the words "objected to" or "dead," as the case may be.

The lists so made out shall be signed, published, and otherwise dealt with in the same manner as the alphabetical lists mentioned in section thirteen of the Parliamentary Registration Act, 1843, and shall for the purposes of the Parliamentary Registration Acts be deemed to be lists of voters, and the provisions of the Parliamentary Registration Acts as to objections shall apply to such lists, and the persons against whose names the overseers have so written the words "objected to" or "dead," shall be deemed to be duly objected to.

6 & 7 Vict. c. 18.

Declaration of lodger to be *prima facie* evidence.

23. In the case of a person claiming to vote as a lodger, the declaration annexed to his notice of claim shall, for the purposes of revision, be *primâ facie* evidence of his qualification.

Declarations as to misdescription.

24. Any person who is entered on any list of voters for a parliamentary borough or any burgess list, subject to revision under this Act, for a municipal borough, and whose name or place of abode or the nature of whose qualification or the name or situation of whose qualifying property is not correctly stated in such list, or in respect of whom there is any other error or omission in the said list, may, whether he has received a notice of objection or not, if he thinks fit, make and subscribe a declaration in the form in that behalf in the schedule to this Act, or as near thereto as the circumstances will admit, before any justice of the peace or any commissioner or other person authorised to administer oaths in the Supreme Court of Judicature (3).

The declaration shall be duly dated and shall on or before the twelfth day of September be

(1) As to purely municipal boroughs, see 45 & 46 Vict. c. 50, Third Schedule, Part I. rr. 10, 25, *ante*, p. 355.

(2) Repealed. 45 & 46 Vict. c. 50, s. 5, *ante*, p. 269.

(3) See *Porrett* v. *Lord*, L. R. 5 C. P. D. 65, 49 L. J. C. P. 176, 42 L. T. N. S. 28, 28 W. R. 393.

sent to the town clerk, who forthwith shall indorse on the declaration a memorandum signed or initialed by him, stating the date when he received it, and naming the declarant, and the list to which the declaration refers, and shall deliver all such declarations to the revising barrister at his first court.

If the declaration is sent as aforesaid in due time (of which the said indorsement shall be *primâ facie* proof), the revising barrister shall receive the declaration as evidence of the facts declared to, and that without proof of the signature of the declarant, or of the justice, commissioner, or person before whom the declaration purports to have been subscribed, unless he has good reason to doubt the genuineness of any signature thereto.

The declaration shall be open free of charge to public inspection at the office of the said town clerk, at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day except Sunday, before the fifteenth day of September, and he shall deliver copies thereof on application and payment of the price of fourpence per folio of seventy-two words.

Penalty for false declaration.

25. If any person falsely or fraudulently signs any such declaration as last aforesaid, or any declaration either as claimant or witness in respect of a claim to vote as a lodger in the name of any other person, whether that person is living or dead, or in a fictitious name, or sends as genuine any false or falsified declaration knowing the same to be false or falsified, or knowingly and wilfully makes any false statement of fact in any declaration of the nature aforesaid, he shall be guilty of a misdemeanor and punishable by fine or by imprisonment for a term not exceeding one year, and the revising barrister shall have power to impound the declaration.

Notice of objection to state specific grounds of objection, &c. 6 & 7 Vict. c. 18, ss. 17, 20. 28 & 29 Vict. c. 36, ss. 7, 8.

26. The notice required by the seventeenth and twentieth sections of the Parliamentary Registration Act, 1843, to be given to persons objected to in boroughs for the purposes of the revision of the lists of voters for a parliamentary borough, and the burgess lists for a municipal borough whose burgess lists are revised under this Act, shall state specifically the ground or grounds of objection, and sections seven and eight of the County Voters Registration Act, 1865, shall extend to such objections.

Revision of lists of voters.

27. For the purposes of the revision of the lists of voters for a parliamentary borough, and the burgess lists for a municipal borough whose burgess lists are revised under this Act—

Objections may be withdrawn.

(1.) An objection may be withdrawn by a notice to that effect in writing, signed by the objector, and given to the person objected to and to the town clerk not less than seven days before the day which shall be appointed for the holding of the first court of revision of the list to which the objection relates:

Reviver of objections on death of objector.

(2.) Any objection by a qualified objector may, after his death, be revived by any other person qualified to have made the objection originally by a notice to that effect in writing signed by him, and given to the person objected to and to the town clerk at or before the time of the revision of the entry to which the objection relates:

A person reviving an objection shall be deemed to have made the objection originally, and he shall be responsible in respect thereof, and the proceedings thereon shall be continued accordingly:

Costs of objections.

(3.) Where objection is made otherwise than by an overseer to any person whose name appears on a list of voters or burgesses and the name is retained on the list, the revising barrister shall, unless he is of opinion that the objection was reasonably made either because of a defect or error in the entry to which the objection relates, or because of a difficulty in verifying or identifying the particulars comprised in such entry, or unless the objection is duly withdrawn, or unless for some other special reason he otherwise determines, order costs not exceeding forty shillings to be paid by the objector to the person objected to.

Duties and powers of revising barrister.

28. A revising barrister shall, with respect to the lists of voters for a parliamentary borough and the burgess lists for a municipal borough which he is appointed to revise, perform the duties and have the powers following:

(1.) He shall correct any mistake which is proved to him to have been made in any list [1]:

(2.) He may correct any mistake which is proved to him to have been made in any claim or notice of objection [1]:

(3.) He shall expunge the name of every person, whether objected to or not, whose qualification as stated in any list is insufficient in law to entitle such person to be included therein:

(4.) He shall expunge the name of every person who, whether objected to or not, is proved to the revising barrister to be dead:

[1] See *Pickard* v. *Baylis*, L. R. 5 C. P. D. 235, 49 L. J. C. P. 182, 41 L. T. N. S. 509, 28 W. R. 256; and *Porrett* v. *Lord*, *ante*, p. 1284.

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(5.) Where an entry in any list and an entry in a return made to the overseers of deaths appear to relate to the same person, the revising barrister shall inquire whether such entries relate to the same person, and on proof being made to him that the entries relate to the same person shall expunge the entry in the list therefrom:

(6.) The revising barrister shall expunge the name of every person, whether objected to or not, whose name or place of abode, or the nature of whose qualification, or the name or situation of whose qualifying property if the qualification is in respect of property, or any other particulars respecting whom by law required to be stated in the list, is or are either wholly omitted or in the judgment of the revising barrister insufficiently described for the purpose of being identified, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of the revising barrister before he shall have completed the revision of the list in which the omission or insufficient description occurs, and in case such matter or matters shall be so supplied, he shall then and there insert the same in such list [1]:

(7.) He shall expunge the name of every person, whether objected to or not, where it is proved to the revising barrister that such person was, on the last day of July then next preceding, incapacitated by any law or statute from voting at an election for the parliamentary borough or an election for the municipal borough, as the case may be, to which the list relates:

(8.) Before expunging from a list the name of any person not objected to, the revising barrister shall cause such notice if any, as shall appear to him necessary or proper under the circumstances of the proposal to expunge the name, to be given to or left at the usual or last known place of abode of such person:

(9.) Subject as herein and otherwise by law provided, the revising barrister shall retain the name of every person not objected to, and also of every person objected to, unless the objector appears by himself or by some person on his behalf in support of his objection:

(10.) If the objector so appears the revising barrister shall require him, unless he is an overseer, to prove that he gave the notice or notices of objection required by law to be given by him, and to give *primâ facie* proof of the ground of objection, and for that purpose may himself examine and allow the objector to examine the overseers or any other person on oath touching the alleged ground of objection, and unless such proof is given to his satisfaction shall, subject as herein and otherwise by law provided, retain the name of the person objected to:

An objection made under this Act by overseers shall be deemed to cast upon the person objected to the burden of proving his right to be on the list:

The *primâ facie* proof shall be deemed to be given by the objector if it is shown to the satisfaction of the revising barrister by evidence, repute, or otherwise that there is reasonable ground for believing that the objection is well founded, and that by reason of the person objected to not being present for examination, or for some other reason, the objector is prevented from discovering or proving the truth respecting the entry objected to:

(11.) If such proof is given by the objector as herein prescribed, or if the objection is by overseers, then unless the person objected to appears by himself or by some person on his behalf, and proves that he was entitled on the last day of July then next preceding to have his name inserted in the list in respect of the qualification described in such list, the revising barrister shall expunge the name of the person objected to:

(12.) Where the matter stated in a list or claim, or proved to the revising barrister in relation to any alleged right to be on any list, is in the judgment of the revising barrister insufficient in law to constitute a qualification of the nature or description stated or claimed, but sufficient in law to constitute a qualification of some other nature or description, the revising barrister, if the name is entered in a list for which such true qualification in law is appropriate, shall correct such entry by inserting such qualification accordingly, and in any other case shall insert the name with such qualification in the appropriate list, and shall expunge it from the other list, if any, in which it is entered:

(13.) Except as herein provided, and whether any person is objected to or not, no evidence shall be given of any other qualification than that which is described in the list or claim, as the case may be, nor shall the revising barrister be at liberty to change the description of the qualification as it appears in the list except for the purpose of more clearly and accurately defining the same:

[1] See note, *ante*, p. 1285.

(14.) Where the name of any person appears to be entered more than once as a parliamentary voter on the lists of voters for the same parliamentary borough, or more than once as a burgess on the burgess lists for the same municipal borough, the revising barrister shall inquire whether such entries relate to the same person, and on proof being made to him that such entries relate to the same person shall retain one of the entries for voting, and place against the other or others a note to the effect that the person is not entitled to vote in respect of the qualification therein contained for the parliamentary borough or for the municipal borough, as the case may be, he being on the list for voting in respect of another qualification:

Any such person may, by notice in writing delivered to the revising barrister at the opening of his first revision court, select the entry to be retained for voting, and in making such selection may select one entry to be retained for voting for the parliamentary borough, and another entry to be retained for voting as a burgess for the municipal borough, but if he does not make any selection the entry to be so retained shall be selected by the revising barrister, except in the case of freemen, in which case the entry to be retained by the revising barrister for voting shall be that on the freemen's list.

If any question on appeal, or otherwise, arise as to the validity of the qualification for which the parliamentary voter or burgess is on the list for voting, recourse may be had for supporting the right of the voter or burgess to be on the parliamentary register or burgess roll for voting to any other qualification of such person appearing on the register or burgess roll:

Provided always, that in the case of a municipal borough divided into wards a vote given in or the right to vote in one ward shall not be supported by a qualification appearing on the burgess roll for some other ward:

(15.) Where a list is made out in divisions the revising barrister shall place the name of any person in the division in which it should appear according to the result of the revision, regard being had to the title of the person to be on the list both as a parliamentary voter and as a burgess, or only in one of those capacities, and shall expunge the name from the other division (if any) in which it appears.

This section shall, as regards every parliamentary borough and every municipal borough whose burgess lists are revised under this Act, take effect instead of section forty of the Parliamentary Registration Act, 1843. 6 & 7 Vict. c. 18, s. 40.

29. The provisions of the fifty-first section of the Parliamentary Registration Act, 1843, relating to the power of the revising barrister to fine overseers for neglect of duty, shall extend to every wilful refusal, neglect, or breach of duty on the part of overseers in the execution of this Act. Power to fine overseers for neglect of duty. 6 & 7 Vict. c. 18, s. 51.

30. Where the whole or part of the area of a municipal borough is co-extensive with or included in the area of a parliamentary borough, the expenses properly incurred by the town clerk (including in his expenses the matters mentioned in section thirty-one of the Representation of the People Act, 1867), and the expenses properly incurred by the overseers in carrying into effect the provisions of this Act with respect to the lists of parliamentary voters and burgess lists, and all moneys received in respect of any of those lists, or in respect of any fine imposed by the revising barrister on the revision of the lists, shall be respectively paid and applied as follows: Expenses and receipts. 30 & 31 Vict. c. 102, s. 31.

(1.) If the area of the parliamentary borough and the area of the municipal borough are co-extensive, one half of the expenses shall be defrayed in the manner provided by the Parliamentary Registration Acts as expenses incurred thereunder, and the other half shall be defrayed out of the borough fund, and one half of the moneys received as aforesaid shall be applied in the manner directed in those Acts, and the other half shall be paid to the borough fund:

(2.) In all other cases the expenses and receipts in respect of the area common to the parliamentary borough and to a municipal borough shall, as to one half thereof, be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts, and shall as to the other half thereof be defrayed out of and paid to the borough fund of such municipal borough:

And the expenses and receipts in respect of an area exclusively parliamentary shall be defrayed and applied as expenses and receipts under the Parliamentary Registration Acts:

And the expenses and receipts of an area exclusively municipal shall be defrayed out of and paid to the borough fund of the municipal borough comprising such area:

Any expenses and receipts incurred or arising in respect of more than one such area

Secs. 30–37.

shall be apportioned between the several areas in respect of which they are incurred or arise, in the proportion as nearly as may be in which the same are incurred and arise in respect of the several areas, regard being had to the number of parliamentary voters or burgesses in each area, or any other circumstances occasioning the expenses or giving rise to the receipts:

The revising barrister shall, as part of the business of the revision, determine, if necessary, in respect of what area or areas any expenses or receipts are incurred or arise, and how much thereof is attributable to each area.

The remuneration of the revising barrister shall be paid as heretofore under the Parliamentary Registration Acts: Provided always, that in the case of a municipal borough whose burgess lists are revised under this Act, there shall be paid out of the borough fund to the revising barrister, by way of additional remuneration in respect of his additional work on account of the municipal revision for such municipal borough, a remuneration at the rate mentioned in the third section of the Municipal Corporation Act, 1859 (1).

22 Vict. c. 35, s. 3.

Delivery and custody of revised lists.

31. The lists, if made out in divisions under this Act, shall when revised be delivered to the town clerk to whom in respect of the area to which the lists relate revised parliamentary lists ought to be delivered.

The revising barrister shall as part of the business of the revision, at the request of the town clerk of any municipal borough the whole or part of the area of which is co-extensive with or included in the area of a parliamentary borough, sign and deliver to him a duplicate of the whole or part of any revised list made out in divisions and relating to that municipal borough.

Every such duplicate shall be prepared by the town clerk at whose request it is so signed, and shall be kept by him for use for municipal purposes.

Commencement and duration of parliamentary register.

32. The register made up from revised lists under the Parliamentary Registration Acts and this Act of voters for any parliamentary borough shall come into operation on the first day of January next after the revision, and shall continue in operation for the year commencing with such first day of January.

Commencement and duration of burgess roll.

33. The burgess roll made up from revised lists under this Act of burgesses for any municipal borough shall come into operation on the first day of November next after the revision, and shall continue in operation for the year commencing with such first day of November.

34. [Certain expressions in 38 & 39 Vict. c. 40, to refer to new burgess roll or ward list (2).]

Appeal and correction of burgess roll where burgess lists are revised under this Act.

35. Where burgess lists are revised under this Act, the provisions of the Parliamentary Registration Acts as to appeal from the decision of the revising barrister shall apply to a decision on the revision of the burgess lists, and the provisions of the said Acts as to the alteration or correction of the register in pursuance of any judgment or order of the Court of Appeal shall apply to the alteration or correction of the burgess roll made up from the burgess lists as if it were a register of parliamentary voters, except that the notice of the judgment or order shall be given to the town clerk having the custody of the burgess roll, and the alteration or correction shall be made and signed by him (3).

Power for revising barrister to summon witnesses.

36. A revising barrister may by summons under his hand require any person to attend at the Court and give evidence or produce documents for the purpose of the revision, and any person who after the tender to him of a reasonable amount for his expenses fails so to attend, or who fails to answer any question put to him by the revising barrister in pursuance of this section, or to produce any document which he is required in pursuance of this section to produce, shall be liable to pay such fine not exceeding five pounds as may be imposed by the revising barrister, and such fine may be recovered, and when recovered shall be applied in like manner as any other fine imposed by the revising barrister under the Parliamentary Registration Acts.

Appeal where revising barrister neglects or refuses to state case.

37. If any person feels aggrieved by a revising barrister neglecting or refusing to state any case, he may, within one month after such neglect or refusal, apply to the High Court of Justice upon affidavit of the facts for a rule calling on the revising barrister, and also on the person, if any, in whose favour the decision from which the applicant desires to appeal was given, to show cause why a rule should not be made directing the appeal to be entertained and the case to be stated; and thereupon the High Court, or any judge thereof in chambers, may make such rule to show cause, and make the same absolute, or discharge it with or without pay-

(1) See now 45 & 46 Vict. c. 50, s. 30 (15), and Fourth Schedule, *ante*, pp. 278 and 358.

(2) Repealed, 45 & 46 Vict. c. 50, s. 5, *ante*, p. 269; but see Third Schedule, Part II. r. 18, of that statute, *ante* p. 357.

(3) By Supreme Court of Judicature Act, 1881, 44 & 45 Vict. c. 68, s. 14, the jurisdiction of the High Court of Justice to decide questions of law, upon appeal or otherwise, under this Act or any Act amending the same, shall henceforth be final and conclusive, unless in any case it shall seem fit to the said High Court to give special leave to appeal therefrom to Her Majesty's Court of Appeal whose decision in such case shall be final and conclusive.

ment of costs as seems just, and the revising barrister on being served with any such rule absolute shall state the case accordingly, and the case shall be stated and the appeal entertained and heard, notwithstanding any limitations of time or place contained in the Parliamentary Registration Act, 1843. Secs. 37–43. 6 & 7 Vict. c. 18.

38. The costs of an appellant against a decision of a revising barrister may, if the appeal is successful, be ordered by the Court hearing the appeal to be paid by the clerk of the peace or town clerk named as respondent in the said appeal, whether he shall or shall not appear before the said Court in support of the decision. Costs of appeal.

For enabling an appellant to obtain such an order he may at or before the time of making his declaration of appeal under section forty-two of the Parliamentary Registration Act, 1843, require the revising barrister to name the clerk of the peace for the county or the town clerk for the parliamentary borough or municipal borough, as the case may be, to which the appeal relates to be respondent in the appeal. 6 & 7 Vict. c. 18, s. 42

The revising barrister if so required shall, and in any case may, name such clerk of the peace or town clerk, as the case may be, to be respondent in an appeal, either alone or in addition to any other person referred to in section forty-three of the Parliamentary Registration Act, 1843. 6 & 7 Vict c. 18, s. 43.

The expenses properly incurred by a clerk of the peace or town clerk as respondent, including any costs which he may be ordered to pay to the appellant in any such appeal, shall be allowed to him as part of the expenses incurred by him in respect of the revision of the list to which the appeal relates. The term "expenses" in this section shall include all matters mentioned in section thirty-one of the Representation of the People Act, 1867. 30 & 31 Vict. c. 102, s. 31

The costs of an appeal against a decision of a revising barrister shall be in the discretion of the Court hearing the appeal, subject, except as aforesaid, to the proviso contained in section seventy of the Parliamentary Registration Act, 1843. 6 & 7 Vict. c. 18, s. 70.

39. The authority having power to make rules for regulating the practice and procedure in Her Majesty's High Court of Justice may from time to time make, and when made alter and annul, rules for regulating the practice and procedure in the Courts of revising barristers for the purposes of the Parliamentary Registration Acts and of this Act. Power to make rules for proceedings at revision courts.

All rules made under this section shall be laid before each House of Parliament within forty days next after the same are made, if Parliament is then sitting, and if not, within forty days after the beginning of the then next sitting of Parliament, and if an address is presented to Her Majesty by either of the said Houses within the next subsequent forty days on which the said House shall have sat praying that any such rule be annulled, Her Majesty may by Order in Council annul the same, and any rule so annulled shall thenceforth be of no effect, but without prejudice to the validity of any proceedings in the meantime taken thereunder. Rules to be laid before Parliament.

All such rules shall while in force have effect as if enacted in this Act.

40. The provisions of section one hundred and one of the Parliamentary Electors Registration Act, 1843, as to the service of notices shall apply to the service of notices under this Act. Service of notices. 6 & 7 Vict. c. 18, s. 101.

The term "notice" in the Parliamentary Registration Acts and this Act shall include any document required to be sent or delivered.

41. [Application of 35 & 36 Vict. c. 33, s. 13 (1).]

42. [Saving for existing registers and burgess rolls (2).]

43. Nothing in this Act shall affect the provisions contained in section seventy-eight of the Reform Act, 1832. Saving for 2 & 3 Will. 4, c. 45, s. 78.

SCHEDULE.

FORM (A.) (3).

FORM of PRECEPT of the TOWN CLERK or other OFFICER issuing the PRECEPT to the OVERSEERS of any PARISH situate wholly or partly in a PARLIAMENTARY BOROUGH, or in a MUNICIPAL BOROUGH the whole or part of the Area of which is co-extensive with or included in the Area of a PARLIAMENTARY BOROUGH.

† Parliamentary borough of † / * Municipal borough of * to wit. } To the overseers of the poor of the parish of township of] [*or*

In pursuance of the provisions of the Parliamentary and Municipal Registration Act, 1878, and the Acts therein referred to, I require your attention to the following:

(1) Repealed, 45 & 46 Vict. c. 50, s. 5, but see now section 72 of that statute, *ante*, p. 288.
(2) Repealed by Statute Law Revision Act, 1883.
(3) See sections 8 and 24, *ante*, pp. 1281, 1284.
† Omit part between crosses if no part of parish is in a parliamentary borough.
* Omit part between asterisks if no part of parish is in a municipal borough.

Schedule.

Instructions.

Note.—Form B. in this schedule must be sent.

On or before the twentieth day of June you are to publish a notice [*or* notices], signed by you according to the form marked B. among the printed forms herewith sent.

The manner in which you are required to publish that notice is as follows; (that is to say), you are to fix one of the printed copies (each copy being first signed by you), on or near the outside of the outer door or of the outer wall near the door of every church and public chapel in your parish [*or* township], including chapels which do not belong to the Established Church, and also in some public and conspicuous position on or near every post office or telegraph office occupied by or on behalf of Her Majesty's Postmaster-General, and every public or municipal or parochial office in your parish [*or* township], or if there is no such church, chapel, or office, then in some public situation in your parish [*or* township], and it must remain there during a period including two Sundays at the least.

Note.—Form C. in this schedule must be sent.

Where any poor rate was on the first day of June due from an occupier in respect of any premises capable of conferring the franchise for the said †parliamentary *or† municipal* borough, you are on or before the twentieth day of June to give to that occupier a notice in the form marked C. sent herewith, by delivering it to the occupier, or leaving it at his last or usual place of abode, or with some person on the premises in respect of which the rate is payable and in case no such person can be found, then by affixing the notice upon some conspicuous part of such premises. You need not give this notice if the rate has been previously duly demanded by a demand note served in the like manner as the last-mentioned notice.

When a borough rate is levied as a separate rate and not as part of the poor rate, the precept should be altered accordingly so as to contain a reference to the borough rate.

On or before the twenty-second day of July next you are to make out a list containing the name and place of abode of every person who has not paid on or before the twentieth day of the same month all poor rates which have become due from him in respect of any premises within your parish [*or* township] before the fifth day of January last, and you are to keep that list to be perused by any person gratis at any time between 10 a.m. and 4 p.m. on any day except Sunday, during the first fourteen days after the said twenty-second day of July.

On or before the last day of July you are to make out a list of all persons †entitled under any right conferred by the Reform Act, 1832 (2 & 3 Will. IV. c. 45), or by section three of the Representation of the People Act, 1867, to be registered as parliamentary voters to vote at the election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of the occupation of property situate wholly or partly within your parish [*or* township], *or† entitled to be enrolled as burgesses of the municipal borough of in respect of the occupation of property situate wholly or partly within your parish [*or* township].*

* This list is to be made out in three divisions:

Division One is to comprise the names of the persons entitled both to be registered as parliamentary voters under a right conferred as aforesaid, and to be enrolled as burgesses.

Division Two is to comprise the names of the persons entitled to be registered as parliamentary voters under a right conferred as aforesaid, but not to be enrolled as burgesses.

Division Three is to comprise the names of the persons entitled to be enrolled as burgesses, but not to be registered as parliamentary voters under a right conferred as aforesaid.*

† On or before the last day of July you are also to make out a list of all persons who are entitled within your parish [*or* township] to be registered as parliamentary voters to vote at the election of a member [*or* members] to serve in Parliament for the said parliamentary borough in respect of any other right than a right conferred by the Reform Act, 1832, or by section three of the Representation of the People Act, 1867 (except as freemen or as lodgers).

On or before the last day of July you are also to make out a list of all persons who being on the register of voters now in force for the said parliamentary borough in respect of residence in lodgings within your parish [*or* township] have duly claimed, on or before the twenty-fifth day of July, to have their names inserted in the lists of parliamentary voters for the said borough in respect of residence in the same lodgings.†

Note.—The appropriate form must be sent.

These lists are [*or* this list is] to be in the form D. (*or, as the case may be,* E. *or* F.) sent herewith.

‡ On or before the last day of July you are also to make out a list (in the Form G. sent herewith) of all persons who are entitled, in respect of the occupation of property within your parish [*or* township], to be elected councillors or aldermen of the said municipal borough, but who are not entitled to be on the burgess roll thereof.‡

Note.—A printed copy of the directions in the schedule for the guidance of overseers in making out the lists must be enclosed.

In making out each of these lists you will follow the directions of which a copy is enclosed.

On or before the first day of August you are to sign and publish written or printed copies of these lists, in the same manner as before mentioned with respect to the notice.

Note.—A printed copy of the Table No. 1 in Schedule (D.) to the Parliamentary Registration Act, 1843, 6 & 7 Vict. c. 18, must be enclosed.

You are to keep a copy of these lists signed by you, †and also a copy of the lists of defaulters in payment of assessed taxes sent to you by the collector of taxes,† to be open to public inspection at any time between the hours of ten o'clock in the forenoon and four o'clock in the afternoon of any day, except Sunday, during the first fourteen days after the publication of the said lists, and to deliver copies of any such lists to any person on payment of a price for each

* Omit part between asterisks if no part of parish is in a municipal borough, or if no part of parish is in a parliamentary borough.

† Omit part between crosses if no part of parish is in a parliamentary borough.

‡ Omit part between asterisks if no part of parish is in a municipal borough, but unless it is omitted, send form G.

Schedule.

copy after the rate contained in the table marked "Parliamentary Registration Act, 1843, Schedule (D.), No. 1," sent herewith.

Note.—Forms marked K. and L. must be sent.

You are to make out lists according to the forms marked K. sent herewith, containing the names of every person who has given or caused to be given to you, or any one of you, on or before the twenty-fifth day of August, notice of his claim to have his name inserted in any list of voters, making separate lists of—

(1.) Persons claiming to be entered in the lists of parliamentary voters otherwise than as freemen or lodgers; and

(2.) Persons claiming to be entered in the lists of parliamentary voters as lodgers who are not comprised in the above-mentioned list of lodger voters; *and

(3.) Persons claiming to be entered in the burgess lists.*

You are also to make out lists according to the forms marked L. sent herewith, containing the names of every person against whom a notice of objection has been given to you, or any of you, on or before the twenty-fifth day of August, as not being entitled to have his name retained in any list for your parish [*or* township], giving in separate lists the objections made to—

(1.) Any person on the list of parliamentary voters other than the above-mentioned list of lodger voters;

(2.) Any person on the above-mentioned list of lodger voters;

(3.) Any person on the burgess list.

On or before the twenty-ninth day of August you are to deliver to me copies of the lists so respectively made out and signed by you as aforesaid.

On or before the first day of September you are to sign and publish each of the lists of claimants and persons objected to in the same manner as before mentioned with respect to the notice.

You are to keep a copy of each of the lists of claimants and persons objected to, signed by you, and these copies, and also the original notices of claims and of objections, are to be open to public inspection at any time between the hours of ten of the clock in the forenoon and four of the clock in the afternoon of any day, except Sunday, during the first fourteen days of September, and you are to deliver copies of each of these lists to any person on payment of a price for each copy after the rate contained in the table marked "Parliamentary Registration Act, 1843, Schedule (D.), No. 1," sent herewith.

If you find any such notice, list or other document published by you as aforesaid to be destroyed, mutilated, effaced, or removed, you are forthwith to place another in its room to the same effect.

You are to attend at the court to be holden for the revision of the said lists, of the time of holding which notice will be given; and at the opening of the court you are there to deliver to the barrister before whom the same is holden the several lists made out and signed by you, and the original notices of claims and of objections given to you.

Herein if you fail you will be liable to the penalties in that case provided.

Dated the day of 18 .

(Signed) *A. B.*,
Town Clerk of the Municipal Borough
of .

If the officer issuing precept is not the town clerk of a municipal borough, he should append to his signature his proper official description.

FORM B.

NOTICE to be Published by the OVERSEERS in a PARLIAMENTARY BOROUGH.

Parliamentary borough of , to wit. } We hereby give notice that no person will be entitled to have his name inserted in any list of parliamentary voters for the parliamentary borough of , now about to be made in respect of the occupation of any property situate wholly or partly within this parish [*or* township] unless he pays on or before the twentieth day of July all the poor rates which have become due from him in respect of those premises up to the fifth day of January last past; or to have his name inserted in any such list under any right conferred by the Reform Act, 1832, in respect of the occupation of any property situate as aforesaid, unless he pays on or before the twentieth day of July all assessed taxes which have become due from him in respect of those premises up to the fifth day of January last passed; and all persons who omit to make such payments will be incapable of being upon the next register of parliamentary voters for this borough in respect of those premises.

Dated the day of June 18 .

(Signed) *A. B.* } Overseers of the Parish [*or* Township]
C. D. } of .

NOTICE to be Published by the OVERSEERS in a MUNICIPAL BOROUGH (1).

Municipal borough of , to wit. } We hereby give notice that no person will be entitled to have his name inserted in any list of burgesses of the municipal borough of , now about to be made in respect of the occupation of any property situate wholly or partly within this parish [*or* township], unless he pays on or before

* Omit part between asterisks if no part of parish is in a municipal borough.

(1) This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

Schedule.

the twentieth day of July all poor rates and borough rates (if any) which have become due from him in respect of those premises up to the fifth day of January last past; and all persons who omit to make such payment will be incapable of being upon the next burgess roll for this borough in respect of those premises.

Dated the day of June 18 .

(Signed) *A. B.* } Overseers of the Parish [*or* Township]
C. D } of .

Note.—Where a parish is situate within both a parliamentary borough and a municipal borough, both the above notices must be issued.

FORM (C.) (1).

To *A. B.*
† Parliamentary borough of†
* Municipal borough of*

Take notice that you will not be entitled to have your name inserted† in the list of parliamentary voters for the parliamentary borough of * or † in the burgess lists for the municipal borough of * now about to be made in respect of the premises in your occupation in [*street or place*], unless you pay on or before the twentieth day of July next all the poor rates* (including borough rates, if any)* due from you in respect of those premises up to the fifth day of January last, amounting to £ , and if you omit to make such payment you will be incapable of being on the next † register of parliamentary voters for the said parliamentary borough* or † burgess roll for the said municipal borough.*

Dated the day of June, 18 .

(Signed) *C. D.* } Overseers,
E. F. }
or
G. H., Assistant Overseer,
or
I. K., Collector
of the Parish [*or* Township] of .

FORM (D.)

FORM of LISTS of PARLIAMENTARY VOTERS and BURGESSES for a PARISH wholly or partly situate both in a PARLIAMENTARY BOROUGH and in a MUNICIPAL BOROUGH.

No. 1.—LIST OF

N.B.—This list (No. 1) does not contain the names of any parliamentary voters except those entitled under some right conferred by the Reform Act, 1832, or by section 3 of the Representation of the People Act, 1867.

† The persons entitled under any right conferred by the Reform Act, 1832, or by section three of the Representation of the People Act, 1867, to be registered as parliamentary voters to vote at the election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of the occupation of property situate wholly or partly within this parish [*or* township],* and † the persons entitled to be enrolled as burgesses for the municipal borough of in respect of this occupation of property situate wholly or partly within this parish [*or* township].*

Division One. Persons entitled both to be Registered as Parliamentary Voters under a right conferred as aforesaid, and to be Enrolled as Burgesses.

1. Names of Voters in full, Surname being first.	2. Place of Abode.	3. Nature of Qualification.	4. Name and Situation of Qualifying Property.
Abrahams, Samuel -	4, Brick Street - -	House (joint) -	4, Brick Street.
Brown, Thomas - -	4, Brick Street - -	Shop - -	4, Brick Street.
Masters, Abel - -	1, Brick Street - -	House - -	1, Brick Street.
Smith, William - -	Wood Villa, Gainsborough.	Buildings - -	2, Brick Street.

(1) This form is to be used in every parliamentary borough, but only in a municipal borough the whole or part of the area of which is co-extensive with or included in the area of a parliamentary borough. If no part of the parish is in a parliamentary borough the parts between crosses are to be omitted. If no part of the parish is in a municipal borough the parts between asterisks are to be omitted. Where a borough rate is levied as a separate rate and not as part of the poor rate, the form should be altered accordingly, so as to distinguish the borough rate from the poor rate, and to state that omission to pay the borough rate will disqualify for enrolment as a burgess.

Division Two. Persons entitled to be registered as Parliamentary Voters under a right conferred as aforesaid, but not to be Enrolled as Burgesses.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.
Adams, John - -	24, Duke Street -	House - -	7, Brick Street.
Stubbs, Thomas - -	10, High Street -	Shop - -	4, Brick Street.

Division Three. Persons entitled to be Enrolled as Burgesses, but not to be Registered as Parliamentary Voters under a right conferred as aforesaid.

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.
Gardener, Mary - -	10, Brick Street - -	House - -	10, Brick Street.
Thompson, Henry -	14 John Street - -	Warehouse -	3, Brick Street.

(Signed) *A. B.* } Overseers of the Parish [*or* Township]
C. D. } of

No. 2.—List of

The persons entitled to be registered as Parliamentary Voters to vote at the election of a member [*or* members] to serve in Parliament for the parliamentary borough of in respect of any other right than a right conferred by the Reform Act, 1832, or by section 3 of the Representation of the People Act, 1867 (except as freemen or as lodgers).

Names of Voters in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property (if any).
Smith, John -	15, Brick Street - -	Inhabitant householder, paying scot and lot.	

(Signed) *A. B.* } Overseers of the Parish [*or* Township]
C. D. } of .

No. 3.—List of

The persons who being on the register of voters now in force for the parliamentary borough of in respect of residence in lodgings, within the parish [*or* township] of claim, in respect of residence in the same lodgings, to have their names inserted in the list of persons entitled to vote in the election of a member [*or* members] to serve in Parliament for the said borough.

Names of Claimants in full, Surname being first.	Description of Rooms occupied, and whether Furnished or not.	Street, Lane, or other Place, and Number, if any, of House in which Lodgings are situate.	Amount of Rent paid.	Name and Address of Landlord or other Person to whom Rent is paid.	Objections by Overseers.

(Signed) *A. B.* } Overseers of the Parish [*or* Township]
C. D. } of .

Form (E.)

Form of List of Parliamentary Voters for a Parish wholly or partly situate in a Parliamentary Borough, but not in a Municipal Borough.

This form is to be the same as Form D., omitting from List No. 1 the parts between asterisks, and omitting the words "*Division One. Persons entitled, &c.,*" forming the heading of Division one, and omitting Divisions two and three.

Schedule.

FORM (F.) (1).

FORM of LIST of Burgesses for a PARISH wholly or partly situate in a MUNICIPAL BOROUGH, but not in a PARLIAMENTARY BOROUGH.

This form is to be the same as Form D., No. 1, omitting the parts between crosses, and omitting the words "*Division One. Persons entitled, &c.,*" forming the heading of Division One, and omitting Divisions Two and Three.

FORM (G.) (1).

FORM of LIST of Occupiers in any Parish entitled to be elected Councillors or Aldermen of a Municipal Borough, though not entitled to be on the Burgess Roll of that Borough.

List of the persons who are entitled to be elected councillors or aldermen of the municipal borough of in respect of the occupation within the parish [*or* township] of of any property, but who are not entitled to be on the burgess roll of that borough.

1. Name of Persons in full, Surname being first.	2. Place of Abode.	3. Nature of Qualification.	4. Name and Situation of Qualifying Property.

(Signed) *A. B.* } Overseers of the Parish [*or* Township]
C. D. } of .

FORM (H.)

FORM OF NOTICE OF CLAIM.

NOS. 1 & 2.—PARLIAMENTARY.

NO. 3.—MUNICIPAL (1).

To the overseers of the parish [*or* township] of
I claim to have my name inserted in the list made by you of burgesses of the municipal borough of , in respect of the qualification named below.
Dated the day of , 18 .

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A. B.*

FORM (I.)

FORM OF NOTICE OF OBJECTION.

NOS. 1 AND 2.—PARLIAMENTARY.

NO. 3.—MUNICIPAL.

NOTICE of OBJECTION to be given to OVERSEERS (1).

To the overseers of the parish [*or* township] of
I hereby give you notice that I object to the name of being retained on the list of burgesses of the municipal borough of .
Dated the day of , 18 .
(Signed) *A. B.*, of [*place of abode*], on the List of Burgesses for the parish of .

(1) This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

No. 4.—MUNICIPAL.

NOTICE of OBJECTION to be given to PERSON objected to (1).

To Mr. ,

I hereby give you notice that I object to your name being retained on the list of burgesses of the municipal borough of , on the following grounds, viz.:—

1. *e. g.*, that you have not occupied for twelve months to July 15th.
2. That
3.

Dated the day of , 18 .

(Signed) *A. B.*, of [*place of abode*], on the List of Burgesses for the parish of .

Note.—If there is more than one burgess list the notice of objection in each of the above two cases, Nos. 3 and 4, should specify the list to which the objection refers, and if the list is made out in divisions, the notice of objection should specify the division to which the objection refers; and if the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to (2).

FORM (K.)

FORM of LIST of CLAIMANTS to be Published by the Overseers.

Nos. 1 & 2.—PARLIAMENTARY.

No. 3.—LIST of CLAIMANTS (MUNICIPAL) (1).

The following persons claim to have their names inserted in the Burgess Roll for the municipal borough of .

Name of Claimant in full, Surname being first.	Place of Abode.	Nature of Qualification.	Name and Situation of Qualifying Property.

(Signed) *A. B.* } Overseers of the Parish
C. D. } [*or* Township] of .

FORM (L.)

FORM of LIST of Persons Objected to to be Published by the Overseers.

Nos. 1 & 2.—PARLIAMENTARY.

No. 3.—LIST of PERSONS objected to (MUNICIPAL) (1).

The following persons have been objected to as not entitled to have their names retained on the Burgess Lists for the municipal borough of .

Name of Person objected to in full, Surname being first.	Place of Abode.	Nature of the supposed Qualification.	Name and Situation of Qualifying Property.

(Signed) *A. B.* } Overseers of the Parish
C. D. } [*or* Township] of .

FORM (M.)

DECLARATION for correcting misdescription in List.

I, , of No. , in the parish of , in the parliamentary borough of , and in the municipal borough of [*as the case may be*], do solemnly and sincerely declare as follows:—

1. I am the person referred to in Division of the List of Parliamentary Voters

(1) This form is to be used only where the whole or part of the area of the municipal borough is co-extensive with or included in the area of a parliamentary borough.

(2) See *Mortlock* v. *Farrer*; *Hall* v. *Cropper*, L. R. 5 C. P. D. 73, 49 L. J. C. P. 160, 41 L. T. N. S. 170, 28 W. R. 395.

Schedule.

and Burgesses made out in Divisions [or in the list of] (*specifying the particular list*) made out for the parish of , by an entry as follows:—

Name as described in List.	Place of Abode. as described in List.	Nature of Qualification, as described in List.	Name and Situation of Qualifying Property.
Brown, John -	High Street - -	Shop - - - - -	2, Shire Lane.

2. My correct name and place of abode, and the correct particulars respecting my qualification, are, and ought to be stated for the purposes of the register about to be made up of voters for the parliamentary borough of , and the burgess roll about to be made up of burgesses for the municipal borough of [*as the case may be*] as follows:—

Correct Name.	Correct place of Abode.	Correct nature of Qualification (1).	Correct Name and Situation of Qualifying Property.
Brown, Joseph -	15, High Street - -	House - - -	24, Shire Lane.

Dated this day of , 18 .
(Signed)

The person before whom the declaration is made should affix his official description.

Made and subscribed before me this day of , 18 .
A. B.,
Justice of the Peace for .

FORM (N.)

NOTICE OF WITHDRAWAL OF OBJECTION.

No. 1.—NOTICE to the PERSON objected to.

To Mr. *

I hereby give you notice that I withdraw my objection to your name being retained on the list of †so far as regards the ground of objection numbered in my notice to you of such objection†.

Dated the day of , 18 .
(Signed) §

No. 2.—NOTICE to the TOWN CLERK.

To the Town Clerk of *

I hereby give you notice that I withdraw my objection to the name of being retained on the list of †so far as regards the ground of objection numbered in my notice to him of such objection†.

Dated the day of , 18.
(Signed) §

FORM (O.)

NOTICE of REVIVING an OBJECTION.

No. 1.—NOTICE to the PERSON objected to.

To Mr. *

I hereby give you notice that I revive the objection which was made by , since deceased, to your name being retained on the list of ‡so far as regards the ground of objection numbered in the notice to you of such objection‡.

Dated the day of , 18 .
(Signed) §

(1) See *Porrett* v. *Lord*, *ante*, p. 1284.

* The list should be referred to in the manner prescribed for the notice of objection.

† Omit the words between crosses if the objection is wholly withdrawn.

‡ Omit the words between crosses if the objection is wholly revived.

§ The notice should be signed in the manner prescribed for the notice of objection.

Schedule.

No. 2.—NOTICE to the TOWN CLERK.

To the Town Clerk of *

I hereby give you notice that I revive the objection which was made by , since deceased, to the name of being retained on the list of † so far as regards the ground of objection numbered in the notice to the person objected to of such objection†.

Dated the day of , 18 .

(Signed) ‡

NOTE (P.)

DIRECTIONS for the Guidance of Overseers in making out the Lists.

The following directions should be observed by overseers in making out the lists of parliamentary voters and burgesses, and also the lists of claimants and persons objected to as parliamentary voters and burgesses.

(1.) The surname and other name or names of each person are to be written at full length, the surname being placed first.

(2.) Each list, and where the list is made out in divisions, each division of each list should be made out in alphabetical order.

(3.) The place of abode should be entered with the name of the street, lane, or other locality, and the number in such street, lane, or other locality of such place of abode, where there is any such name or number, and should be entered in all cases in such a manner as will afford a full and sufficient address for a person entered if a letter is addressed to him by post.

(4.) The nature of the qualification should be entered as nearly as possible in the words of the statute conferring the franchise, for instance:—

(*a*.) The nature of the qualification of a person under the Reform Act, 1832 (2 & 3 Will. 4, c. 45), or under the Municipal Corporations Acts (1), should be stated thus; "house," or in case of a joint occupation, "house (joint)," or "warehouse," "counting-house," "shop," or "building," or in the manner provided by the Parliamentary and Municipal Registration Act, 1878, as the case may be:

(*b*.) The nature of the qualification of a person under section 3 of the Representation of the People Act, 1867, should be stated thus, "dwelling-house."

(5.) The name and situation of the qualifying property, if the qualification is in respect of property, should be entered with the name of the street, lane, or other locality, and the number in such street, lane, or other locality of such property, where there is any such name or number, and should be entered in all cases in such a manner as will afford full and sufficient means of identifying such property.

(6.) Where several qualifications are possessed by the same person, the particulars respecting each qualification should be stated in the list; and in the case of a list made out in divisions, where a person is entered in Division 1 in respect of one qualification for parliamentary purposes, and in respect of another qualification for municipal purposes, each such qualification should be distinguished in the list by a note to the effect that the qualification is for parliamentary purposes only, or for municipal purposes only, as the case may be.

(7.) In making out the list of lodger claimants who claim on or before the twenty-fifth day of July, and are then on the register in respect of the same lodgings, if you have reason to believe that any person whose name is entered on that list is dead, or is not entitled to vote, you should make a note to that effect in the last column of the list, being the column headed "Objections by overseers."

(8.) You should omit from any list of parliamentary voters or burgesses the name of any person who appears from the returns furnished by the registrar of births and deaths to be dead, and the name of any person who is ascertained to be disqualified for being inserted in the list by reason of having received parochial relief or other alms.

Note.—If the local authority has given any special directions as to the mode of making out the list the town clerk or other officer issuing the precepts must modify direction (2) accordingly.

NOTE (Q.)

DIRECTIONS for Guidance in the formation of the PARLIAMENTARY REGISTER and BURGESS ROLL.

In copying and printing Divisions 1 and 2 for the parliamentary register, and Divisions 1 and 3 for the burgess roll, of any revised list made out in divisions under this Act, the two divisions in each set may, and, if and so far as the local authority under the Act shall so direct, shall be combined or kept separate, and be arranged according to convenience for use in parts for polling districts or wards, and where the polling districts and wards are not conterminous in such manner that the parts may be conveniently compiled or put together to serve either as lists for polling districts or as ward lists; and the names may, and, if and so far as the said local authority shall so direct, shall be distinguished by a number either alone, or in combination with a letter or other distinguishing mark according to the parts, and any arrangement may, and, if and so far as the said local authority shall so direct, shall be adopted according to convenience, so that one print or edition of Division 1 may be available for both sets.

* The list should be referred to in the manner prescribed for the notice of objection.
† Omit the words between crosses if the objection is wholly revived.
‡ The notice should be signed in the manner prescribed for the notice of objection.
(1) See 45 & 46 Vict. c. 50, s. 9 (2), *ante*, p. 271.

Schedule.

Each entry for voting on the parliamentary register of every parliamentary borough, and on the burgess roll of every municipal borough whose burgess lists are revised under this Act, is to be distinguished by a number, either alone or in combination with a letter or distinguishing mark.

Any entry of a person not entitled to vote in respect of the qualification therein contained, he being on the list for voting in respect of another qualification, is to be denoted by an asterisk in the manner provided by section forty-seven of the Parliamentary Registration Act, 1843, with respect to similar entries in the register for counties.

The officer having the custody of any revised lists under this Act shall permit access thereto for the purpose of the same being copied for the parliamentary register of the parliamentary borough, and for the burgess roll of any municipal borough to which such revised lists relate.

MUNICIPAL ELECTIONS (CORRUPT AND ILLEGAL PRACTICES) ACT, 1884.

47 & 48 VICT. c. 70.

An Act for the better Prevention of Corrupt and Illegal Practices at Municipal and other Elections.
[14*th August*, 1884.]

Corrupt Practices.

Secs. 2—4.

Definition and punishment of corrupt practice at municipal election.

2. (1.) The expression "corrupt practice" in this Act means any of the following offences, namely, treating, undue influence, bribery, and personation as defined by the enactments set forth in part one of the third schedule to this Act, and aiding, abetting, counselling, and procuring the commission of the offence of personation.

(2.) A person who commits any corrupt practice in reference to a municipal election shall be guilty of the like offence, and shall on conviction be liable to the like punishment, and subject to the like incapacities, as if the corrupt practice had been committed in reference to a parliamentary election.

Incapacity of candidate reported guilty of corrupt practice. 45 & 46 Vict. c. 50.

3. (1.) Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the report of an election court made in pursuance of section ninety-three of the Municipal Corporations Act, 1882, that any corrupt practice, other than treating and undue influence, has been proved to have been committed in reference to such election by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of ever holding a corporate office in the said borough, and if he has been elected his election shall be void; and he shall further be subject to the same incapacities as if at the date of the said report he had been convicted of a corrupt practice.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any corrupt practice having been committed in reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by his agents of any corrupt practice in reference to such election, and if the report is that any candidate at such election has been guilty by his agents of a corrupt practice in reference to such election, that candidate shall not be capable of being elected to or holding any corporate office in the said borough, during a period of three years from the date of the report, and if he has been elected, his election shall be void.

Illegal Practices.

Certain expenditure to be illegal practice.

4. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made—

(*a*) on account of the conveyance of electors to or from the poll whether for the hiring of horses or carriages, or for railway fares, or otherwise; or

(*b*) to an elector on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill, or notice; or

(*c*) on account of any committee room in excess of the number allowed by this Act (that is to say), if the election is for a borough one committee room for the borough, and if the election is for a ward one committee room for the ward, and if the number of electors in such borough or ward exceeds two thousand, one additional committee room for every two thousand electors and incomplete part of two thousand electors, over and above the said two thousand.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after a municipal election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this Act, shall also be guilty of an illegal practice.

(3.) Provided that where it is the ordinary business of an elector as an advertising agent to exhibit for payment bills and advertisements, a payment to or contract with such elector if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section.

Expense in excess of maximum to be illegal practice.

5. (1.) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by or on behalf of a candidate at an election, whether before, during, or after an election, on account of or in respect of the conduct or management of such election, save that in the case of an election of a councillor a sum may be paid and expense incurred not in excess of the maximum amount following; (that is to say,)

The sum of twenty-five pounds, and, if the number of electors in the borough or ward exceeds five hundred, an additional amount of threepence for each elector above the first five hundred electors.

(2.) Any candidate or agent of a candidate or person who knowingly acts in contravention of this section shall be guilty of an illegal practice.

(3.) Where there are two or more joint candidates at an election the maximum amount of expenses shall, for each of such joint candidates, be reduced by one-fourth, or if there are more than two joint candidates by one-third.

(4.) Where two or more candidates at the election, by themselves or any agent or agents, hire or use the same committee rooms for such election, or employ or use the services of the same clerks, messengers, or polling agent at such election, or publish a joint address or joint circular or notice at such election, those candidates shall be deemed for the purposes of this enactment to be joint candidates at such election: Provided that—

(*a.*) The employment and use of the same committee room, clerk, messenger, or polling agent, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates:

(*b.*) Nothing in this enactment shall prevent candidates from ceasing to be joint candidates:

(*c.*) Where any excess of expenses above the maximum allowed for one of two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate, and such ceasing or beginning was in good faith, and such excess is not more than under the circumstances is reasonable, and the total expenses of such candidate do not exceed the maximum amount allowed for a separate candidate, such excess shall be deemed to have arisen from a reasonable cause within the meaning of the enactments respecting the allowance by the High Court or election court of an exception from the provisions of this Act which would otherwise make an act an illegal practice, and the candidate may be relieved accordingly from the consequences of having incurred such excess of expenses.

Voting by prohibited persons and publishing of false statements of withdrawal to be illegal.

6. (1.) If any person votes or induces or procures any person to vote at a municipal election, knowing that he or such person is prohibited, whether by this or any other Act, from voting at such election, he shall be guilty of an illegal practice.

(2.) Any person who before or during a municipal election knowingly publishes a false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice.

(3.) Provided that a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this section committed without his knowledge and consent.

Punishment on conviction of illegal practice.

7. A person guilty of an illegal practice in reference to a municipal election, shall on summary conviction be liable to a fine not exceeding one hundred pounds and be incapable during a period of five years from the date of his conviction of being registered as an elector or voting at any election (whether it be a parliamentary election or an election for a public office within the meaning of this Act) held for or within the borough in which the illegal practice has been committed.

Incapacity of candidate reported guilty of illegal practice. 45 & 46 Vict. c. 50.

8. (1.) An illegal practice within the meaning of this Act shall be deemed to be an offence against Part IV. of the Municipal Corporations Act, 1882, and a petition alleging such illegal practice may be presented and tried accordingly.

(2.) Upon the trial of an election petition respecting a municipal election for a borough or ward of a borough in which a charge is made of any illegal practice having been committed in

Secs. 8—13.

reference to such election, the election court shall report in writing to the High Court whether any of the candidates at such election has been guilty by himself or his agents of an illegal practice in reference to such election, and if the report is that a candidate at such election has been guilty by himself or his agents of an illegal practice in reference to such election, the candidate shall not be capable of being elected to or of holding any corporate office in the said borough during the period for which he was elected to serve, or for which if elected he might have served, and if he was elected, his election shall be void; and, if the report is that such candidate has himself been guilty of such illegal practice, he shall also be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.

Illegal Payment, Employment, and Hiring.

Providing of money for illegal practice or payment to be illegal payment.

9. Where a person knowingly provides money for any payment which is contrary to the provisions of this Act, or for any expenses incurred in excess of any maximum amount allowed by this Act, or for replacing any money expended in any such payment, except where the same may have been previously allowed in pursuance of this Act to be an exception, such person shall be guilty of illegal payment.

Employment of hackney carriages, or of carriages and horses kept for hire.

10. (1.) A person shall not let, lend, or employ for the purpose of the conveyance of electors to or from the poll at a municipal election, any public stage or hackney carriage, or any horse or other animal kept or used for drawing the same, or any carriage, horse, or other animal which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such carriage, horse, or other animal, knowing that it is intended to be used for the purpose of the conveyance of electors to or from the poll, he shall be guilty of illegal hiring.

(2). A person shall not hire, borrow, or use for the purpose of the conveyance of electors to or from the poll any carriage, horse, or other animal which he knows the owner thereof is prohibited by this section to let, lend, or employ for that purpose, and if he does so he shall be guilty of illegal hiring.

(3.) Nothing in this Act shall prevent a carriage, horse, or other animal being let to or hired, employed, or used by an elector, or several electors at their joint cost, for the purpose of conveying him or them to or from the poll.

(4.) No person shall be liable to pay any duty or to take out a license for any carriage by reason only of such carriage being used without payment or promise of payment for the conveyance of electors to or from the poll at an election.

Corrupt withdrawal from a candidature.

11. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a municipal election, in consideration of any payment or promise of payment, shall be guilty of illegal payment, and any person withdrawing in pursuance of such inducement or procurement shall also be guilty of illegal payment.

Certain expenditure to be illegal payment.

12. (1.) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be made on account of bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is made in contravention of this section, either before, during, or after an election, the person making such payment shall be guilty of an illegal payment, and any person being a party to any such contract or receiving such payment shall also be guilty of illegal payment if he knew that the same was made contrary to law.

Certain employment to be illegal.

13. (1.) No person shall, for the purpose of promoting or procuring the election of a candidate at a municipal election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except as follows (that is to say),

(*a*) a number of persons may be employed, not exceeding two for a borough or ward, and if the number of electors in such borough or ward exceeds two thousand one additional person may be employed for every thousand electors and incomplete part of a thousand electors over and above the said two thousand, and such persons may be employed as clerks and messengers, or in either capacity; and

(*b*) one polling agent may be employed in each polling station:

Provided that this section shall not apply to any engagement or employment for carrying into effect a contract *bonâ fide* made with any person in the ordinary course of business.

(2.) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of illegal employment, and the person so engaged or employed shall also be guilty of illegal employment if he knew that he was engaged or employed in contravention of this Act.

(3.) A person legally employed for payment under this section may or may not be an elector, but may not vote.

14. Every bill, placard, or poster having reference to a municipal election shall bear upon the face thereof the name and address of the printer and publisher thereof; and any person printing, publishing, or posting, or causing to be printed, published, or posted, any such bill, placard, or poster as aforesaid, which fails to bear upon the face thereof the name and address of the printer and publisher, shall, if he is a candidate, be guilty of an illegal practice, and if he is not the candidate, shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Name and address of printer on placards.

15. The provisions of this Act prohibiting certain payments and contracts for payments, and the payment of any sum, and the incurring of any expense, in excess of a certain maximum, shall not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of the same being in contravention of this Act.

Saving for creditors.

16. (1.) (*a.*) Any premises, which are licensed for the sale of any intoxicating liquor for consumption on or off the premises, or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on the premises, or

(*b.*) Any premises where any intoxicating liquor is supplied to members of a club, society, or association, or any part of any such premises,

shall not, for the purpose of promoting or procuring the election of a candidate at a municipal election, be used either as a committee room or for holding a meeting, and if any person hires or uses any such premises or any part thereof in contravention of this section he shall be guilty of illegal hiring, and the person letting or permitting the use of such premises or part thereof, if he knew it was intended to use the same in contravention of this section, shall also be guilty of illegal hiring.

(2.) Provided that nothing in this section shall apply to any part of such premises which is ordinarily let for the purpose of chambers or offices for the holding of public meetings or of arbitrations, if such part has a separate entrance and no direct communication with any part of the premises on which any intoxicating liquor or refreshment is sold or supplied as aforesaid.

Use of certain premises for committee rooms or meetings to be illegal hiring.

17. (1.) A person guilty of an offence of illegal payment, employment, or hiring shall, on summary conviction, be liable to a fine not exceeding one hundred pounds.

(2.) Where an offence of illegal payment, employment, or hiring is committed by a candidate, or with his knowledge and consent, such candidate shall be guilty of an illegal practice.

Punishment of illegal payment, employment, or hiring.

18. Where upon the trial of an election petition respecting a municipal election for a borough or ward of a borough it is found by the election court that illegal practices or offences of illegal payment, employment, or hiring, committed in reference to such election for the purpose of promoting the election of a candidate at that election, have so extensively prevailed that they may be reasonably supposed to have affected the result of that election, the election court shall report such finding to the High Court, and the election of such candidate, if he has been elected, shall be void, and he shall not, during the period for which he was elected to serve, or for which, if elected, he might have served, be capable of being elected to or holding any corporate office in the said borough.

Avoidance of election for extensive illegal practices, &c.

Excuse and Exception for Corrupt or Illegal Practice or Illegal Payment, Employment, or Hiring.

19. Where, upon the trial of an election petition respecting a municipal election, the election court reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence, and illegal practice, or of any of such offences, in reference to such election, and the election court further report that the candidate has proved to the court—

(*a.*) That no corrupt or illegal practice was committed at such election by the candidate or with his knowledge or consent, and the offences mentioned in the said report were committed without the sanction or connivance of such candidate; and

(*b.*) That all reasonable means for preventing the commission of corrupt and illegal practices at such election were taken by and on behalf of the candidate; and

(*c.*) That the offences mentioned in the said report were of a trivial, unimportant, and limited character; and

(*d.*) That in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;

then the election of such candidate shall not, by reason of the offences mentioned in such report, be void, nor shall the candidate be subject to any incapacity under this Act.

Report exonerating candidate in certain cases of corrupt and illegal practice by agents.

20. Where, on application made, it is shown to the High Court or to a municipal election court by such evidence as seems to the court sufficient—

(*a.*) That any act or omission of a candidate at a municipal election for a borough or ward of a borough, or of any agent or other person, would, by reason of being in contravention of any of the provisions of this Act, be but for this section an illegal practice, payment, employment, or hiring; and

Power of High Court and election court to except innocent act from being illegal practice, &c.

Secs. 20, 21.

(*b.*) that such act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith; and

(*c.*) that such notice of the application has been given in the said borough as to the court seems fit;

and under the circumstances it seems to the court to be just that the said candidate, agent and person, or any of them, should not be subject to any of the consequences under this Act of the said act or omission, the court may make an order allowing such act or omission to be an exception from the provisions of this Act, which would otherwise make the same an illegal practice, payment, employment, or hiring, and thereupon such candidate, agent, or person shall not be subject to any of the consequences under this Act of the said act or omission.

Sending in claims and making payments for election expenses.

21. (1.) Every claim against any person in respect of any expenses incurred by or on behalf of a candidate at an election of a councillor on account of or in respect of the conduct or management of such election shall be sent in within fourteen days after the day of election, and if not so sent in shall be barred and not paid, and all expenses incurred as aforesaid shall be paid within twenty-one days after the day of election, and not otherwise, and any person who makes a payment in contravention of this section, except where such payment is allowed as provided by this section, shall be guilty of an illegal practice, but if such payment was made without the sanction or connivance of the candidate, the election of such candidate shall not be void, nor shall he be subject to any incapacity under this Act by reason only of such payment having been made in contravention of this section.

(2.) Every agent of a candidate at an election of a councillor shall, within twenty-three days after the day of election, make a return to the candidate in writing of all expenses incurred by such agent on account of or in respect of the conduct or management of such election, and if he fails so to do shall be liable, on summary conviction, to a fine not exceeding fifty pounds.

(3.) Within twenty-eight days after the day of election of a councillor, every candidate at such election shall send to the town clerk a return of all expenses incurred by such candidate or his agents on account of or in respect of the conduct or management of such election, vouched (except in the case of sums under twenty shillings) by bills stating the particulars and receipts, and accompanied by a declaration by the candidate made before a justice in the form set forth in the Fourth Schedule to this Act, or to the like effect.

(4.) After the expiration of the time for making such return and declaration, the candidate, if elected, shall not, until he has made the return and declaration (in this Act referred to as the return and declaration respecting election expenses), or until the date of the allowance of such authorised excuse, as is mentioned in this Act, sit or vote in the council, and if he does so shall forfeit fifty pounds for every day on which he so sits or votes to any person who sues for the same.

(5.) If the candidate without such authorised excuse as is mentioned in this Act fails to make the said return and declaration, he shall be guilty of an illegal practice, and if he knowingly makes the said declaration falsely he shall be guilty of an offence, and on conviction thereof on indictment shall be liable to the punishment for wilful and corrupt perjury, and such offence shall also be deemed to be a corrupt practice within the meaning of this Act.

(6.) The county court for the district in which the election was held, or the High Court, or an election court, may, on application either of the candidate or a creditor, allow any claim to be sent in and any expense to be paid after the time limited by this section, and a return of any sum so paid shall forthwith after payment be sent to the town clerk.

(7.) If the candidate applies to the High Court or an election court, and shows that the failure to make the said return and declaration, or either of them, or any error or false statement therein, has arisen by reason of his illness or absence, or of the absence, death, illness, or misconduct of any agent, clerk, or officer, or by reason of inadvertence, or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the court may, after such notice of the application and on production of such evidence of the grounds stated in the application, and of the good faith of the applicant, and otherwise as to the court seems fit, make such order for allowing the authorised excuse for the failure to make such return and declaration, or for an error or false statement in such return or declaration, as to the court seems just.

(8.) The order may make the allowance conditional upon compliance with such terms as to the court seems calculated for carrying into effect the objects of this Act, and the order shall relieve the applicant from any liability or consequences under this Act in respect of the matters excused by the order.

(9.) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse.

(10.) The return and declaration sent in pursuance of this Act to the town clerk shall be kept at his office, and shall at all reasonable times during the twelve months next after they are received by him be open to inspection by any person on payment of the fee of one shilling, and the town clerk shall, on demand, furnish copies thereof or of any part thereof at the price of twopence for every seventy-two words.

(11.) After the expiration of the said twelve months, the town clerk may cause the return and declaration to be destroyed, or if the candidate so require, shall return the same to him.

Disqualification of Electors.

Prohibition of persons guilty of offences from voting.

22. Every person guilty of a corrupt or illegal practice, or of illegal employment, payment, or hiring at a municipal election is prohibited from voting at such election, and if any such person votes his vote shall be void, and shall be struck off on a scrutiny.

Application of sections 37 and 38 of 46 & 47 Vict. c. 51.

23. So much of sections thirty-seven and thirty-eight of the Corrupt and Illegal Practices Prevention Act, 1883, as is set forth in Part II. of the Third Schedule to this Act, shall apply as part of this Act.

List in burgess roll of persons incapacitated for voting by corrupt or illegal practices.

24. (1.) The town clerk in every municipal borough shall annually in July make out a list containing the names and description of all persons who, though otherwise qualified to be enrolled as burgesses of such borough, have under this Act, or under the Corrupt and Illegal Practices Prevention Act, 1883, or under any other Act for the time being in force relating to a parliamentary election or an election to any public office, become after the commencement of this Act, by reason of conviction of a corrupt or illegal practice, or of the report of any election court or election commissioners, incapable of voting at a municipal election in such borough or any ward thereof, and the town clerk shall state in the list (in this Act referred to as the corrupt and illegal practices list), the offence of which each person has been found guilty.

(2.) For the purpose of making out such list, he shall examine the report of any election court or election commissioners who have respectively tried an election petition or inquired into an election where the election (whether a parliamentary election or an election to any public office) was held in the said borough or in the county in which such borough is situate.

(3.) The town clerk of any municipal borough shall, not less than fourteen days before the first day appointed by law for the publication of the parish burgess lists in such borough, send the corrupt and illegal practices list to the overseers of every parish wholly or partly within the borough, and the overseers shall publish that list, together with the parish burgess lists, and shall also, in the case of every person in the corrupt and illegal practices list, omit his name from the list of persons entitled to be enrolled as burgesses or to be elected councillors, or, as circumstances require, add "objected" before his name in the list of claimants published by them, in like manner as is required by law in any other cases of disqualification.

(4.) Any person named in the corrupt and illegal practices list may claim to have his name omitted therefrom, and any person entitled to object to any parish burgess list may object to the omission of the name of any person from such first-mentioned list. Such claims and objections shall be sent in within the same time, and be dealt with in like manner, and any such objection shall be served on the person referred to therein in like manner, as nearly as circumstances admit, as other claims and objections under the enactments relating to the enrolment of burgesses.

(5.) The revising authority shall determine such claims and objections, and shall revise such list in like manner, as nearly as circumstances admit, as in the case of other claims and objections and of any parish burgess list and list of persons entitled to be elected councillors.

(6.) Where it appears to the revising authority that a person not named in the list is subject to have his name inserted in the corrupt and illegal practices list, he shall (whether an objection to the omission of such name from the list has or has not been made, but) after giving such person an opportunity of making a statement to show cause to the contrary, insert his name in that list and expunge his name from any list of burgesses or of persons entitled to be elected councillors.

(7.) A revising authority in acting under this section shall determine only whether a person is incapacitated by conviction or by the report of any election court or election commissioners, and shall not determine whether a person has or has not been guilty of any corrupt or illegal practice.

(8.) The corrupt and illegal practices list shall be appended to the burgess roll, and shall be printed and published therewith wherever the same is printed or published.

(9.) Any town clerk or overseer who fails to comply with the provisions of this section shall be liable to the like fine as he is liable to under section seventy-five of the Municipal Corporations Act, 1882, for any neglect or refusal in relation to a parish burgess list as therein mentioned. 45 & 46 Vict. c. 50.

Proceedings on Election Petitions.

Petition for illegal practice.

25. (1.) A municipal election petition complaining of the election on the ground of an illegal practice may be presented at any time before the expiration of fourteen days after the day on which the town clerk receives the return and declaration respecting election expenses by the candidate to whose election the petition relates, or where there is an authorised excuse for failing to make the return and declaration then within the like time after the date of the allowance of the excuse.

Time for presentation of petition alleging illegal practices.

(2.) A municipal election petition, complaining of the election on the ground of an illegal practice, and specifically alleging a payment of money or other act made or done since the election by the candidate elected at such election, or by an agent of the candidate, or with the privity of the candidate, in pursuance or in furtherance of such illegal practice, may be presented at any time within twenty-eight days after the date of such payment or act, whether or not any other petition against that person has been previously presented or tried.

45 & 46 Vict. c. 50.

(3.) Any election petition presented within the time limited by the Municipal Corporations Act, 1882, may, for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice can, under this section, be presented.

(4.) This section shall apply notwithstanding the illegal practice is also a corrupt practice.

Withdrawal of election petition.

26. (1.) Before leave for the withdrawal of a municipal election petition is granted, there shall be produced affidavits by all the parties to the petition and their solicitors, but the High Court may on cause shown dispense with the affidavit of any particular person if it seems to the court on special grounds to be just so to do.

(2.) Each affidavit shall state that, to the best of the deponent's knowledge and belief, no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, in relation to the withdrawal of the petition; but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement, and shall make the foregoing statement subject to what appears from the affidavit.

(3.) The affidavits of the applicant and his solicitor shall further state the ground on which the petition is sought to be withdrawn.

(4.) If any person makes any agreement or terms, or enters into any undertaking, in relation to the withdrawal of an election petition, and such agreement, terms, or undertaking is or are for the withdrawal of the election petition in consideration of any payment, or in consideration that the seat shall at any time be vacated, or in consideration of the withdrawal of any other election petition, or is or are (whether lawful or unlawful) not mentioned in the aforesaid affidavits, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding twelve months, and to a fine not exceeding two hundred pounds.

(5.) Copies of the said affidavits shall be delivered to the Director of public prosecutions a reasonable time before the application for the withdrawal is heard, and the court may hear the Director of public prosecutions or his assistant or other representative (appointed with the approval of the Attorney-General), in opposition to the allowance of the withdrawal of the petition, and shall have power to receive the evidence on oath of any person or persons whose evidence the Director of public prosecutions or his assistant, or other representative, may consider material.

45 & 46 Vict. c. 50.

(6.) Where in the opinion of the court the proposed withdrawal of a petition was the result of any agreement, terms, or undertaking prohibited by this section, the court shall have the same power with respect to the security as under section ninety-five of the Municipal Corporations Act, 1882, where the withdrawal is induced by a corrupt consideration.

(7.) In every case of the withdrawal of an election petition, by leave of the election court such court shall report in writing to the High Court whether, in the opinion of such election court, the withdrawal of such petition was the result of any agreement, terms, or undertaking, or was in consideration of any payment, or in consideration that the seat should at any time be vacated, or in consideration of the withdrawal of any other election petition, or for any other consideration, and if so, shall state the circumstances attending the withdrawal.

(8.) Where more than one solicitor is concerned for the petitioner or respondent, whether as agent for another solicitor or otherwise, the affidavit shall be made by all such solicitors.

Continuation of trial of election petition.

27. The trial of every municipal election petition shall, so far as is practicable consistently with the interests of justice in respect of such trial, be continued *de die in diem* on every lawful day until its conclusion.

Attendance of Director of public prosecu-

28. (1.) On every trial of a municipal election petition the Director of public prosecutions shall by himself or by his assistant, or by such representative as hereinafter mentioned, attend at the

Section 28.

tions on trial of election petition, and prosecution by him of offenders.

trial, and it shall be the duty of such Director to obey any directions given to him by the election court with respect to the summoning and examination of any witness to give evidence on such trial, and with respect to the prosecution by him of offenders, and with respect to any person to whom notice is given to attend with a view to report him as guilty of any corrupt or illegal practice.

(2.) It shall also be the duty of such Director, without any direction from the election court, if it appears to him that any person is able to give material evidence as to the subject of the trial, to cause such person to attend the trial, and with the leave of the court to examine such person as a witness.

(3.) It shall also be the duty of the said Director, without any direction from the election court, if he thinks it expedient in the interests of justice so to do, to prosecute, either before the said court or before any other competent court, any person who has not received a certificate of indemnity and who appears to him to have been guilty of a corrupt or illegal practice at a municipal election.

(4.) Where a person is prosecuted before an election court for any corrupt or illegal practice, and such person appears before the court, the court shall proceed to try him summarily for the said offence, and such person, if convicted thereof upon such trial, shall be subject to the same incapacities as he is subject to under this or any other Act, upon conviction, whether on indictment or in any other proceeding for the said offence; and further, may be adjudged by the court, if the offence is a corrupt practice, to be imprisoned, with or without hard labour, for a term not exceeding six months, or to pay a fine not exceeding two hundred pounds, and if the offence is an illegal practice, to pay such fine as is fixed by this Act for the offence:

Provided that, in the case of a corrupt practice, the court, before proceeding to try summarily any person, shall give such person the option of being tried by a jury.

(5.) Where a person is so prosecuted for any such offence, and either he elects to be tried by a jury or he does not appear before the court, or the court thinks it in the interests of justice expedient that he should be tried before some other court, the court, if of opinion that the evidence is sufficient to put the said person upon his trial for the offence, shall order such person to be prosecuted on indictment or before a court of summary jurisdiction, as the case may require, for the said offence; and in either case may order him to be prosecuted before such court as may be named in the order; and for all purposes preliminary and of and incidental to such prosecution the offence shall be deemed to have been committed within the jurisdiction of the court so named.

(6.) Upon such order being made,

(*a.*) If the accused person is present before the court, and the offence is an indictable offence, the court shall commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence; and

(*b.*) If the accused person is present before the court, and the offence is not an indictable offence, the court shall order him to be brought before the court of summary jurisdiction before whom he is to be prosecuted, or cause him to give bail to appear before that court; and

(*c.*) If the accused person is not present before the court, the court shall as circumstances require issue a summons for his attendance, or a warrant to apprehend him and bring him before a court of summary jurisdiction, and that court, if the offence is an indictable offence, shall, on proof only of the summons or warrant and the identity of the accused, commit him to take his trial, or cause him to give bail to appear and take his trial for the said offence, or if the offence is punishable on summary conviction, shall proceed to hear the case, or if such court be not the court before whom he is directed to be prosecuted shall order him to be brought before that court.

(7.) Any order or act of an election court under this section shall not be subject to be discharged or varied under sub-section six of section ninety-two of the Municipal Corporations Act, 1882. 45 & 46 Vict. c. 50.

(8.) The Director of public prosecutions may nominate, with the approval of the Attorney-General, any barristers or solicitors of not less than ten years' standing, one of whom shall, when required, act as the representative for the purposes of this section of such Director, and when so acting shall receive such remuneration as the Treasury may approve. There shall be allowed to the Director and his assistant or representative, for the purposes of this section, such allowance for expenses as the Treasury may approve.

(9.) The costs incurred in defraying the expenses of the Director of public prosecutions under this section (including the remuneration of his representatives) shall, in the first instance, be paid by the Treasury, and so far as they are not in the case of any prosecution paid by the defendant, shall be deemed to be expenses of the election court, and shall be paid as the expenses of that

Secs. 28–31.

45 & 46 Vict. c. 50.

court are directed by section one hundred and one of the Municipal Corporations Act, 1882, to be paid; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of the said costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct.

Power to election court to order payment by borough or individual of costs of election petition.

29. (1.) Where upon the trial of a municipal election petition it appears to the election court that a corrupt practice has not been proved to have been committed in reference to the election by or with the knowledge and consent of the respondent to the petition, and that such respondent took all reasonable means to prevent corrupt practices being committed on his behalf, the court may make one or more orders with respect to the payment either of the whole or such part of the costs of the petition as the court may think right as follows;

(*a.*) If it appears to the court that corrupt practices extensively prevailed in reference to the said election, the court may order the whole or part of the costs to be paid by the borough; and

(*b.*) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in reference to such election, the court may, after giving such person or persons an opportunity of being heard by counsel or solicitor and of examining and cross-examining witnesses to show cause why the order should not be made, order the whole or part of the costs to be paid by that person, or those persons or any of them, and may order that if the costs cannot be recovered from one or more of such persons they shall be paid by some other of such persons or by either of the parties to the petition.

(2.) Where any person appears to the court to have been guilty of the offence of a corrupt or illegal practice, the court may, after giving such person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to the said offence or to the said person to be paid by the said person to such person or persons as the court may direct.

(3.) The rules and regulations of the Supreme Court of Judicature with respect to costs to be allowed in actions, causes, and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part IV. of the Municipal Corporations Act, 1882, and this Act, and the taxing officer shall not allow any costs, charges, or expenses on a higher scale than would be allowed in any action, cause or matter in the High Court on the higher scale, as between solicitor and client.

45 & 46 Vict. c. 50.

Miscellaneous.

General provisions as to prosecution of offences under this Act.

30. Subject to the other provisions of this Act, the procedure for the prosecution of a corrupt or illegal practice or any illegal payment, employment, or hiring committed in reference to a municipal election, and the removal of any incapacity incurred by reason of a conviction or report relating to any such offence, and the duties of the Director of public prosecutions in relation to any such offence and all other proceedings in relation thereto (including the grant to a witness of a certificate of indemnity), shall be the same as if such offence had been committed in reference to a parliamentary election; and sections forty-five and forty-six and sections fifty to fifty-seven (both inclusive), and sections fifty-nine and sixty of the Corrupt and Illegal Practices Prevention Act, 1883, shall apply accordingly as if they were re-enacted in this Act with the necessary modifications, and with the following additions:—

46 & 47 Vict. c. 51.

(*a.*) Where the Director of public prosecutions considers that the circumstances of any case require him to institute a prosecution before any court other than an election court for any offence other than a corrupt practice committed in reference to a municipal election in any borough, he may, by himself or his assistant, institute such prosecution before any court of summary jurisdiction in the county in which the said borough is situate or to which it adjoins, and the offence shall be deemed for all purposes to have been committed within the jurisdiction of such court; and

(*b.*) General rules for the purposes of Part IV. of the Municipal Corporations Act, 1882, shall be made by the same authority as rules of court under the said sections; and

45 & 46 Vict. c. 50.

(*c.*) The giving or refusal to give a certificate of indemnity to a witness by the election court shall be final and conclusive.

s. 94 (7).

Person incapacitated by conviction or report to vacate seat or office.

31. If any person, in consequence of conviction or of the report of an election court under this Act, becomes not capable of being elected to or sitting in the House of Commons, or of being elected to or holding any public or judicial office, and such person, at the date of the said conviction or report, has been so elected or holds any such office, then his seat or office, as the case may be, shall be vacated as from that date.

32. (1.) Where any costs of a petition are, under an order of a municipal election court, to be paid by a borough, such costs shall be paid out of the borough fund or borough rate.

Payment and recovery of costs.

(2.) Where any costs or other sums are, under the order of an election court or otherwise under this Act, to be paid by any person, those costs shall be a simple contract debt due from such person to the person or persons to whom they are to be paid, and if payable to the Treasury shall be a debt to Her Majesty, and in either case may be recovered accordingly.

Service of notices.

33. Where any summons, notice, or document is required to be served on any person with reference to any proceeding respecting a municipal election in any borough or ward of a borough, whether for the purpose of causing him to appear before the High Court or any election court, or otherwise, or for the purpose of giving him an opportunity of making a statement, or showing cause, or being heard by himself, before any such court, for any purpose of this Act, such summons, notice, or document may be served either by delivering the same to such person, or by leaving the same at, or sending the same by post by a registered letter to, his last known place of abode in the said borough, or, if the proceeding is before any court, in such other manner as the court may direct, and in proving such service by post it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered with the post office.

Definitions. 45 & 46 Vict. c. 50. 46 & 47 Vict. c. 51.

34. In this Act expressions have the same meaning as in the Municipal Corporations Act, 1882, and in the Corrupt and Illegal Practices Prevention Act, 1883; except that the words "borough," "election petition," "election court," and "candidate," shall, unless the context otherwise requires, have the meaning given by the Municipal Corporations Act, 1882, and not the meaning given by the Corrupt and Illegal Practices Prevention Act, 1883; and except that "election" shall, unless the context otherwise requires, mean a municipal election.

For the purposes of this Act the number of electors shall be taken according to the enumeration of the electors in the burgess roll.

Application to city of London of Act and of Part IV. of 45 & 46 Vict. c. 50.

35. This Act and Part IV. of the Municipal Corporations Act, 1882, shall apply to a municipal election in the city of London, subject as follows:—

(1.) For the purpose of such application "municipal election" means an election to the office of mayor, alderman, common councilman, or sheriff, and includes the election of any officer elected by the mayor, aldermen, and liverymen in common hall, and the expression "corporate office" includes each of the aforesaid offices, and the expression "borough" shall be deemed to apply to the said city:

(2.) The expression "burgess" means, in relation to each municipal election, any person entitled to vote at such election:

(3.) Any costs or expenses directed to be paid out of the borough fund or borough rate shall, if incurred in respect of the election of an alderman or common councilman for any ward, be paid out of the ward rate of that ward, and in any other case shall be paid by the chamberlain of the said city out of the city's cash:

(4.) The enactments relating to personation, polling agents, and disclosure of votes shall not apply, save that if any person commits any offence under the City of London Municipal Elections Amendment Act, 1867, in relation to the declaration required by that Act to be made at the poll, he shall, in addition, be deemed guilty of a corrupt practice under this Act: 30 Vict. c. 1.

(5.) A vacancy in any office created by the decision of an election court shall be filled by a new election, and every summoning officer is hereby authorised and required to summon the electors for such election:

(6.) In the case of an election of an alderman and common councilman a sum may be paid and expense incurred not in excess of the maximum fixed by this Act for the election of a councillor.

(7.) In the case of an election by liverymen in common hall a sum may be paid and expenses incurred, if a poll be not demanded, not exceeding forty pounds, and, if a poll be demanded, then not exceeding two hundred and fifty pounds, and, in the event of a poll being demanded, such poll shall take place on the third day after the demand for a poll be made, unless such third day be a Sunday, in which case the poll shall take place on the fourth day, and the poll shall last for one day only, and commence at the hour of eight in the morning and close at six in the evening.

(8.) The town clerk shall send the corrupt and illegal practices list, when made out by him, to the ward clerk of each ward not less than fourteen days before the day on which the list of persons entitled to vote in such ward is required to be made out, and the aldermen and common councilmen of each ward shall omit from such last-mentioned list the names of all persons mentioned in the corrupt and illegal practices list, and the corrupt and illegal practices list shall be printed and appended to every copy of the list of persons entitled to vote in such ward.

Application of Act to other elections.

Application of this Act and Part IV. of 45 & 46 Vict. c. 50, to other elections.

36. (1.) Subject as hereinafter mentioned, the provisions of this Act and of Part IV. of the Municipal Corporations Act, 1882, as amended by this Act, shall extend to elections for the offices mentioned in the first column of the first schedule to this Act as if re-enacted herein and in terms made applicable thereto, and petitions may be presented and tried, and offences prosecuted and punished, and incapacities incurred in reference to each such election accordingly.

Provided that in the application of the said provisions to any such election:

(*a.*) The area, officer, and rate mentioned opposite to the office in the second, third, and fourth columns of the said schedule, shall be deemed to be substituted for the borough or ward, town clerk, and borough fund or rate respectively.

(*b.*) The expression "corporate office" in the said provisions shall mean an office mentioned in the said schedule, and in relation to the election of a guardian of a union includes any such office in the union, and "a municipal election" shall mean an election to such office, and the expressions "municipal election court," "municipal election list," and "municipal election petition" shall be construed accordingly.

(*c.*) No corrupt and illegal practices list shall be made for any such election.

(*d.*) Vacancies created by the decision of an election court shall be filled by a new election.

(*e.*) A petition relating to the election of a guardian of a union may be tried at any place within the union.

(*f.*) Nothing in the said provisions shall render it unlawful to hold a meeting for the purpose of promoting or procuring the election of a candidate to any office mentioned in the said schedule on any licensed or other premises not situate in an urban sanitary district or in the metropolis;

(*g.*) Where the poll at any election to an office in the said schedule is taken by means of voting papers, such of the said provisions as relate to personation, polling agents, disclosure of votes and conveyance of voters, shall not apply; but any offence in relation to voting papers or to personation or to voting at such election which is punishable on summary conviction (that is to say,) the offences mentioned in section three of the Poor Law Amendment Act, 1851, and in rule sixty-nine of schedule two to the Public Health Act, 1875, shall, without prejudice to the punishment under such section and rule of a person guilty of such offence, be deemed to be an illegal practice within the meaning of the said provisions.

14 & 15 Vict. c. 105. 38 & 39 Vict. c. 55.

(*h.*) The Local Government Board shall have the same power as heretofore under section eight of the Poor Law Amendment Act, 1842, to determine any question arising as to the right of a person to act as guardian, except that the board shall not have power—

5 & 6 Vict. c. 57.

(*a.*) To determine, until after the expiration of twenty-one days after the election of a person as guardian, any question which can be determined upon an election petition under this section; nor

(*b.*) To determine any question which is raised by an election petition under this section, and is either awaiting decision or has been decided by an election court; nor

(*c.*) To determine any question of general corruption, or of any corrupt or illegal practice, except so far as appears to such board necessary for determining the validity of any vote.

(2.) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges, may annually appoint as many barristers, not exceeding five, as they may think necessary to be commissioners for the trial of election petitions under Part IV. of the Municipal Corporations Act, 1882, and this Act, and shall from time to time assign the petitions (whether relating to a municipal election or to any other election to which this Act extends) to be tried by each commissioner.

Exemption from provisions as to maximum expenses.

37. The provisions of this Act which prohibit the payment of any sum, and the incurring of any expense by or on behalf of a candidate at an election, on account of, or in respect of, the conduct or management of the election, and those which relate to the time for sending in and paying claims, and those which relate to the maximum amount of election expenses, or the return or declaration respecting election expenses, shall not apply to any of the elections mentioned in the first schedule to this Act.

Repeal.

Repeal of Acts.

38. The Acts specified in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in the third column of that schedule mentioned, but such

repeal shall not affect anything duly done or suffered, or any right acquired or accrued, or any incapacity incurred, before the commencement of this Act; and any person subject to any incapacity under any enactment hereby repealed, or under any enactment for which such repealed enactment was substituted, shall continue subject thereto, and this Act shall apply to him as if he had become so subject in pursuance of the provisions of this Act. Secs. 38–41.

39. This Act shall come into operation on the first day of October one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act. Commencement of Act.

Extent of Act.

40. This Act shall not extend to Scotland or Ireland. Act not to extend to Scotland or Ireland.

41. This Act shall continue in force to the end of the year one thousand eight hundred and eighty-six, and no longer. Duration of Act.

SCHEDULES.

FIRST SCHEDULE (1). Schedule 1.

ELECTIONS to which this Act extends.

In England.

Office.	Area.	Officer.	Rate.
Member of local board, as defined by the Public Health, Act, 1875.	Local Government district or ward of such district.	Clerk to the local board, or person performing like duties.	The general district rate.
Member of Improvement Commissioners, as defined by the Public Health Act, 1875.	Improvement Act district of ward of such district.	Clerk to the Improvement Commissioners or person performing like duties.	The general district rate or other rate out of which the expenses of the Improvement Commissioners are payable.
Guardian elected under the Poor Law Amendment Act, 1834.	Parish or ward of a parish or united parishes.	Clerk to the guardians, or person performing like duties.	The poor rate of the parish or united parishes.
Member of school board.	School district or division of the metropolis.	Returning officer of school boards.	The school fund.

SECOND SCHEDULE (2). Schedule 2.

ENACTMENTS REPEALED.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first and last mentioned, or otherwise referred to as forming the beginning or as forming the end of the portion comprised in the description or citation.

As to England.

33 & 34 Vict. c. 75.	The Elementary Education Act, 1870.	Section thirty-three.
45 & 46 Vict. c. 50.	The Municipal Corporations Act, 1882.	Section seventy-seven, from "corrupt practice" down to "or personation," and from "canvasser" down to "candidate at a municipal election." Section seventy-eight. Section seventy-nine. Section eighty. Section eighty-two. Section eighty-three. Section eighty-four. Section ninety-two, sub-section four, from "and those judges" down to the end of the sub-section. Section ninety-four, sub-sections five, six, seven, and eight. So much of section ninety-eight, sub-section two, as relates to the principles of taxation.

(1) See section 36, *ante*.

(2) See section 38, *ante*.

Schedule 3.

THIRD SCHEDULE.

PART I. (1).

ENACTMENTS DEFINING CORRUPT PRACTICES.—ENACTMENTS DEFINING THE OFFENCE OF BRIBERY.

The Corrupt Practices Prevention Act, 1854, 17 & 18 *Vict. c.* 102, *ss.* 2 *and* 3.

Bribery defined.

S. 2. The following persons shall be deemed guilty of bribery, and shall be punishabl accordingly:—

(1.) Every person who shall, directly or indirectly, by himself or by any other person on hi behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procur or endeavour to procure, any money or valuable consideration to or for any voter, or t or for any person on behalf of any voter, or to or for any other person, in order t induce any voter to vote or refrain from voting, or shall corruptly do any such act a aforesaid on account of such voter having voted or refrained from voting at an election.

(2.) Every person who shall, directly or indirectly, by himself or by any other person on hi behalf, give or procure, or agree to give or procure, or offer, promise, or promise t procure or endeavour to procure, any office, place, or employment to or for any voter or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

(3.) Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(4.) Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure, or engage, promise, or endeavour to procure the return of any person to serve in Parliament, or the vote of any voter at any election.

(5.) Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election: Provided always, that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for on account of any legal expenses *bonâ fide* incurred at or concerning any election.

Bribery further defined.

S. 3. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly:—

(1.) Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or from refraining or agreeing to refrain from voting at any election.

(2.) Every person who shall, after any election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

The Representation of the People Act, 1867, 30 & 31 Vict. c. 102, s. 49.

Corrupt payment of rates to be punishable as bribery.

S. 49. Any person, either directly or indirectly, corruptly paying any rate on behalf of any ratepayer for the purpose of enabling him to be registered as a voter, thereby to influence his vote at the future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf and with whose privity any such payment as in this section is mentioned is made, shall also be guilty of bribery, and punishable accordingly.

ENACTMENT DEFINING THE OFFENCE OF PERSONATION.

The Ballot Act, 1872, 35 & 36 *Vict. c.* 33, *s.* 24.

Personation defined.

S. 24. A person shall, for all purposes of the laws relating to parliamentary and municipal elections, be deemed to be guilty of the offence of personation who, at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

ENACTMENTS DEFINING THE OFFENCES OF TREATING AND UNDUE INFLUENCE.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 *Vict. c.* 51, *ss.* 1 *and* 2.

What is treating.

S. 1. Any person who corruptly by himself or by any other person, either before, during, or

(1) See section 2, *ante*.

after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any meat, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election, or on account of such person or any other person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be guilty of treating.

And every elector who corruptly accepts or takes any such meat, drink, entertainment, or provision, shall also be guilty of treating.

What is undue influence.

S. 2. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of or threaten to make use of any force, violence, or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who shall by abduction, duress, or any fraudulent device or contrivance impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce, or prevail upon any elector either to give or to refrain from giving his vote at any election, shall be guilty of undue influence.

ENACTMENT DEFINING THE OFFENCES OF BRIBERY, TREATING, UNDUE INFLUENCE, AND PERSONATION.

The Municipal Corporations Act, 1882, 45 & 46 *Vict. c.* 50, *s.* 77.

Definitions.

S. 77. "Bribery," "treating," "undue influence," and "personation" include respectively anything done before, at, after, or with respect to a municipal election, which, if done before, at, after, or with respect to a parliamentary election, would make the person doing the same liable to any penalty, punishment, or disqualification for bribery, treating, undue influence, or personation, as the case may be, under any Act for the time being in force with respect to parliamentary elections.

PART II. (1)

ENACTMENTS RELATING TO DISQUALIFICATION OF ELECTORS.

The Corrupt and Illegal Practices Prevention Act, 1883, 46 & 47 *Vict. c.* 51, *ss.* 37 *and* 38.

Prohibition of disqualified persons from voting.
35 & 36 Vict. c. 60.
45 & 46 Vict. c. 50.

S. 37. Every person who, in consequence of conviction or of the report of any election court or election commissioners under this Act, or under the Corrupt Practices (Municipal Elections) Act, 1872, or under Part IV. of the Municipal Corporations Act, 1882, or under any other Act for the time being in force relating to corrupt practices at an election for any public office, has become incapable of voting at any election, whether a parliamentary election or an election to any public office, is prohibited from voting at any such election, and his vote shall be void.

Hearing of person before he is reported guilty of corrupt or illegal practice, and incapacity of person reported guilty.

S. 38. (1) Before a person, not being a party to an election petition nor a candidate on behalf of whom the seat is claimed by an election petition, is reported by an election court . . . to have been guilty, at an election, of any corrupt or illegal practice, the court . . . shall cause notice to be given to such person, and if he appears in pursuance of the notice, shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

. . . . . .

(5.) Every person who, after the commencement of this Act, is reported by any election court . . . to have been guilty of any corrupt or illegal practice at an election, shall, whether he obtained a certificate of indemnity or not, be subject to the same incapacity as he would be subject to if he had at the date of such election been convicted of the offence of which he is reported to have been guilty . . .

(6.) Where a person who is a justice of the peace is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether he has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to report the case to the Lord High Chancellor of Great Britain, with such evidence as may have been given of such corrupt practice, and where any such person acts as a justice of the peace by virtue of his being or having been mayor of a borough, the Lord High Chancellor shall have the same power to remove such person from being a justice of the peace as if he was named in a commission of the peace.

(7.) Where a person who is a barrister or a solicitor, or who belongs to any profession the admission to which is regulated by law, is reported by any election court . . . to have been guilty of any corrupt practice in reference to an election, whether such person has obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to bring the matter before the inn of court, high court, or tribunal having power to take cognizance of any misconduct of such person in his profession, and such inn of court, high court, or tribunal may deal with such person in like manner as if such corrupt practice were misconduct by such person in his profession.

(8.) With respect to a person holding a license or certificate under the Licensing Acts (in this section referred to as a licensed person) the following provisions shall have effect:—

(*a.*) If it appears to the court by which any licensed person is convicted of the offence of bribery or treating that such offence was committed on his licensed premises, the court shall direct such conviction to be entered in the proper register of licenses:

(1) See section 23, *ante*.

Schedule 3.

(*b*) If it appears to an election court . . . that a licensed person has knowingly suffered any bribery or treating in reference to any election to take place upon his licensed premises, such court . . . (subject to the provisions of this Act as to a person having an opportunity of being heard by himself and producing evidence before being reported) shall report the same; and, whether such person obtained a certificate of indemnity or not, it shall be the duty of the Director of public prosecutions to bring such report before the licensing justices from whom or on whose certificate the licensed person obtained his license, and such licensing justices shall cause such report to be entered in the proper register of licenses:

(*c*) Where an entry is made in the register of licenses of any such conviction of or report respecting any licensed person as above in this section mentioned, it shall be taken into consideration by the licensing justices in determining whether they will or will not grant to such person the renewal of his license or certificate, and may be a ground, if the justices think fit, for refusing such renewal.

. . . . . .

Schedule 4.

FOURTH SCHEDULE. (1)

FORM OF DECLARATION BY CANDIDATE AS TO EXPENSES.

I , having been a candidate at the election of councillor for the borough [*or* ward] of , on the day of [and my agents do hereby solemnly and sincerely declare that I have paid] for my expenses at the said election, and that, except as aforesaid, I have not, and to the best of my knowledge and belief, no person, nor any club, society, or association, has on my behalf, made any payment, or given, promised, or offered any reward, office, employment, or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that, except as aforesaid, no money, security, or equivalent for money, has to my knowledge or belief been paid, advanced, given, or deposited by anyone to or in the hands of myself, or any other person, for the purpose of defraying any expenses incurred on my behalf on account of or in respect of the conduct or management of the said election.

And I further solemnly and sincerely declare that I will not at any future time make or be a party to the making or giving of any payment, reward, office, employment, or valuable consideration for the purpose of defraying any such expenses as last-mentioned, or provide or be a party to the providing of any money, security, or equivalent for money for the purpose of defraying any such expenses.

Signature of declarant *C.D.*

Signed and declared by the above-named declarant on the day of , before me.

(Signed) *E.F.*
Justice of the Peace for .

JURIES ACT, 1870.

33 & 34 VICT. c. 77.

An Act to amend the laws relating to the qualifications, summoning, attendance, and remuneration of Special and Common Juries. [*9th August*, 1870.]

Secs. 1—5.

Commencement of Act.

1. This Act shall not come into force till the second day of November one thousand eight hundred and seventy.

Short titles of certain Acts.

3. The Acts herein-after mentioned may be cited for all purposes by the short titles following; that is to say,

An Act of the session of the sixth year of the reign of King George the Fourth, chapter fifty, and intituled "An Act for consolidating and amending the laws relative to Jurors and Juries," by the short title of "The County Juries Act, 1825;"

this Act by the short title of "The Juries Act, 1870."

Construction of Act and repeal of inconsistent enactments.

4. This Act shall be construed as one with "The County Juries Act, 1825," and any Act amending the same; and such parts of the said Act and of any other Act or Acts as are inconsistent with this Act are hereby repealed.

Definition of terms.

5. In this Act—

The term "overseers" shall include churchwardens, and the term "quarter sessions" shall include general sessions:

The word "juror" shall mean male persons only.

(1) See section 21, *ante*.

6. Every man whose name shall be in the jurors book for any county in England or Wales, or for the county of the city of London, and who shall be legally entitled to be called an esquire, or shall be a person of higher degree, or shall be a banker or merchant, or who shall occupy a private dwelling house rated or assessed to the poor rate or to the inhabited house dnty on a value of not less than one hundred pounds in a town containing, according to the census next preceding the preparation of the jury list, twenty thousand inhabitants and npwards, or rated or assessed to the poor rate or to the inhabited house duty on a value of not less than fifty pounds elsewhere, or who shall occupy premises other than a farm rated or assessed as aforesaid on a value of not less than one hundred pounds, or a farm rated or assessed as aforesaid on a value of not less than three hnndred pounds, shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London respectively.

Qualification of special jurors.

7. [So much of the said first section of the County Juries Act, 1825, as relates to the qualification of persons as jurors in Wales is hereby repealed, and it is hereby enacted, that (1)] the qualification of persons as jurors in Wales shall be the same as the qualification of persons as jurors in England.

Qualification of jurors in Wales.

8. Aliens having been domiciled in England or Wales for ten years or upwards, if in other respects duly qualified, shall be qualified and shall be liable to serve on juries or inquests in England and Wales as if they had been natural-born subjects of the Queen; but, save as aforesaid, no man not being a natural-born subject of the Queen shall be qualified to serve on juries or inquests in any conrt or on any occasion whatsoever.

Aliens to be qualified after ten years domicile, but not otherwise.

9. The inhabitants of the city and liberty of Westminster shall, as heretofore, be exempt from serving on any jury at the sessions of the peace for the county of Middlesex.

The persons described in the schedule hereto shall be severally exempt as therein specified from being returned to serve and from serving upon any juries or inquests whatsoever, and their names shall not be inserted in the lists of the persons qnalified and liable to serve on the same, but save as aforesaid, no man otherwise qualified so to serve on such juries or inquests shall be exempt from serving thereon, any enactment, prescription, charter, grant, or writ to the contrary notwithstanding.

Persons exempt from serving on juries.

10. Provided always, and it is hereby enacted, that no man who has been or shall be attainted of any treason or felony, or convicted of any crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry, is or shall be qualified to serve on juries or inquests in any court or on any occasion whatsoever.

Convicts (exception), outlaws &c., disqualified.

11. In making ont the lists of persons within their respective parishes and townships qualified to serve as jurors, the overseers shall specify which of such persons are, in the judgment of such overseers, qualified as special jurors, and shall also specify in every case the nature of the qualification and also the occupation and the amount of the rating or assessment of every such person.

Overseers to specify special jurors in list.

12. No person whose name shall be in the jury book as a juror shall be entitled to be excused from attendance on the ground of any disqualification or exemption other than illness not claimed by him at or before the revision of the list by the justices of the peace, and a notice to that effect shall be printed at the bottom of every jury list.

Disqualification or exemption to be pleaded before revision of list.

13. If any overseer, without reasonable excuse to be allowed by the justice or justices, having cognizance of the case, insert in the list of persons qualified to serve as jurors prepared by him the name of any person whose name ought not to have been inserted therein, or omit therefrom the name of any person whose name ought not to have been omitted, he shall, on summary conviction, be liable to a penalty for each offence not exceeding forty shillings.

Penalty on overseer for negligence.

14. Upon completing the revision of the jury lists, the justices at petty sessions shall certify in writing that they have examined such lists and that the same are, to the best of their knowledge and belief, true and proper lists of the special and common jurors; and the decision of such justices as to the qualifications of persons marked as special jurors in the lists so revised by them shall, as respects those lists, be final.

Justices to certify jury lists after revision.

15. And whereas by the thirty-first section of "The County Juries Act, 1825," it is enacted, that "the sheriff of every county in England and Wales or his under sheriff, and the sheriffs of London or their secondary, shall, within ten days after the delivery of the jurors book for the current year to either of them, take from such book the names of all men who shall be described therein as esquires, persons of higher degree, or as bankers or merchants:" Be it enacted, that nothing in the said section contained shall be deemed to authorise the said sheriffs or any of them, or any under sheriff, or any secondary, to remove from the jurors book the name of any person by reason of his being therein described as an esquire or person of higher degree, or as a

Special jurors names to be retained in jurors book.

(1) Repealed by Statute Law Revision Act, 1883, but the former enactment is not thereby revived.

Secs. 15–25.

banker or merchant, nor shall the said sheriffs or any sheriff or under sheriff or secondary remove from the jurors book the name of any person by reason of his being otherwise qualified to serve on special juries.

16. [Special juries for London and Middlesex to be provided in the same manner as in other counties.]

17. [Abolition of present practice of nominating special juries in London and Middlesex.]

18. [Mode of obtaining special jury in London and Middlesex.]

Summoning of jurors.

19. The following regulations shall be enacted with respect to the summoning of jurors:

(1.) That no person shall be summoned to serve on any jury or inquest (except a grand jury) more than once in any one year, unless all the jurors upon the list shall have been already summoned to serve during such year:

Provided that nothing herein contained shall prejudice the operation of any certificate granted under the County Juries Act, 1825, ss. 41 and 42:

(2.) No person shall be exempted from serving as a common juror by reason of his being on any special jurors list, or being qualified to serve as a grand juror:

(3.) No person shall be summoned or liable to serve as a juror in more than one court on the same day.

Jurors entitled to six days notice.

20. No juror shall be liable to any penalty for non-attendance on any jury unless the summons requiring him to attend be duly served six days at least before the day on which he is required to attend, but no longer period than such six days shall in any case be required between the service and such last-mentioned day.

Sheriff to make regulations as to attendance.

21. It shall be lawful for any sheriff or other officer to whom any precept for summoning jurors shall be addressed, with the consent of the person or persons by whom such precept shall have been issued, to make regulations as to the attendance of jurors during the time for which they shall be summoned, and in particular as to the days on which, and the time during which, they are to attend.

Such regulations may be sent to any juror, together with the summons requiring him to attend on any jury, and when so sent shall be deemed to be part of such summons.

22. [Payment of jurors [1].]

Jurors to be allowed fire and refreshment.

23. Jurors, after having been sworn, may, in the discretion of the judge, be allowed at any time before giving their verdict the use of a fire when out of court, and be allowed reasonable refreshment, such refreshment to be procured at their own expense.

Judges to make general orders.

24. The judges of Her Majesty's superior courts of common law are hereby empowered by general orders to make rules, not inconsistent with this Act, for the purpose of carrying out the several provisions of this Act.

Jury lists in the city of London to be made as before.

25. This Act shall not alter or affect the mode of procedure pursued in the making out of jury lists for the city of London, nor the provisions of the ninth and tenth Victoria, chapter ninety-five, section seventy-two.

SCHEDULE.

PERSONS EXEMPT FROM SERVING ON JURIES.

Schedule.

Peers.
Members of Parliament.
Judges.
Clergymen.
Roman Catholic priests.
Ministers of any congregation of Protestant dissenters and of Jews whose place of meeting is duly registered, provided they follow no secular occupation except that of a schoolmaster.
Serjeants, barristers-at-law, certificated conveyancers, and special pleaders, if actually practising.
Members of the Society of Doctors of Law and advocates of the civil law, if actually practising.
Attornies, solicitors, and proctors, if actually practising and having taken out their annual certificates, and their managing clerks, and notaries public in actual practice.
Officers of the courts of law and equity, and of the Admiralty and Ecclesiastical Courts, including therein the Courts of Probate and Divorce, and the clerks of the peace or their deputies, if actually exercising the duties of their respective offices.
Coroners.
Gaolers and keepers of houses of correction, and all subordinate officers of the same.

[1] Repealed by 34 Vict. c. 2.

Schedule.

Keepers in public lunatic asylums.

Members and licentiates of the Royal College of Physicians in London, if actually practising as physicians.

Members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, if actually practising as surgeons.

Apothecaries certificated by the Court of Examiners of the Apothecaries Company, and all registered medical practitioners and registered pharmaceutical chemists, if actually practising as apothecaries, medical practitioners, or pharmaceutical chemists respectively.

Officers of the navy, army, militia, and yeomanry, while on full pay.

The members of the Mersey Docks and Harbour Board.

The master, wardens, and brethren of the Corporation of Trinity House, of Deptford Strond.

Pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed under any Act of Parliament or charter for the regulation of pilots.

The household servants of Her Majesty, her heirs and successors.

Officers of the Post-Office, Commissioners of Customs, and officers, clerks, or other persons acting in the management or collection of the Customs, Commissioners of Inland Revenue, and officers or persons appointed by the Commissioners of Inland Revenue or employed by them or under their authority or direction in any way relating to the duties of Inland Revenue.

Sheriffs officers.

Officers of the rural and metropolitan police.

Magistrates of the metropolitan police courts, their clerks, ushers, doorkeepers, and messengers.

Members of the council of the municipal corporation of any borough, and every justice of the peace assigned to keep the peace therein, and the town clerk and treasurer for the time being of every such borough, so far as relates to any jury summoned to serve in the county where such borough is situate.

Burgesses of every borough in and for which a separate court of quarter sessions shall be holden so far as relates to any jury summoned for the trial of issues joined in any court of general or quarter sessions of the peace in the county wherein such borough is situate.

Justices of the peace so far as relates to any jury summoned to serve at any sessions of the peace for the jurisdiction of which he is a justice.

Officers of the Houses of Lords and Commons.

BOROUGH AND LOCAL COURTS OF RECORD ACT, 1872.

35 & 36 VICT. c. 86.

An Act to amend the Law relating to Borough and other Local Courts of Record.

[10*th August*, 1872.]

Secs. 2—5.

Her Majesty may direct certain enactments to extend to any local court of record.

2. It shall be lawful for Her Majesty from time to time by an Order in Council to direct that all or any part of the provisions of an Act passed in the first and second years of his late Majesty King William the Fourth, intituled "An Act to enable courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims," and of the provisions set forth in the schedule to this Act, shall apply to all or any local Court or Courts of Record in England or Wales; and within one month after such Order shall have been made and published in the *London Gazette*, such provisions shall extend and apply in manner directed by such Order, and any such Order may be in like manner from time to time altered and annulled; and in and by such Order Her Majesty may alter and modify such provisions as are mentioned in the schedule, so as to adapt the same to the constitution, jurisdiction, and procedure of any such court or courts, and may direct by whom and at what time or times any powers and duties incident to the provisions applied under this Act shall and may be exercised with respect to matters in such court or courts, and may make any orders or regulations which may be deemed requisite for carrying into operation in such court or courts the provisions so applied.

Her Majesty may direct that writ, &c. may be served as specified.

3. It shall also be lawful for Her Majesty from time to time by such Order as aforesaid to direct that any writ, order, summons, or process issuing out of or made or taken in any such Court of Record may be served in such part or parts of England and Wales as shall be specified in such Order.

Two or more courts may be held at the same time.

4. Two or more courts may be held at the same time either for the trial of issues or for the ordinary proceedings of the court.

Affidavits made before any commissioner, &c.

5. Affidavits made before any commissioner or other person appointed or authorised to take affidavits, either in England or elsewhere, by the Lord High Chancellor, or by any of the

Secs. 5—8.

superior courts or by the judges thereof, may be used in the court, and the signature of any person purporting to be such commissioner, or to be a person so appointed or authorised as aforesaid, need not be verified.

Power to send writs of execution to bailiffs of county court.

6. In all cases where final judgment shall have been obtained in any action brought in the court wherein the debt or damage does not exceed twenty pounds, exclusive of costs, and also in all cases where any rule or order shall be made by the judge for the payment of any sum of money, or any costs, charges, or expenses, not exceeding the sum of twenty pounds, such court shall be at liberty to send a writ or precept for the recovery of the same to the registrar of any county court within the jurisdiction of which the defendant may possess any goods or chattels; and the registrar of such county court shall stamp or seal the same, and thereupon the high bailiff of such county court shall execute the same in the same manner as if such writ or precept had been issued out of such county court, and such high bailiff shall take all the usual and proper fees thereupon, and shall make a return of what he shall have done thereunder to the bailiff or serjeant-at-mace of the court; and in all matters done under such writ or precept, or in relation thereto, such high bailiff shall be under the direction and control of the judge of the county court of which he is high bailiff, as if such writ or precept had issued out of such county court: Provided always, that the costs of more than one writ, precept, or warrant shall not be allowed against the execution debtor unless by order of the judge of the said court.

Judge may appoint a deputy.

7. A judge of any court may appoint a deputy or assistant judge to execute any particular portion or duty of such judge, such appointment being under such orders, rules, and regulations as Her Majesty by Order in Council may direct, provided such deputy shall be a barrister of not less than seven years standing.

Proviso as to City of London Court.

8. Provided always, that in the City of London Court the same fees shall always be taken as are for the time being taken in the county courts: Provided also, that the provisions in section twelve of the schedule shall not be applied to the City of London Court, or to the Court of Record for the Hundred of Salford.

SCHEDULE.

The SCHEDULE to which the Act refers.

Schedule.

Interpretation of terms.

1. In the construction of the following provisions the word "court" shall be understood to mean the Court of Record to which such provisions as aforesaid, or any of them, are made applicable by an Order of Her Majesty in Council. The word "judge" shall be understood to mean the judge, deputy or assistant judge, for the time being of such court. The words "superior courts" shall be understood to mean the superior courts of common law at Westminster.

Power to judge when out of the jurisdiction to hear motions.

2. The judge may, at any time within such time and such manner as is permitted by the rules of the court, and whether the court be sitting or not, and either when within or when out of the limits of the jurisdiction of the court, hear and grant applications for rules to show cause in arrest of judgment, or for judgment *non obstante veredicto*, or for a repleader, or for granting new trials, or for entering nonsuits and verdicts in causes pending in the court, to the same extent and subject to the rules and regulations to be made in respect thereof in the same manner as rules and regulations are made in the court; and all rules and orders made by the judge upon the hearing of such motions out of court shall be as valid and binding upon the parties as if the same had been made during the sittings of the court.

Judge to determine fees payable to registrar and officers of the court.

3. The judge shall and he is hereby required to make and settle a table of the fees to be taken by the registrar and the bailiff or other officers of the court, and such table of fees shall be submitted to two judges of the superior courts; and if such table of fees shall be confirmed and allowed by such judges, either as such table shall have been submitted to them, or with such alterations, additions, or abatements as they shall think proper, the fees therein mentioned, and no other, may thenceforth be lawfully taken by the officer therein declared to be entitled thereunto.

Power to judge to alter fees from time to time.

4. It shall be lawful for the judge from time to time, as occasion shall require, to make and settle a new table of fees to be taken instead of the fees contained in the table of fees which shall have been made and settled as aforesaid, but such new table shall be of no validity until confirmed and allowed in the manner hereinbefore mentioned.

Table of fees to be exhibited.

5. The registrar shall cause a true copy of the table of fees in force for the time being to be exhibited in a conspicuous part of the office of the registrar.

A special case may be stated for the opinion of one of the superior courts at Westminster.

6. The parties in any action may, after issue joined by consent and by order of the registrar, state the facts of the case in the form of a special case for the opinion of any one of the superior courts, and may agree that a judgment shall be entered in the court for the plaintiff or defendant, as such superior court shall think fit.

Special case to be transmitted by the registrar

7. The registrar shall transmit such special case under seal of the court to the rule department of the master's office of the superior court in which the case is to be argued, and thereupon all such proceedings shall be taken and rules and regulations observed in the superior court as

are usnal with reference to cases stated for the opinion of such superior court in actions therein pending.

8. The registrar, upon the production of an office copy of the rule of the superior court made upon hearing such special case, shall enter judgment in the court in conformity with the decision of the superior court.

to the rule department.

9. In all cases where final jndgment shall be obtained in any action brought in the court, where the sum recovered, exclusive of costs, is not less than twenty ponnds, and also in all cases where any rule or order shall be made by the judge for the payment of any snm of money not less than twenty pounds, it shall be lawful for any judge of any of the superior courts, either in term or vacation, npon the application of any person entitled to the benefit of such judgment, rule, or order, and upon the production of such judgment, rule, or order, under the seal of the court and signature of the proper officer, to direct snch jndgment, rule, or order, or a copy of such judgment, rule, or order, verified by affidavit, to be filed with the clerk of the judgments of one of the superior courts, and thereupon such judgment, rule, or order shall be of the same effect as a jndgment recovered in or a rule or order made by such snperior court, and all proceedings shall and may be immediately had and taken thereupon, or by reason or in conseqnence thereof, as if such judgment so recovered, or rule or order so made, had been originally recovered in or made by the superior court; and all the reasonable costs and charges of such application and removal shall be recovered in like manner as if the same were part of such judgment, rule, or order.

Upon production to registrar of rule of superior court, judgment to be entered.

Removal of judgments into the superior courts.

10. Upon the application of any of the parties to any such action depending in the court, any one of the judges of the superior courts at Westminster may order a commission to issue for the examination of witnesses upon oath at any place or places beyond the limits of England and Wales by interrogatories or otherwise, and by the same or any subsequent order or orders may give all such directions touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Commission may be issued by a judge of a superior court to examine witnesses abroad.

11. The judge shall have power to nonsuit the plaintiff in every case in which satisfactory proof shall not be given to him entitling either the plaintiff or defendant to the jndgment of the court, and shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had npon snch terms as he shall think reasonable, and in the meantime to stay the proceedings.

Nonsuit.

12. No action entered in the court shall before jndgment be removed or removable from the court into any superior court by any writ or process, except by leave of a judge of one of the superior courts in cases which shall appear to such judge fit to be tried in one of the superior courts, and upon such terms, as to payment of costs, security for debt and costs, or such other terms, as such jndge shall think fit.

No actions to be removed into superior courts but on certain conditions.

STATUTES RELATING TO INCLOSURE AND RECREATION GROUNDS.

INCLOSURE CLAUSES CONSOLIDATION ACT, 1801.

41 GEO. III. c. 109.

[*2nd July*, 1801.]

Section 3. 3. And whereas disputes or doubts may arise concerning the boundaries of parishes, manors, hamlets, or districts to be divided and inclosed, and of parishes, manors, hamlets, or districts adjoining thereto; be it therefore enacted that the commissioner or commissioners appointed in or by virtue of any such Act shall, and he or they is and are hereby authorised and required, by examination of witnesses upon oath or affirmation (which oath or affirmation any one of such commissioners is hereby empowered to administer), and by such other legal ways and means as he or they shall think proper, to inquire into the boundaries of such several parishes, manors, hamlets, or districts, and in case it shall appear to such commissioner or commissioners that the boundaries of the same respectively are not then sufficiently ascertained and distinguished, such commissioner or commissioners shall, and he or they is hereby authorised and required to ascertain, set out, determine, and fix the same respectively; and after the said boundaries shall be so ascertained, set out, determined, and fixed, the same shall and are hereby declared to be the boundaries of such parishes, manors, hamlets, or districts (1): Provided always, that such commissioner or commissioners (before he or they proceed to ascertain and set out the boundaries of such parishes, manors, hamlets, or districts) shall, and he or they is and are hereby required to give public notice (2), by writing under his or their hands, to be affixed on the most public doors of the churches of such parishes, and also by advertisement to be inserted in some newspaper to be named in such Act, and also by writing to be delivered to or left at the last or usual places of the abode of the respective lords or stewards of the lords of the manors in which the lands and grounds to be inclosed shall be situate, and of such adjoining manor or manors, ten days at least before the time of setting out such boundaries, of his or their intention to ascertain, set out, determine, and fix the same respectively; and such commissioner or commissioners shall, within one month after his or their ascertaining and setting out the same boundaries, cause a description thereof, in writing, to be delivered to or left at the places of abode of one of the churchwardens or overseers of the poor of the respective parishes (3), and also of such respective lords or stewards: Provided always, that if any person or persons interested in the determination of the said commissioner or commissioners respecting the said boundaries shall be dissatisfied with such determination, such person or persons may appeal to the justices of the peace acting in and for the county in which such lands or grounds shall be situate, at any general quarter sessions of the peace to be holden within four calendar months next after the aforesaid publication of the said boundaries, by delivering or leaving such description as aforesaid, the party or parties making such appeal, giving eight days notice of such appeal and of the matter thereof, in writing, to the commissioners; and the decision of the said justices therein shall be final and conclusive (4), and shall not be removed or removable by *certiorari*, or any other writ or process whatsoever, into any of His Majesty's Courts of Record at Westminster or elsewhere.

(1) See *R.* v. *St. Mary, Bury St. Edmunds*, 4 B. & Ald. 462.
(2) See *R.* v. *Haslingfield*, 2 M. & S. 558.
(3) See *R.* v. *Washbrook*, 4 B. & C. 732.
(4) See *Phillips* v. *Maile*, 7 Bing. 133.

8. Such commisssoner or commissioners shall, and he or they is, and are hereby authorised and required, in the first place, before he or they proceed to make any of the divisions and allotments directed in and by such Act, to set out and appoint the public carriage roads and highways through and over the lands and grounds intended to be divided, allotted, and inclosed, and to divert, turn, and stop up (1) any of the roads and tracts upon and over all or any part of the said lands and grounds, as he or they shall judge necessary, so as such roads and highways shall be and remain thirty feet wide at the least, and so as the same shall be set out in such directions as shall upon the whole appear to him or them most commodious to the public (2); and he or they are hereby further required to ascertain the same by marks and bounds, and to prepare a map in which such intended roads shall be accurately laid down and described, and to cause the same, being signed by such commissioner, if only one, or the major part of such commissioners, to be deposited with the clerk of the said commissioner or commissioners for the inspection of all persons concerned; and as soon as may be after such carriage roads shall have been set out and such map so deposited, to give notice in some newspaper to be named in such Bill, and also by affixing the same upon the church-door of the parish in which any of the lands so to be inclosed shall lie, of his or their having set out such roads and deposited such map, and also of the general lines of such intended carriage roads, and to appoint in and by the same notice a meeting to be held by the said commissioner or commissioners, at some convenient place in or near the parish or township within which the said inclosure is to be made, and not sooner than three weeks from the date and publication of such notice, at which meeting it shall and may be lawful for any person who may be injured or aggrieved by the setting out of such roads to attend; and if any such person shall object to the setting out of the same, then such commissioner or commissioners, together with any justice or justices of the peace acting in and for the division of the county in which such inclosure shall be made, and not being interested in the same, who may attend such meeting, shall hear and determine such objection, and the objections of any other such person, to any alteration that the said commissioner or commissioners, together with such justice or justices, may in consequence propose to make, and shall, and he or they are hereby required, according to the best of their judgment upon the whole, to order and finally direct how such carriage roads shall be set out, and either to confirm the said map, or make such alterations therein as the case may require: Provided always, that in case such commissioner or commissioners shall by such Bill be empowered to stop up any old or accustomed road passing or leading through any part of the old inclosures in such parish, township, or place, the same shall in no case be done without the concurrence and order of two justices of the peace (3) acting in and for such division, and not interested in the repair of such roads, and which order shall be subject to an appeal to the quarter sessions (4), in like manner and under the same forms and restrictions as if the same had been originally made by such justice as aforesaid.

9. Such carriage roads so to be set out as aforesaid shall be well and sufficiently fenced on both sides, by such of the owners and proprietors of the lands and grounds intended to be divided, allotted, and inclosed, and within such time as such commissioner or commissioners shall by any writing under his or their hands direct or appoint; and it shall not be lawful for any person or persons to set up or erect any gate across any such carriage road, or to plant any trees in or near to the hedges on the sides thereof at a less distance from each other than fifty yards; and such commissioner or commissioners shall, and he or they is and are hereby empowered and required, by writing under his or their hands, to nominate and appoint one or more surveyor or surveyors, with or without a salary, for the first forming and completing such parts of the said carriage roads as shall be newly made, and for putting into complete repair such parts of the same as shall have been previously made; which salary (if any), and also the expense of forming, completing, and repairing such roads respectively, over and above a proportion of the statute duty (5) on the roads so to be repaired, shall be raised in like manner as the charges and expenses of obtaining and passing any such Act, and of carrying the same into execution, shall be thereby directed to be raised, and shall be paid to such surveyor or surveyors on or before the execution of the award of such commissioner or commissioners; and in case the same shall be thereby provided to be raised by sale of any part of the lands so to be divided and inclosed, then such commissioner or commissioners shall make a conditional rate upon the owners and proprietors of the same, in case the produce of such sale should prove insufficient for the purposes aforesaid;

(1) See *R.* v. *Downshire* (*Marquis of*), 4 Ad. & E. 698.
(2) See *R.* v. *Cricklade*, 14 Q. B. 735, 19 L. J. M. C. 169; *R.* v. *E. Hagbourne*, 28 L. J. M. C. 71.
(3) See *Logan* v. *Burton*, 5 B. & C. 513, 8 D. & R. 299; *Harber* v. *Rand*, 9 Price; *Williams* v. *Eyton*, 4 H. & N. 357, 28 L. J. Ex. 176.
(4) *R.* v. *JJ. of Yorkshire*, 2 B. & C. 228; *Manning* v. *E. Counties Ry.*, 12 M. & W. 237.
(5) Statute duty is now abolished by the Highway Act, 1835, *ante*, p. 756.

Secs. 9—11. and such surveyor or surveyors shall, and he or they is and are hereby directed to be in all respects subject to the jurisdiction and control of the justices of the peace acting in and for the county in which such roads shall respectively lie, and shall account to such justices in like manner for all moneys so to be by him or them received and expended, and for the repayment of any surplus which may remain in his or their hands to such persons as shall have been made liable to contribute thereto, according to the proportion so as above ascertained by such commissioner or commissioners: and such justices shall have the like powers of levying any such rate as may by them be thought necessary for the purposes aforesaid, according to the proportions previously ascertained by such commissioner or commissioners, as if such surveyor or surveyors had been appointed under or by virtue of the General Highway Act, passed in the thirteenth year of the reign of His present Majesty (1); and in case such surveyor or surveyors shall neglect to complete and repair such roads respectively, within the space of two years after such award, unless a further time not exceeding one year shall for that purpose be allowed by such justices, and then within such further time he or they shall forfeit the sum of twenty pounds, and the inhabitants at large of the parish, township, or place wherein such roads shall be respectively situate shall be in no wise charged or chargeable towards forming or repairing the said roads respectively, except such proportion of such statute duty (2) as aforesaid, till such time as the same shall by such justices in their special sessions be declared to be fully and sufficiently formed, completed, and repaired, from which time, and for ever thereafter, the same shall be supported and kept in repair by such persons, and in like manner as the other public roads within such parish, township, or place are by law to be amended and kept in repair (3).

10. Such commissioner or commissioners shall, and he or they is and are hereby empowered and required to set out and appoint such private roads, bridleways, footways, ditches, drains, watercourses, watering places, quarries, bridges, gates, stiles, mounds, fences, banks, bounds and land marks, in over upon and through or by the sides of the allotments to be made and set out in pursuance of such Act as he or they shall think requisite giving such notice and subject to such examination as to any private roads or paths, as are above required in the case of public roads and the same shall be made, and at all times for ever thereafter be supported and kept in repair by and at the expense of the owners and proprietors for the time being of the lands and grounds directed to be divided and inclosed, in such shares and proportions as the commissioner or commissioners shall in and by his or their award order and direct (4).

11. After such public and private roads and ways shall have been set out and made the grass and herbage arising thereon shall for ever belong to and be the sole right of the proprietors of the lands and grounds which shall next adjoin the said roads and ways on either side thereof, as far as the crown of the road; and all roads, ways, and paths, over, through and upon such lands and grounds which shall not be set out as aforesaid, shall be for ever stopped up and extinguished and shall be deemed and taken as part of the lands and grounds to be divided, allotted and inclosed, and shall be divided, allotted and inclosed accordingly: Provided that nothing herein contained shall extend or be construed to extend to give such commissioner or commissioners any power or authority to divert, change, or alter any turnpike road that shall or may lead over any such lands and grounds unless the consent of the majority of the trustees of such turnpike road, assembled at some public meeting called for that purpose on ten days notice, be first had and obtained.

INCLOSURE ACT, 1857.

20 & 21 VICT. c. 31.

Section 12. 12. [After reciting that it is expedient to provide summary means of preventing nuisances in town greens and village greens, and on land allotted and awarded upon any inclosure under the said Acts (5) as a place for exercise and recreation: enacts] "if any person wilfully cause any injury or damage to any fence of any such town or village green or land, or wilfully and without lawful authority lead or drive any cattle or animal thereon, or wilfully lay any manure, soil, ashes, or rubbish, or other matter or thing thereon, or do any other act whatsoever to the injury of such town or village green or land, or to the interruption of the use or enjoyment thereof as a

(1) Now repealed by the Highway Act, 1835, s. 1, *ante*, p. 756.
(2) Now abolished by the Highway Act, 1835, *ante*, p. 756.
(3) See *R.* v. *Hatfield*, 4 Ad. & E. 156; and *R.* v. *Midville*, 4 Q. B. 240.
(4) See *Falmouth* (*Earl of*) v. *Richardson*, 3 B. & C. 837.
(5) The Acts for the Enclosure, Exchange, and Improvement of Land.

place for exercise and recreation, such person shall for every such offence, upon a summary conviction thereof before two justices upon the information of any churchwarden or overseer of the parish in which such town or village green or land is situate, or of the person in whom the soil of such town or village green or land may be vested, forfeit and pay, in any of the cases aforesaid, and for each and every such offence over and above the damages occasioned thereby, any sum not exceeding forty shillings, and it shall be lawful for any such churchwarden or overseer or other person as aforesaid to sell and dispose of any such manure, soil, ashes, and rubbish or other matter or thing as aforesaid; and the proceeds arising from the sale thereof and every such penalty as aforesaid, shall, as regards any such town or village green not awarded under the said Acts or any of them to be used as a place for exercise and recreation, be applied in aid of the rates for the repair of the public highways in the parish, and shall, as regards the land so awarded, be applied by the persons or person in whom the soil thereof may be vested in the due maintenance of such land as a place for exercise and recreation; and if any manure, soil, ashes, or rubbish be not of sufficient value to defray the expense of removing the same, the person who laid or deposited such manure, soil, ashes, or rubbish shall repay to such churchwarden or overseer or other person as aforesaid the money necessarily expended in the removal thereof; and every such penalty as aforesaid shall be recovered in manner provided by the Act, 11 & 12 Vict. c. 43; and the amount of damage occasioned by any such offence as aforesaid shall in case of dispute be determined by the justices by whom the offender is convicted; and the payment of the amount of such damage, and the repayments of the money necessarily expended in the removal of any manure, soil, ashes, or rubbish, shall be enforced in like manner as any such penalty."

Section 12.

RECREATION GROUNDS, GARDENS, ETC.

23 & 24 VICT. c. 30.

An Act to enable a majority of two thirds of the ratepayers of any parish or district, duly assembled, to rate their district in aid of Public Improvements for general benefit within their district (1).

[*3rd July*, 1860.]

Secs. 1—3.

1. It shall be lawful for the ratepayers of any parish maintaining its own poor, the population of which, according to the last account from time to time taken thereof by the authority of Parliament, exceeds five hundred persons, to purchase or lease lands, and to accept gifts and grants of land, for the purpose of forming any public walk, exercise or play ground, and to levy rates for maintaining the same, and for removal of any nuisances or obstruction to the free use and enjoyment thereof, and for improving any open walk or footpath, or placing convenient seats, or shelters from rain, and for other purposes of a similar nature.

Ratepayers may hold land, &c., for purpose of forming public walks, &c., and levy rates for maintaining the same, &c.

2. This Act may be adopted for any borough, or for any parish having a population of five hundred or upwards, (according to the last account for the time taken by authority of Parliament) in the same manner as the Act of the ninth and tenth Victoria, chapter seventy-four, may be adopted in such borough or parish.

Adoption of Act, according to 9 & 10 Vict. c. 74.

3. Where the Act is adopted in a borough or in such a parish, the provisions of the Act of the ninth and tenth Victoria, chapter seventy-four (2), for the purposes below specified applicable in the like cases where that Act is adopted, shall take effect for the purposes of this Act, viz.: All the provisions concerning

As to public baths and wash-houses.

(1.) The authority by which and the manner in which the Act is to be carried into execution:

(2.) The mode of providing the expenses of carrying the Act into execution (excluding the provisions for borrowing money for such expenses):

(3.) The appointment (in the case of a parish) of commissioners, the tenure of office and procedure, and the audit of their accounts:

(4.) The powers of the councils and commissioners for the purposes of the Act (except the powers of borrowing money).

(1) See the Local Government Board Act, 1871, 34 & 35 Vict. c. 70, ss. 2, 7 and Sched. tit. "Public Improvements," *ante*, p. 393. The Recreation Grounds Act, 1859, 22 Vict. c. 27, deals only with the conveyance of lands to trustees to be held by them as public recreation grounds, &c.

As to the dedication of parts of settled estates for streets, gardens, &c., see the Settled Estates Act, 1877, 40 & 41 Vict. c. 18, ss. 20, 21, *post*.

(2) *Ante*, p. 1191.

Secs. 4—7.

Ratepayers, after notice given, to rate parishes.

Corporate bodies may attend and vote.

One half of the estimated cost to be raised by private subscription

Amount of rate.

4. After the adoption of this Act it shall be lawful for the ratepayers in meeting assembled to rate such parish to a separate rate, to be called the " Parish Improvement Rate;" provided that such rate be agreed to by a majority of at least two thirds in value of the ratepayers assembled at such meeting.

5. Corporate bodies shall be allowed to attend meetings to be held as aforesaid and to vote thereat by some person to be deputed by them for that purpose under their corporate seal.

6. Provided always, that previous to any such rate being imposed a sum in amount not less than at least one half of the estimated cost of such proposed improvement shall have been raised, given, or collected by private subscription or donation.

7. Such rate shall not exceed sixpence in the pound.

RECREATION GROUNDS, GARDENS, ETC.

26 VICT. c. 13.

An Act for the protection of certain Garden or Ornamental Grounds in Cities and Boroughs.

[*4th May*, 1863.]

Secs. 1, 2.

Gardens in certain squares, &c. may be freed from neglect, encroachments, &c., and vested in the Metropolitan Board of Works or other corporate authority:

or vested in a committee of rated inhabitants.

1. Where in any city or borough any enclosed garden or ornamental ground has been set apart otherwise than by the revocable permission of the owner (1) thereof in any public square, crescent, circus, street, or other public place, for the use or enjoyment of the inhabitants thereof, and where the trustees, commissioners, or other body appointed for the care of the same have neglected to keep it in proper order, or where such garden or ground has not been vested in or placed under the management of any trustees, commissioners, or other body for the care of the same, and from the want of such care, or from any other cause, has been neglected, the Metropolitan Board of Works, where the same is in any place under their jurisdiction, except the City of London (where the provisions of this Act shall be carried into effect by the Corporation of the said city), and the corporate authorities in any other city or borough, shall take charge of the same, putting up a notice or notices to that effect in such garden or ornamental ground, and if after due inquiry the person entitled to any estate of freehold in the same cannot be found, or if it shall be vested in any person by whom it is held, subject to any condition or reservation for keeping the same as and for a garden or pleasure ground, or that the same shall not be built upon, but not otherwise, shall cause any buildings or other encroachments made therein within the period of twenty years before the passing of this Act to be removed, and (if requested by a majority of two-thirds of the owners and of the occupiers of the houses surrounding the same) shall vest such garden or ornamental ground in a committee consisting of not more than nine nor fewer than three of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants; and the vestry or board of any and every parish or district within which the same or any part thereof is situate shall from time to time cause to be raised the sums required by such committee for defraying the expenses of the maintenance and management of such enclosed garden or ornamental ground, or of such part thereof as is situate within their parish or district, by an addition to the general rate to be assessed on the occupiers of such houses; or if the said owners and occupiers shall not agree as aforesaid to undertake the charge of such garden or ornamental ground, the Metropolitan Board of Works or corporate authority aforesaid shall, within six months after the notice hereinbefore-mentioned shall have been put up within the same, or within such further time as the said board or authority may think it expedient to allow for such agreement to be come to, vest the same in such vestries or boards, who shall thenceforth take charge of and maintain the same as an open place or street in such manner as shall appear to them most advantageous to the public, subject to the approval of the Metropolitan Board of Works or corporate authority, as the case may require; saving and always reserving to every person and persons, his and their heirs, executors, administrators, and assigns, all such estate, right, title, and interest as he, she, or they would or ought to have had and enjoyed of, in, to, from, or out of the gardens and grounds aforesaid in case this Act had not passed.

Protection of open spaces from encroachment.

2. And whereas it is expedient that the same should be carefully protected from undue encroachment, where any right to require that any garden or ornamental ground as aforesaid be

(2) See *Tulk* v. *Metropolitan Board of Works*, L. R. 3 Q. B. 94, 37 L. J. Q. B. 11, 17 L. T. N. S. 202, 16 W. R. 212, 31 J. P. 756.

kept and maintained as such, or that the same shall not be built upon, shall belong to any person in right of any house or other property, and he shall by notice in writing signed by him addressed to the Metropolitan Board of Works where the same is in any place under their jurisdiction, except the City of London, where the same shall be addressed to the Corporation of the said city, or to the corporate authorities in any other city or borough, requesting the said Metropolitan Board of Works or corporate authority to protect the right before mentioned, the said Metropolitan Board of Works or corporate authority, after due inquiry, may, if they shall think fit, accede to such request, and then and thereupon the right of such person to require that such garden or ornamental ground to be maintained as such, or that the same shall not be built upon, shall thenceforth be vested in such Metropolitan Board of Works or corporate authority, who shall be fully empowered for and in their own name, to exercise all the rights, powers, and privileges in relation thereto, and take such legal proceedings for asserting, defending, and protecting the same, as the said person might have exercised or taken.

Expenses how to be defrayed.

3. . . . . the expenses incurred by any corporate authority shall be deemed to be expenses necessarily incurred by them in carrying into execution within and for their city or borough the Act intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any other Act amending the same (1).

5 & 6 Will. 4, c. 76.

Byelaws for management of garden, &c.

4. Where any such garden or ground is managed by any committee of the inhabitants of any square, crescent, circus, street, or place, such committee may make, and from time to time revoke and alter, bye-laws for the management of the same, and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses, and other things therein, which bye-laws shall be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which the same shall be passed, and which book shall and may be produced and read, and taken as evidence of such bye-laws, in all courts whatever, and any inhabitant or servant, or other person admitted to such garden by any inhabitant, offending against the same, after they shall have been duly allowed, as hereinafter provided, upon proof thereof before a magistrate acting for the district in which such garden is situate, shall be liable for each offence to a penalty not exceeding five pounds: Provided always, that such bye-laws shall not come into operation until the same shall have been allowed by some judge of one of the superior courts, or by the justices in quarter sessions; and it shall be incumbent on such judge or justices, on the request of such committee, to inquire into any bye-laws tendered to them for that purpose, and to allow or disallow the same as they think meet.

Penalty for injuring garden.

5. Any police constable who shall see any person throwing any rubbish into any such garden, or trespassing therein, or getting over the railings or fence, or stealing or damaging the flowers or plants, or committing any nuisance therein, may apprehend such person, under the authority hereby given to him; and any person convicted before any magistrate acting for the district shall be liable for each and every offence aforesaid to a penalty not exceeding forty shillings, or to imprisonment for any period not exceeding fourteen days; and in case it shall be necessary to state in any proceedings the ownership of the property of such garden, flowers, or plants, it shall be sufficient to describe the same as the property of the committee by the name of *A. B.* and others (2).

11 & 12 Vict. c. 43, to apply.

6. . . . . the Act passed in the twelfth year of the reign of Her Majesty the Queen, chapter forty-three, shall apply to every penalty or forfeiture imposed by this Act, or any bye-law made in pursuance thereof for any matter or thing done or omitted to be done within any other part of England and Wales.

Act not to extend to property of the crown or to property under the management of the Commissioners of Works, &c.

7. Nothing in this Act shall extend to or include any garden, ornamental ground, or other land belonging to Her Majesty in right of Her Crown or of Her Duchy of Lancaster, or any garden, ornamental ground, or other land for the time being under the management of the Commissioners for the time being of Her Majesty's Works and Public Buildings, or of the commissioners for the time being acting under the Crown Estate Paving Act, 1851, or to any garden, ornamental or other ground, for which special provision is made for the due care and protection thereof by any public or private Act of Parliament.

(1) Now the Municipal Corporations Act, 1882, *ante*, p. 269.

(2) Further, as to malicious injuries in gardens, see the Malicious Injuries to Property Act, 1861, 24 & 25 Vict. c. 97, ss. 20—23, and s. 53, and as to stealing or cutting, &c., with intent to steal trees, plants, fences, &c., see Larceny Act, 1861, 24 & 25 Vict. c. 96, ss. 32—37.

COMMONS ACT, 1876.

39 & 40 VICT. c. 56.

An Act for facilitating the regulation and improvement of Commons, and for amending the Acts relating to the Inclosure of Commons. [11*th August*, 1876.]

PART I.

LAW AS TO THE REGULATION AND INCLOSURE OF COMMONS.

Applications in relation to Commons.

Secs. 2—4.

Alternative Provisional Order for regulation or inclosure of commons.

2. The Inclosure Commissioners may entertain an application made in manner in this Act mentioned for a Provisional Order:—

(1.) For the regulation of a common; or

(2.) For the inclosure of a common or parts of a common;

Further, an application may be made as respects the same common for the regulation of part of such common, specifying the part to be regulated, and for the inclosure of the residue, and in such case the application shall be dealt with as respects such parts as if they were separate commons, with this exception, that the boundaries as proposed in the application of the part to be regulated and the part to be inclosed may be modified by the Provisional Order.

The commissioners shall not proceed to carry any application under this Act into effect until it is made to appear to them that the persons making the application represent at least one-third in value of such interests in the common as are proposed to be affected by the Provisional Order.

"Regulation of common" includes adjustment of rights and improvement.

3. A Provisional Order for the regulation of a common may provide, generally or otherwise, for the adjustment of rights in respect of such common, and for the improvement of such common, or for either of such purposes, or for any of the things by this Act comprised under the expression "adjustment of rights" or "improvement of a common," or may state that all or any of such subjects are to be provided for in the proceedings subsequent to the confirmation of the Provisional Order by Parliament.

Explanation of adjustment of rights.

4. The adjustment of rights in respect of a common comprises for the purposes of this Act all or any of the following things:

(1.) As respects rights of common of pasture in a common, being waste land of a manor,—the determination of the persons by whom, the stock by which, and the times at which such common of pasture is to be exercised;

(2.) As respects rights of common of turbary, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the common, being waste land of a manor,—the determination of the persons by whom, and the mode and place or places in which, and the times at which such rights are to be exercised, also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition, of all or any of such rights which may permanently injure the common;

(3.) As respects rights of common in land which is not waste land of a manor,—the stinting or other determination of such rights, and the persons by whom, and the mode in which, and the times at which such rights are to be exercised, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights which may be injurious to the general body of the commoners or to the proper cultivation of the land;

(4.) As respects any common whether it is or is not waste land of a manor,—the determination of the rights and obligations of the lord of the manor, severalty owners, or other person or persons entitled to the soil of such common, as also on compensation made to any person aggrieved, either by grant of a right of equal value, or with his consent in writing, in money,—the restriction, modification, or abolition of all or any of such rights, and in particular in the case of severalty owners of all or any of such rights which may be injurious to the general body of the severalty owners or to the proper cultivation of the land; and

(5.) Generally as respects any common, whether it is or is not waste land of a manor,—the determination of any rights and settlement of any disputes relating to boundaries, rights in the soil or in the produce of the soil, or otherwise, whether arising between

the commoners themselves, or between the commoners in relation to the lords of the manors, severalty owners, or other person or persons entitled to the soil of the common, which settlement may be conducive to the interests of all or any class of persons interested in the common.

Explanation of improvement.

5. The improvement of a common comprises for the purposes of this Act all or any of the following things; (that is to say,)

(1.) The draining, manuring, or levelling the common; and

(2.) The planting trees on parts of such common, or in any other way improving or adding to the beauty of the common; and

(3.) The making or causing to be made bye-laws and regulations for the prevention of or protection from nuisances or for keeping order on the common; and

(4.) The general management of such common.

(5.) The appointment from time to time of conservators of the common for the purposes aforesaid.

Meaning of Provisional Order for inclosure of commons.

6. A Provisional Order for the inclosure of a common means a Provisional Order for inclosing the common as provided by the Inclosure Acts, 1845 to 1868, as amended by this Act.

Provisions for the benefit of a neighbourhood applicable alike to orders for regulation and orders for inclosure.

7. In any Provisional Order in relation to a common, the Inclosure Commissioners shall, in considering the expediency of the application, take into consideration the question whether such application will be for the benefit of the neighbourhood, and shall, with a view to such benefit insert in any such order such of the following terms and conditions (in this Act referred to as statutory provisions for the benefit of the neighbourhood) as are applicable to the case; (that is to say,)

(1.) That free access is to be secured to any particular points of view; and

(2.) That particular trees or objects of historical interest are to be preserved; and

(3.) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common; and

(4.) That carriage roads, bridle paths, and footpaths over such common are to be set out in such directions as may appear most commodious; and

(5.) That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood.

Suburban Commons.

Sanitary authorities to be represented in the case of commons in the neighbourhood of towns.

8. Notice of any application under this Act in relation to a common which is situate either wholly or partly in any town or towns, or within six miles of any town or towns (which common so situate is in this Act referred to as a suburban common) shall be served as soon as may be on the urban sanitary authority or authorities having jurisdiction over such town or towns, and it shall be lawful for the urban sanitary authority of any such town to appear before the assistant commissioner on the occasion of his holding a local inquiry as in this Act mentioned, and also to appear before the Inclosure Commissioners, and to make to him or them, at any time during the proceedings in relation to obtaining a Provisional Order under this Act, such representations as they may think fit with respect to the expediency or inexpediency of such application, regard being had to the health, comfort, and convenience of the inhabitants of the town over which such authority has jurisdiction, and to propose to him or them such provisions as may appear to such urban sanitary authority to be proper, regard being had as aforesaid.

Any urban sanitary authority entitled to receive notice of an application in relation to a suburban common may, with the sanction of the Inclosure Commissioners, enter into an undertaking to contribute out of their funds for or towards the maintenance of recreation grounds, or of paths or roads, or the doing any other matter or thing for the benefit of their town in relation to the common to which such application relates.

They may also, in relation to any such common, and with such sanction as aforesaid, enter into an undertaking to pay compensation in respect to the rights of commoners, for the purpose of securing greater privileges for the benefit of their town.

An urban sanitary authority may acquire by gift and hold without license in mortmain on trust for the benefit of their town any suburban common in respect of which they would be entitled to receive notice of any application made to the Inclosure Commissioners in pursuance of this Act, and any rights in such a common.

They may also in the case of any such suburban common purchase and hold as aforesaid, with a view to prevent the extinction of the rights of common, any saleable rights in common or any tenement of a commoner having annexed thereto rights of common.

Secs. 8–10.

They may also, with the consent of persons representing at least one-third in value of such interests in a suburban common as aforesaid as are proposed to be affected by the Provisional Order, make an application to the Inclosure Commissioners for the regulation of such common with a view to the benefit of their town and the improvement of such common.

Where an urban sanitary authority makes an application under this Act with such consent as aforesaid in respect of the regulation of a common, or undertakes to make any contribution or to pay any compensation or make any other payment out of its funds in respect of a common such urban sanitary authority may, if the Inclosure Commissioners deem it advisable, having regard to the benefit of the neighbourhood as well as to private interests, be invested with such powers of management or other powers as may be expedient.

The expenses incurred by an urban sanitary authority in pursuance of this section may be defrayed out of any rate applicable to the payment of expenses incurred by such authority in the execution of the Public Health Act, 1875, and not otherwise provided for.

A town for the purposes of this section means any municipal borough, or Improvement Act district, or local government district, having a population of not less than five thousand inhabitants.

The population of any town for the purposes of this Act shall be reckoned according to the last published census for the time being, and distances shall be measured in a direct line from the town hall, or if there shall be no town hall, then from the cathedral or church, if there shall be only one church, or if there be more churches than one, then from the principal market place of such town to the nearest point of the suburban common. When part only of a common is situate within the aforesaid distance from a town, such part shall be deemed for the purposes of this section to be a common separate and distinct from the part situated without and beyond such distance.

Procedure.

9. [Issue of forms by commissioners.]

Rules as to application to commissioners.

10. The following rules shall be observed with respect to an application to the Inclosure Commissioners for a Provisional Order for the regulation or inclosure of a common; that is to say,

Publication of notices of application.

(1.) The applicants, previously to making their application, shall publish, in such manner as the Inclosure Commissioners may from time to time, by general or special order, direct, an advertisement giving notice of their intention to apply for such Provisional Order, and shall also serve a like notice on any urban sanitary authority entitled under this Act to receive such notice: Provided that such advertisement as aforesaid shall always be inserted in at least one paper circulating in the neighbourhood of the common to which the application relates:

Manner of application.

(2.) The application shall be in writing, accompanied with a map of the common, or part thereof, and, if for the regulation of a common, shall express whether the applicants propose that all or certain specified provisions only of this Act for the adjustments of rights or improvement of commons should be put in force in relation to such common, and whether to apply to the whole or part of such common, but, subject as aforesaid, an application for the regulation or inclosure of a common shall be in such form and be made in such manner as the Inclosure Commissioners may from time to time direct:

Evidence to be furnished in support of application.

(3.) On making their application in respect of any common, the applicants shall furnish the Inclosure Commissioners, in answer to questions previously submitted or otherwise in such manner as the said commissioners may from time to time direct, with information bearing on the expediency of the application considered in relation to the benefit of the neighbourhood as well as to private interests:

Evidence in relation to benefit of neighbourhood.

(4.) The information to be furnished as bearing on the expediency of the application, considered in relation to the benefit of the neighbourhood, shall comprise statements as to the particulars following; that is to say, as to the number and occupation of the inhabitants of the parish or place in which the common is situate; as to the population of the neighbouroood, and the distance of the common from any neighbouring towns and villages; as to the intention of the applicants to propose the adoption of all or any of the statutory provisions as defined by this Act for the benefit of the neighbourhood; as to the circumstance of any ground other than the common to which the application relates being available for the recreation of the neighbourhood; and in the case of a common being waste land of a manor, as to the site, extent, and suitableness of the allotments, if any, proposed to be made for recreation grounds and field gardens, or for either of such purposes; and as to any other matter which in the judgment of the Inclosure Commissioners may assist them in forming an opinion as to whether such

application ought to be acceded to, having regard to the benefit of the neighbourhood, and if acceded to, as to what statutory provisions, as defined by this Act, ought to be inserted in the Provisional Order for the benefit of the neighbourhood :

The Inclosure Commissioners shall also require, in the case of an application for inclosure, special information as to the advantages the applicants anticipate to be derivable from the inclosure of a common as compared with the regulation of a common, also the reasons why an inclosure is expedient when viewed in relation to the benefit of the neighbourhood :

Evidence in relation to private interests.

(5.) The information to be furnished as bearing on the expediency of the application considered in relation to private interests shall comprise statements as to the several particulars following ; that is to say, as to the extent and nature of the common to which the application relates ; as to the mines, minerals, or valuable strata (if any) under the same ; as to the questions of boundary (if any) concerning snch common, or such mines, minerals, or strata ; as to the parties interested in such common, and the nnmbers and proportion in value of interest who have consented to or dissented from the application ; as to the nature of the rights reqniring the intervention of the Inclosure Commissioners or the interference of Parliament ; as to the supposed advantages of the application being acceded to ; as to (in cases where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the Provisional Order applied for) the allotment (if any) or compensation agreed on or proposed to be made to such lord of the manor in respect of his interest so affected ; and as to any other matter which, in the jndgment of the Inclosure Commissioners, may assist them in forming an opinion as to whether such application ought to be acceded to, having regard to private interests, and if acceded to as to what provisions onght to be inserted in the Provisional Order for the protection of private interests :

Duty of commissioners on application.

(6.) The Inclosure Commissioners shall take into consideration any application made to them as in this Act provided, and if satisfied by the information furnished to them as aforesaid, or by any further inquiries made by themselves or an assistant commissioner, that a *primâ facie* case has been made ont, and that, regard being had to the benefit of the neighbourhood as well as to private interests, it is expedient to proceed further in the matter, they shall order a local inquiry to be held by an assistant commissioner.

Rules as to local inquiry.

11. The following rules shall be observed with respect to a local inquiry held by order of the Inclosure Commissioners :

Inspection and public meeting.

(1.) The assistant commissioner appointed to hold such inqniry shall inspect the common to which the application relates, and shall convene one or more public meetings at a suitable time and place for securing the attendance of the neighbouring inhabitants, and of all persons claiming interest in the common : Provided always, that one at least of such public meetings shall be held in the evening between the hours of seven and ten of the clock.

Notice of meeting.

(2.) The assistant commissioner shall give not less than twenty-one days' notice of his intention to hold the first of such meetings.

Contents of notice.

(3.) The notice shall, in such form as the Inclosure Commissioners from time to time direct, state the nature of the application made, the objects of the meeting, that the meeting is a public one and held for the purpose of enabling the assistant commissioner to hear all persons desirons of being heard on the subject matter of the application, whether considered in relation to the benefit of the neighbourhood or to private interests, and the desirability of the attendance of all persons interested in the subject matter of the inquiry.

Publication of notice.

(4.) The notice shall be given—

(*a.*) By affixing a copy thereof on the principal door of the church of the parish in which the common to which the application relates, or the greater part thereof is situate ; and

(*b.*) By posting copies of the same on or near the common to which it relates at the post office or post offices of the parish or district in which the common to which the application relates is situate, at any town hall, or vestry hall, or other building or room the expense of maintaining which is payable out of any local rate, situate in the parish or district, and at all places therein where notices are nsually posted ; and

(*c.*) By advertising in such manner as the Inclosure Commissioners may direct, or otherwise giving notice of the meetings in such manner as they think best calculated to ensure publicity in the locality.

Secs. 11, 12.

Conduct of meeting.

(5.) The assistant commissioner shall preside and regulate the proceedings at such meeting and shall hear all persons desirous of being heard in relation to the subject matter the inquiry. He may adjourn any such meeting from time to time, or from place place, on giving such notice of adjournment as he thinks best calculated to ensu publicity.

Personal inquiries by assistant commissioner.

(6.) The assistant commissioner shall also make any inquiries and do any other acts which may be instructed by the Inclosure Commissioners or may think it advisable to do, f the purpose of enabling the commissioners to judge as to the expediency of making t Provisional Order applied for, also as to the nature of the provisions to be inserted i any such Provisional Order if made.

Report of assistant commissioner to Inclosure Commissioners.

(7.) The assistant commissioner shall report in writing to the Inclosure Commissioners t result of the local inquiry, and of the public meeting or meetings held by him (in suc form and with such details as the Inclosure Commissioners may from time to tim direct), and specially shall report to the Inclosure Commissioners the informatic obtained by him as to the several particulars in respect of which the applicants for Provisional Order are by this Act required to furnish information to the Inclosur Commissioners.

He shall also report the number of persons who attended the meetings held by hin the objections (if any) made to the application, and the suggestions (if any) made i relation to the provisions to be inserted in the Provisional Order for the benefit of t neighbourhood or for the protection of private interests, and any other circumstanc which he may think expedient, with a view to enable the Inclosure Commissioners t judge of the expediency of making the Provisional Order, having regard as aforesai and also, if the order be made, of the provisions to be inserted therein.

Map to accompany report.

(8.) The report shall be accompanied by an outline or other map on such scale and of such description as may be directed by the Inclosure Commissioners, with a sketch in th case of an inclosure of a common being waste of land of a manor, of the allotments (i any) proposed to be made for recreation grounds and field gardens, or for either of suc purposes.

Rules as to Provisional Orders.

12. The following rules shall be observed with respect to Provisional Orders to be made by th Inclosure Commissioners; that is to say,

Draft Provisional Order to be framed.

(1.) The Inclosure Commissioners, if satisfied by the report of the assistant commissioner o by further inquiries to be made by themselves or an assistant commissioner, that, havin regard to the benefit of the neighbourhood as well as to private interests, it is expedien to proceed further in the matter, shall frame, in such form and with such provisions a they, having regard as aforesaid, may think expedient, and as are consistent with law and the description of Provisional Order applied for, a draft Provisional Order for th consideration of the persons interested in the common, specifying, if such application i for the regulation of a common, whether all or any one or more of the provisions o this Act for the adjustment of rights and the improvement of a common are to be pu in force:

Provisions for benefit of neighbourhood.

(2.) With respect to provisions for the benefit of the neighbourhood, there shall be inserted ir such draft Provisional Order all such of the statutory provisions as defined by this Act for the benefit of the neighbourhood as are applicable to the case; also, if the order is an inclosure order in the case of a common being waste land of a manor, the quantity and situation of the allotments (if any) to be made for recreation grounds and fiel gardens [1]:

Provisions for protection of private interests.

(3.) With respect to private interests, there shall be inserted in such draft Provisional Order, (1) where the interest of any lord of the manor in the soil of a common or in mineral or other rights may be affected by the order, a statement of the allotment (if any) or other compensation to be allotted or made to the lord of such manor in respect of his interest so affected; and (2) where there is any mineral property or other rights in relation thereto belonging to persons other than the lord of the manor which may be affected by the order, such provisions and reservations as are required to be inserted by the Inclosure Acts, 1845 to 1868, or as may appear to the Inclosure Commissioners proper to be inserted; also, if there are any other rights which appear to the commis-

[1] Further, by the Commons (Expenses) Act, 1878, 41 & 42 Vict. c. 56, it is provided that:
Section 4. The commissioners may, if they think fit, specify in any Provisional Order for the regulation of a common, as one of the terms and conditions of the regulation, the appropriation of an allotment for the labouring poor, and the provisions of the Inclosure Acts, 1845 to 1876, with respect to such allotments made upon the inclosure of a common shall apply to any such allotment made on the regulation of a common.

sioners proper to be specially provided for or to be excepted from the operation of the order, there shall be specified the provisions or exceptions to be made in that behalf:

Section 12.

(4.) As soon as may be after making their Provisional Order, the Inclosure Commissioners shall cause a copy thereof to be deposited in the parish or parishes in which the common is situate to which such order relates, in order that the same may be considered by the parties interested therein, and they shall give notice, in snch manner as they think best calculated to secure publicity, of snch deposit having been made, and of their intention to certify the expediency of such order if the necessary consents are obtained thereto:

Deposit of draft order for consideration of parties interested.

(5.) The Inclosure Commissioners shall not certify the expediency of a draft Provisional Order unless they are satisfied that persons representing at least two thirds in value of such interests in the common as are affected by the order consent thereto; and when the common to which the order relates is the waste land of any manor, or land within any manor to the soil of which the lord of such manor is entitled in right of his manor, then, unless there is more than one person interested in such manor according to the definition of the Inclosure Act, 1845, the commissioners shall not certify the expediency of the same, unless the person interested in the common in right of snch manor, or his snbstitnte under the said Inclosure Act, 1845, consent to such order; and where there is more than one person interested in snch manor the commissioners shall not certify the expediency of the order, in case such persons or the majority of such persons in respect of interest signify their dissent within a time to be limited by the commissioners:

Consents before Provisional Order certified to be expedient.

(6.) Where the freemen, burgesses, or inhabitant honseholders of any city, borough, or town are entitled to rights of common or other interest in the common to which the draft provisional order relates, the Inclosure Commissioners shall not certify the expediency of such order unless it appears to the commissioners that two thirds in number of snch of the freemen and burgesses so entitled as may be resident in such city, borongh, or town, or within seven miles thereof, or of such inhabitant honseholders, as the case may be, have consented to the order; and in case two thirds in number of such resident freemen and burgesses, or of such inhabitant householders, have so consented such consent shall be deemed the consent of the class of freemen, burgesses, or inhabitant householders, as the case may be, so entitled:

Reservation in favour of freemen interested in common.

(7.) The Inclosure Commissioners may cause a meeting or meetings to be held by an assistant commissioner for the purpose of obtaining the necessary consents, or of ascertaining the interests of consenting or dissenting parties, or they may cause such consents or dissents to be ascertained in such other manner as they may think fit:

Means of obtaining consents.

(8.) The Inclosure Commissioners may, at any time before certifying the expediency of a draft Provisional Order, modify the same of their own mere motion, or on the snggestion of any parties interested, but snch modifications shall not be of any validity unless they are consented to in the same manner as if they formed part of the draft Provisional Order originally deposited by the commissioners:

Power to modify Provisional Order before expediency certified.

(9.) When the necessary consents have been obtained to any draft Provisional Order as originally deposited, or as modified in pursuance of this Act, such order shall be deemed to be final; and the Inclosure Commissioners shall in a report or reports to be made from time to time, as respects each Provisional Order which has become final as aforesaid, certify that it is expedient that such Provisional Order should be confirmed by Parliament, together with their reasons for certifying such expediency, and specially, as respects each Provisional Order, they shall, in snch manner as they think best adapted to enable Parliament to judge of the expediency of such order, state the information furnished to them as to the several particulars in respect of which the applicants for a Provisional Order are by this Act required to furnish information to the commissioners; also the result of the local inquiry, and of the nnmber and description of the persons who attended the meetings held during such inquiry, and the nature of the objections (if any) made to the application, and the suggestions (if any) made in relation to the provisions to be inserted for the benefit of the neighbourhood or for the protection of private interests by the persons so attending, and any other circumstances which the commissioners may think it expedient to state for such purposes as aforesaid:

Certificate of expediency of Provisional Order.

(10.) Every report made by the Inclosure Commissioners certifying the expediency of any Provisional Order under this Act shall be presented to Parliament, and if at any time thereafter it is enacted by Act of Parliament that any order for the regulation or inclosure of a common, the expediency of which has been so certified by the commissioners, shall be confirmed, the regulation or inclosure of any common to which any

Confirmation of Provisional Order.

Secs. 12–15.

such order relates shall be proceeded with and completed according to the terms of the Provisional Order relating to such common, and to the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, and any Act of Parliament containing such enactments as aforesaid shall be deemed to be a public general Act, but a Provisional Order, until such Act of Parliament as aforesaid has been passed in relation thereto, shall not be of any validity whatever:

Supplemental power to modify Provisional Order after expediency certified.

(11.) If, after the presentation to Parliament of a report made by the Inclosure Commissioners certifying the expediency of any Provisional Order for the regulation or inclosure of a common, and before a Bill has been brought in for the confirmation of such order, such report is referred to a committee of either House of Parliament for consideration, and such committee recommend that such Provisional Order should not be confirmed by Parliament except subject to certain modifications, the Inclosure Commissioners may modify the Provisional Order accordingly, but such modifications shall not be of any validity unless they are consented to in the same manner as if they had formed part of the draft Provisional Order originally deposited by the commissioners:

And it shall be the duty of the commissioners to take the necessary steps for ascertaining whether such consent as aforesaid can be obtained or not, and if such consent be obtained, the commissioners shall make a special report to the effect that the order has been modified as aforesaid and such consent duly obtained, and such report shall be presented to Parliament; and thereupon the order so modified shall be deemed to be in the same position in all respects as if it were an order in respect of which a report had been made by the commissioners certifying the expediencey thereof, and such report had been presented to Parliament.

Partial application of procedure under Inclosure Acts.

13. The Inclosure Commissioners may insert in any Provisional Order for the regulation of a common any provisions they may deem necessary for the purpose of carrying such order into effect; but, subject as aforesaid, when an Act of Parliament has been passed as aforesaid, enacting that the regulation of a common shall be proceeded with, the subsequent proceedings for carrying into effect the regulation of such common shall be the same, so far as is practicable, as they would be in case such common were to be inclosed instead of being regulated, and the provisions of the Inclosure Acts, 1845 to 1868, as amended by this Act, shall apply accordingly.

Power to raise money for improvement of common.

14. A Provisional Order for the regulation of a common may provide for the raising from time to time by such persons interested in the common, and for such amounts as the commissioners think fit, of money to be applied towards the improvement or protection of such common, either by means of rates to be levied on the persons and in respect of the property who and which respectively will be benefited or principally benefited by such improvement or regulation, or by means of the sale of any outlying or other small portion not exceeding in the whole one-fortieth part of the total area of such common [1].

Supplemental Provisions.

Owners may make bye-laws.

15. The majority in value of the owners of skirts or rights of pasture in any regulated pasture created under the provisions of the General Inclosure Act, 1845, in addition to the powers they now possess are hereby authorised at any annual meeting for the election of field reeves to make bye-laws and regulations for the prevention of or protection from nuisances or for keeping order on the regulated pasture, and for general management, occupation, and enjoyment of the regulated pasture, provided the consent of the lord of the manor is given to such bye-laws.

[1] Now by Commons (Expenses) Act, 1878, 41 & 42 Vict. c. 56, it is provided:

Section 2. The Inclosure Commissioners may, if they think fit, insert in any Provisional Order for the regulation of a common a provision for the raising and payment of the expenses of and incidental to the regulation of such common, either wholly or partly, by a sale of a portion of the common; and they shall in such case specify in the Provisional Order the situation and the maximum quantity of the portion of the common which may be so sold; and where such provision is made the said expenses may be raised and paid accordingly in manner provided by the Inclosure Acts, 1845 to 1868.

Section 3. Where in a Provisional Order for the regulation of a common the Inclosure Commissioners insert, in pursuance of section fourteen of the Commons Act, 1876, a provision for the raising of money to be applied towards the improvement or protection of such common by means of the sale of any portion, they shall in the Provisional Order specify the situation and maximum quantity of the portion which may so be sold; and they may, if they think fit, also insert in the order a provision for the investment of the proceeds of such sale or any part of those proceeds, and for the application of the annual income of the investment towards the improvement or protection of such common, and for the sale of such investment or any part thereof from time to time, and the application of the proceeds of such sale towards the improvement or protection of such common.

16. Any bye-law made in pursuance of this Act, and any alteration made therein, and any revocation of a bye-law, shall not be of any validity until it has been confirmed by one of Her Majesty's Principal Secretaries of State.

Provision as to bye-laws.

Pecuniary penalties (to be recovered summarily before any two justices) may be imposed by any such bye-laws on persons breaking the same, provided that no penalty exceeds for any one offence the sum of forty shillings.

17. No such confirmation shall take place unless notice of the intention to apply therefor, stating the effect of this section, has been published by the conservators one month at least before the application.

Notice of application for confirmation of bye-laws.

During one month at least before the application a copy of every bye-law, the making, alteration, or revocation of which is submitted for confirmation, shall be kept at the office of the person or body of persons making, altering, or revoking such bye-law open for inspection by persons interested, and such person or body of persons shall furnish a printed copy thereof to every person applying for the same on payment of a sum not exceeding one shilling for each copy.

18. Subject to the terms of the provisional order the amount of any compensation to be paid for any restriction, modification, or abolition of rights in pursuance of an order for the regulation of a common shall be deemed to be expenses of and incidental to the regulation of the common, and may be defrayed accordingly.

Provision as to certain expenses under order for regulation of a common.

19. Whereas by several awards made under the authority of Inclosure Acts prior to the year one thousand eight hundred and forty-five, fuel allotments for the poor have been set out and awarded, and vested in divers persons and bodies of persons as trustees of such allotments:

Definition of power of Charity Commissioners in certain cases.

And whereas under the provisions of the Inclosure Acts, 1845 to 1868, and the several Acts of Parliament and awards made thereunder, allotments for recreation grounds and field gardens have been set out and awarded to the churchwardens and overseers of parishes and other persons:

And whereas power exists or is claimed under divers Acts of Parliament, to divert such allotments from the uses declared by Parliament respecting the same: Be it enacted, that after the passing of this Act, notwithstanding anything in any other Act contained, it shall not be lawful (save as hereinafter mentioned) to authorise the use of or to use any such allotment, or any part thereof, for any other purpose than those declared concerning the same by the Act of Parliament and award, or either of them, under which the same has been set out: Provided, that it shall be lawful for the Charity Commissioners for England and Wales in the exercise of their ordinary jurisdiction under the Charitable Trusts Acts, upon the application of the trustees of any fuel allotment, to authorise the use of such fuel allotment as a recreation ground and field gardens, or for either of those purposes, and to make an order under the provisions of "The Charitable Trusts Act, 1860," for the establishment of a scheme for the administration of such fuel allotment accordingly; and provided, that it shall be lawful for the said Charity Commissioners, on such application as aforesaid, to authorise the exchange of any fuel allotment, or any part thereof, for land of equal value situate within the parish or district for the benefit of the poor of which such allotment was set out, if the Commissioners are of opinion that by means of such exchange land better suited for the purpose for which such allotment was set out will be obtained.

20. After the passing of this Act, where any common is regulated pursuant to this Act by a provisional order of the Inclosure Commissioners confirmed by Parliament, or is the subject of a scheme confirmed by Parliament under the provisions of "The Metropolitan Commons Act, 1866," or "The Metropolitan Commons Amendment Act, 1869," or (being situate within the metropolitan police district) is the subject of any private or local Act of Parliament having for its object the preservation of such common as an open space, no surveyor of highways or highway board constituted in pursuance of the Highway Acts, or trustees of any turnpike road, shall search for, dig, get, or carry away gravel, sand, stone, or other materials in or from any part of such common which has not been set apart for that purpose with the sanction of Parliament, without the consent of the person or persons having the regulation or management of the same, or in default of such consent, without an order of two or more justices in petty sessions assembled, and acting in and for the petty sessional division in which such common is situate, who may in their order prescribe such conditions as to mode of working and restitution of the surface as to them shall seem expedient.

Gravel digging.

Part II.

Amendment of the Inclosure Acts.

Field Gardens and Recreation Grounds.

21. Whereas it is expedient that the expenses of clearing any allotments made for field gardens may be included in the expenses of an inclosure: Be it enacted, that the valuer shall,

Expenses of clearing.

Secs. 21–27.

draining, and fencing field gardens.

unless the Inclosure Commissioners otherwise direct, cause every allotment made for a field garden to be cleared, drained, fenced, levelled, and otherwise made fit for immediate use and occupation; and the expenses incurred by the valuer under this section shall be paid as part of the general expenses of the inclosure.

Substituted allotments for recreation grounds and field gardens.

22. The provisions of the Inclosure Acts, 1845 to 1868, which authorise the Inclosure Commissioners to allow an equal quantity of the land proposed to be inclosed to be allotted for the purpose of a recreation ground or field garden, or for any other public purpose, in lieu of that directed to be allotted by any provisional order, shall extend to authorise them to allow the allotment of land of equal value although it may not be of equal quantity.

Situation of allotments for recreation grounds and field gardens.

23. Every allotment made for the purpose of a recreation ground or field garden shall be in such part of the land proposed to be inclosed as is best suited for the purpose for which it is appropriated, and where any land proposed to be inclosed consists partly of common being waste land of a manor (in this section referred to as the first-mentioned land), and partly of common not being waste land of a manor (in this section referred to as the second-mentioned land), and the commissioners are satisfied that it would be advantageous that the allotment for a recreation ground or a field garden, or any part thereof, should be made out of the second-mentioned land instead of out of the first-mentioned land, the commissioners may, in the provisional order relating to such land, specify as one of the terms and conditions of the inclosure thereof that the said allotments or the said part thereof shall be made accordingly out of the second-mentioned land, and shall out of the first-mentioned land allot land of equal value by way of exchange to the persons interested in the second-mentioned land.

Field gardens to be free of rent-charge.

24. There shall be repealed so much of the Inclosure Acts, 1845 to 1868, as relates to the charging of an allotment made for the purpose of a field garden with a rentcharge, and every such allotment made after the passing of this Act shall be made free of any such rentcharge.

Allotments for recreation grounds to be vested in churchwardens and overseers.

25. There shall be repealed so much of the Inclosure Acts, 1845 to 1868, as provides that an allotment made for the purpose of a recreation ground may be allotted to any person entitled to an allotment under the inclosure, and every such allotment made after the passing of this Act shall be vested in the churchwardens and overseers for the time being of the parish in which the same shall be situate, and shall be held by them as provided by the Inclosure Acts, 1845 to 1868.

Amendment of law as to letting field gardens.

26. Whereas by the Inclosure Act, 1845, allotment wardens are required to let the allotments under their management to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, and are further required to demand, in respect of such letting, a rent not below the full yearly value of the land to be ascertained in manner in the said Act mentioned; and whereas it is expedient to amend the said provisions: Be it enacted that allotment wardens, if they are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in gardens not exceeding a quarter of an acre, may let the same, or any unlet portion thereof, in gardens not exceeding an acre each to such inhabitants as aforesaid: Further, it shall be the duty of allotment wardens to offer the gardens under their management to the poor inhabitants of the parish at a fair agricultural rent, if from time to time sufficient to satisfy all rates, taxes, tithes, tithe rentcharge, and the rentcharge charged on the said allotments under the provisions of "The General Inclosure Act, 1845," but not otherwise, instead of at such rent as is required by the said Act. Moreover, if in any parish the allotment wardens are unable to let the allotments under their management, or any portion thereof, to the poor inhabitants of the parish in such quantities and at such rents as aforesaid, they may let the same, or such portion as may be unlet, to any person whatever at the best annual rent which can be obtained for the same, without any premium or fine, and on such terms as may enable the allotment wardens to resume possession thereof within a period not exceeding twelve months, if it should at any time be required for such poor inhabitants as aforesaid.

This section shall apply to all land allotted to the poor for the purpose of cultivation under any Inclosure Act whatever, whether public or private, whether under the management of allotment wardens, feoffees, trustees, rector or vicar and churchwardens, overseers, managers, or any other person or persons whatever, and whether at present cultivated or uncultivated, so that all such persons as aforesaid shall have like powers and duties as are hereinbefore given to and imposed upon allotment wardens.

Application of surplus rents of recreation grounds and field gardens.

27. Whereas by section seventy-three of the Inclosure Act, 1845, the surplus rents arising from recreation grounds are applicable in aid of the rates for the repair of the public highways in the parish or respective parishes in which the said grounds are situate, and by section one hundred and twelve of the same Act the surplus rents arising from field gardens are payable to the overseers of the poor in aid of the poor rates of the parish: And whereas it is expedient to amend the said provisions: Be it enacted, that the surplus rents arising from recreation grounds shall from and after the passing of this Act cease to be applied in manner provided by the said

seventy-third section, and shall be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the recreation grounds or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for recreation grounds in the same parish or neighbourhood; and the surplus rents arising from field gardens shall, from and after the passing of this Act, cease to be applied in manner provided by the said one hundred and twelfth section, and shall be applied to all or any of the following purposes, and to no other purpose; that is to say, in improving the field gardens or any of them in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, or in hiring or purchasing additional land for field gardens in the same parish or neighbourhood (1).

The trustees of any recreation ground and the allotment wardens of any field gardens may, with the approval of the Inclosure Commissioners, sell all or any part of the allotment vested in them, and out of the proceeds of such sale purchase any fit and suitable land in the same parish or neighbourhood: Provided, that the land so purchased shall be held in trust for the purposes for which the allotment so sold as aforesaid was allotted, and for no others; and provided that the Inclosure Commissioners shall not sanction any such sale as aforesaid unless and until it shall be proved to their satisfaction that land more suitable for the purposes for which the allotment proposed to be sold was allotted may and will be forthwith purchased; and the proceeds of any such sale shall be paid to the Inclosure Commissioners, and shall remain in their hands until such purchase of other land as aforesaid.

Reports to be made by managers of recreation grounds and field gardens.

28. The trustees of recreation grounds, where such trustees are the overseers or churchwardens of a parish, and the allotment wardens of field gardens shall, from time to time, and at such intervals of not less than three years nor more than five years, as the Inclosure Commissioners direct, make such reports to the said commissioners in respect of the recreation grounds and field gardens under their management, with such particulars of the rents received by them, as the commissioners may require.

Amendment of law as to town and village greens.

29. Whereas by the Inclosure Act, 1857, provision is made for the protection of town and village greens and recreation grounds, and it is expedient to amend such provision: Be it enacted as follows, that is to say, an encroachment on or inclosure of a town or village green, also any erection thereon, or disturbance, or interference with, or occupation of the soil thereof, which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance, and if any person does any act in respect of which he is liable to pay damages or a penalty under section twelve of the said Inclosure Act, 1857, he may be summarily convicted thereof upon the information of any inhabitant of the parish in which such town or village green or recreation ground is situate, as well as upon the information of such persons as in the said section mentioned.

This section shall apply only in cases where a town or village green or recreation ground has a known and defined boundary.

Jurisdiction of county court in respect of illegal inclosures.

30. A county court within whose jurisdiction any common or part of a common is situate shall have jurisdiction to hear any case relating to any illegal inclosure or encroachment of or upon such common or part of a common respectively made after the passing of this Act, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and to grant an injunction against such inclosure, encroachment, or nuisance, or to make an order for the removal or abatement of such inclosure, encroachment, or nuisance.

Any person aggrieved by any injunction granted or order made or refusal to grant an injunction or make an order by a county court in pursuance of this section may, on giving security for costs to the satisfaction of the county court, appeal to the high court of justice in a summary manner, or by special case or otherwise, as may be prescribed by rules of court to be made by the supreme court of judicature in manner provided by the seventeenth section of the Supreme Court of Judicature Act, 1875.

The appellate court may on hearing the appeal reverse, modify, or confirm the injunction or order complained of, or remit the case to the county court from which the appeal lay, with instructions to deal with the case according to the directions given by the appellate court.

Where an appeal is lodged against the order of a county court directing the removal or abatement of any inclosure, encroachment, or nuisance, such order shall be suspended during such time as such appeal is pending.

(1) Now the Commons Act, 1876, 42 & 43 Vict. c. 37, provides as follows:—

Section 2. The improving the field gardens, or any of them, to which the twenty-seventh section of the Commons Act, 1876, applies, in the same parish or neighbourhood, or maintaining the drainage and fencing thereof, shall be one of the purposes to which the surplus rents arising from recreation grounds shall be applied.

Secs. 30–37.

Nothing in this Act contained shall abridge or interfere with any existing right of abating or otherwise preventing any illegal inclosure of or encroachment on any common, or any nuisance interfering with any right of common.

Until rules of court are made for the purposes of this section, an appeal may be had from the decision of any county court under this section in the same manner in which an appeal from the decision of a county court may be had in a case within its ordinary jurisdiction.

Three months' notice of claim to inclose to be given in the local papers.

31. Any person intending to inclose or improve a common or part of a common otherwise than under the provisions of this Act shall give notice to all persons claiming any legal right in such common, or part of a common, by publishing, at least three months beforehand, a statement of his intention to make such inclosure, for three successive times, and in two or more of the principal local newspapers in the county, town, or district in which the common or part of a common proposed to be inclosed is situate; but the provisions of this section shall not apply to any commons or waste lands whereon the rights of common are vested solely in the lord of the manor.

A production of a newspaper containing such advertisement as aforesaid shall be evidence of the same having been issued, and the inclosure shall, until the contrary is proved, be deemed to have taken place at the time specified in such advertisement.

Appointment of valuer to be confirmed by commissioners.

32. An appointment of a valuer after the passing of this Act shall not be valid until it has been confirmed by the commissioners. The commissioners may disapprove of a valuer on the ground of his incompetency, interest, want of impartiality, or any reasonable cause, and where they so disapprove of a valuer may call a meeting, and a meeting may be held to appoint, and another person appointed (subject to the approval of the commissioners) to be valuer in like manner as if no previous meeting had been held and no valuer had been previously appointed, and so on until a valuer approved by the commissioners is appointed.

General Amendment.

Extension of section 105 of the Inclosure Act, 1845, as to exchanges and partitions.

33. The provisions of section one hundred and five of the Inclosure Act, 1845, relating to the validity after confirmation of an award of inclosure of the exchanges, and partitions set forth in such award, shall apply to orders of exchange, partition, and division of intermixed lands carried into effect in pursuance of the Inclosure Acts, 1845 to 1868, by separate orders, and not included in an award of inclosure.

Part III.

Miscellaneous.

Repeal of certain parts of the Inclosure Act, 1845, and amendment of law as to reports.

34. . . . . the Inclosure Commissioners shall not be required to repeat, in their general annual report, any of the particulars in relation to the regulation or inclosure of commons which they may have stated in any other reports made by them in pursuance of this Act in relation to such commons, but they may refer to such other reports, or give a summary thereof, or otherwise deal with the same as may be thought expedient (1).

35. [Act not to apply to metropolitan commons.]

A common regulated under Act not to be inclosed without sanction of Parliament

36. Where an Act of Parliament has been passed confirming a provisional order under this Act for the regulation of a common, then, subject to and without prejudice to the provisions of that order, such common shall not, nor shall any part thereof, be inclosed without the sanction of Parliament subsequently obtained.

Definitions.

Definitions.

37. In this Act, unless the context otherwise requires,—

"A common" means any land subject to be inclosed under the Inclosure Acts, 1845 to 1868:

"Waste land of a manor" means and includes any land consisting of waste land of any manor on which the tenants of such manor have rights of common, or of any land subject to any rights of common which may be exercised at all times of the year for cattle levant and couchant, or to any rights of common which may be exercised at all times of the year, and are not limited by number or stints:

"Person" includes a body corporate:

"Inclosure Acts, 1845 to 1868," means the Acts mentioned in the schedule hereto, and each of the Acts mentioned in the said schedule may be cited by the short title in such schedule in that behalf mentioned; and the above mentioned Acts together with this Act may be cited as "The Inclosure Acts, 1845 to 1876:"

(1) The first portion of this section is repealed by Statute Law Revision Act, 1883

SETTLED ESTATES ACT, 1877.[1]

40 & 41 VICT. c. 18.

An Act to consolidate and amend the Law relating to Leases and Sales of Settled Estates.

[28*th June*, 1877.]

Secs. 20, 21.

20. It shall be lawful for the court, if it shall deem it proper and consistent with a due regard for the interests of all parties entitled under the settlement, and subject to the provisions and restrictions in this Act contained, from time to time to direct that any part of any settled estates [1] be laid out for streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses, either to be dedicated to the public or not, and the court may direct that the parts so laid out shall remain vested in the trustees of the settlement, or to be conveyed to or vested in any other trustees, upon such trusts for securing the continued appropriation thereof to the purposes aforesaid in all respects, and with such provisions for the appointment of new trustees when required, as by the court shall be deemed advisable.

21. When any part of any settled estates [1] is directed to be laid out for such purposes as aforesaid, the court may direct that any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercoursss, including all necessary or proper fences, pavings, connections, and other works incidental thereto respectively, be made and executed, and that all or any part of the expenses in relation to such laying out and making and execution be raised and paid by means of a sale or mortgage of or charge upon all or any part of the settled estates, or be raised and paid out of the rents and profits of the settled estates or any part thereof, or out of any moneys or investments representing moneys liable to be laid out in the purchase of hereditaments to be settled in the same manner as the settled estates, or out of the income of such moneys or investments, or out of any accumulations of rents, profits, or income; and the court may also give such directions as it may deem advisable for any repair or maintenance of any such streets, roads, paths, squares, gardens, or other open spaces, sewers, drains, or watercourses or other works out of any such rents, profits, income, or accumulations during such period or periods of time as to the court shall seem advisable.

[1] By the Conveyancing Act, 1881, 44 & 45 Vict. c. 41, s. 41, where any person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

Section 37.

"Municipal borough" means any place for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and the Acts amending the same [1]:

"Improvement Act district" means any area subject to the jurisdiction of any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town:

"Local government district" has the same meaning as it has in the Public Health Act, 1875.

Schedule.

SCHEDULE.

Year and Chapter.	Title.	Short Title.
8 & 9 Vict. c. 118.	An Act to facilitate the inclosure and improvement of commons and lands held in common, the exchange of lands, and the division of intermixed lands; to provide remedies for defective or incomplete executions, and for the non-execution of the powers of general and local Inclosure Acts, and to provide for the revival of such powers in certain cases.	The Inclosure Act, 1845.
9 & 10 Vict. c. 70.	An Act to amend the Act to facilitate the inclosure and improvement of commons.	The Inclosure Act, 1846.
10 & 11 Vict. c. 111	An Act to extend the provisions of the Act for the inclosure and improvement of commons.	The Inclosure Act, 1847.
11 & 12 Vict. c. 99.	An Act to further extend the provisions of the Act for the inclosure and improvement of commons.	The Inclosure Act, 1848.
12 & 13 Vict. c. 83.	An Act further to facilitate the inclosure of commons and the improvement of commons and other lands.	The Inclosure Act, 1849.
14 & 15 Vict. c. 53.	An Act to consolidate and continue the Copyhold and Inclosure Commissions, and to provide for the completion of proceedings under the Tithe Commutation Acts.	The Inclosure Commissioners Act, 1851.
15 & 16 Vict. c. 79.	An Act to amend and further extend the Acts for the inclosure, exchange, and improvement of land.	The Inclosure Act, 1852.
17 & 18 Vict. c. 97.	An Act to amend and extend the Acts for the inclosure, exchange, and improvement of land.	The Inclosure Act, 1854.
20 & 21 Vict. c. 31.	And Act to explain and amend the Inclosure Acts.	The Inclosure Act, 1857.
22 & 23 Vict. c. 43.	An Act to amend and extend the provisions of the Acts for the inclosure, exchange, and improvement of land.	The Inclosure Act, 1859.
31 & 32 Vict. c. 89.	An Act to alter certain provisions in the Acts for the commutation of tithes, the Copyhold Acts, and the Acts for the inclosure, exchange, and improvement of land, and to make provision towards the expense of the Copyhold, Inclosure, and Tithe Office.	The Inclosure, &c., Expenses Act, 1868.

[1] See the Municipal Corporations Act, 1882, section 242 (1), *ante*, p. 345.

STATUTES RELATING TO RATING.

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17 GEO. II. c. 3.

An Act to oblige Overseers of the Poor to give Public Notice of Rates made for the Relief of the Poor, and to produce the same.

Secs. 1—3.

1. From and after the first day of May, one thousand seven hundred and forty-four, the churchwardens and overseers, or other persons authorised to take care of the poor in every parish, township, or place, shall give, or cause to be given, public notice in the church of every rate for the relief of the poor allowed by the justices of the peace the next Sunday after the same shall have been so allowed, and no rate shall be esteemed or reputed valid and sufficient so as to collect and raise the same unless such notice shall have been given (1).

2. The churchwardens and overseers of the poor, or other persons authorised as aforesaid in every parish, township, or place, shall permit all and every the inhabitants of the said parish, township, or place to inspect every such rate at all reasonable times, paying one shilling for the same, and shall upon demand forthwith give copies of the same or any part thereof to any inhabitant of the said parish, township, or place, paying at the rate of sixpence for every twenty-four names.

3. If any churchwarden or overseer of the poor, or other person authorised as aforesaid, shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof as aforesaid, such churchwarden or overseer, or other person authorised as aforesaid, for every such offence shall forfeit and pay to the party aggrieved the sum of twenty pounds, to be sued for and recovered by action of debt, bill, plaint or information in any of His Majesty's courts of record, wherein no essoin, protection or wager of law, or more than one imparlance shall be allowed.

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7 WILL. IV. AND 1 VICT. c. 45 (2).

An Act to alter the mode of giving Notices for the Holding of Vestries and of making Proclamations in cases of Outlawry, and of giving Notices on Sundays with respect to various matters.

[12*th July*, 1837.]

Secs. 1, 2.

[1. Repeals so much of 58 Geo. 3, c. 69, as directs the publication of notices to be made in the parish church or chapel on some Sunday during or immediately after divine service.]

2. That from and after the first day of January next all proclamations or notices which under or by virtue of any law or statute or by custom or otherwise have been heretofore made or given in churches or chapels during or after divine service, shall be reduced into writing and copies thereof, either in writing or in print, or partly in writing and partly in print, shall, previously to the commencement of divine service on the several days on which

(1) See the two next statutes, 7 Will. 4 & 1 Vict. c. 45, and 45 & 46 Vict. c. 20, *post*.
(2) See the preceding and succeeding statutes and 58 Geo. 3, c. 69, s. 1, cited in note, *ante*, p. 757.

Secs. 2—6.

such proclamations or notices have heretofore been made or given in the church or chapel of any parish or place, or at the door of any church or chapel, be affixed on or near to the doors of all the churches and chapels within such parish or place, and such notices when so affixed shall be in lieu of and as a substitution for the several proclamations and notices so heretofore given as aforesaid, and shall be good, valid, and effectual to all intents and purposes whatsoever.

3. That no such notice of holding a vestry shall be affixed on the principal door of such church or chapel unless the same shall previously have been signed by a churchwarden of the church or chapel, or by the rector, vicar, or curate of such parish, or by an overseer of the poor of such parish, but that every such notice so signed shall be affixed on or near to the principal door of such church or chapel.

4. That from and after the first day of January next no decree relating to a faculty, nor any other decree, citation, or proceeding whatsoever in any ecclesiastical court, shall be read or published in any church or chapel during or immediately after divine service.

5. That nothing in this Act shall extend or be construed to extend to the publication of banns, nor to notice of the celebration of divine service or of sermons, nor to restrain the curate in pursuance of the rules in the Book of Common Prayer from declaring unto the people what holy days or fasting days are in the week following to be observed, nor to restrain the minister from proclaiming or publishing what is prescribed by the rules of the Book of Common Prayer or enjoined by the Queen or by the ordinary of the place.

6. That all the provisions of this Act shall extend and be construed to extend to the town of Berwick-on-Tweed, the Isle of Man, and the Islands of Guernsey, Jersey, Alderney and Sark.

POOR RATE ASSESSMENT AMENDMENT ACT, 1882.

45 & 46 VICT. c. 20.

[*3rd July*, 1882.]

Section 4.

Publication of rate where no parish church.

4. In a parish in which there is no church or chapel of the parish, a poor rate, whether made before or after the passing of this Act, shall be deemed to have been duly published if, within fourteen days after the making of the rate, notice thereof has been given by affixing such notice in some public and conspicuous place or situation in the parish.

POOR LAW RATING ACT, 1744.

17 GEO. II. c. 38.

An Act for remedying some defects in the Act made in the forty-third year of the reign of Queen Elizabeth, entitled "An Act for the Relief of the Poor" (1). [*24th June*, 1744.]

Section 4.

4. In case any person or persons (2) shall find him, her, or themselves aggrieved by any rate (3) or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on, or left out (4) of such rate or assessment, or to the sum charged on any person or persons therein, or shall have any material objection to such account as aforesaid or any part therof, or shall find him, her, or themselves aggrieved by any neglect, act, or thing done or omitted by the churchwardens and overseers of the poor, or by any of His Majesty's justices of the peace, it shall and may be lawful for such person or persons in any of the cases aforesaid, giving reasonable notice (5) to the churchwardens or overseers of the poor of the parish, township, or place, to appeal to the next general (6) or quarter sessions of the peace for the county, riding, division, corporation, or franchise where such parish, township, or place lies; and the justices of the peace there assembled are hereby authorised and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the

(1) See this statute as to rating generally in note (3), *ante*, p. 779.
(2) See *R.* v. *Gwyer*, 2 A. & E. 216; *R.* v. *Sussex JJ.*, 15 East, 206; *R.* v. *JJ. Lancashire*, 12 Q. B. 305.
(3) See *R.* v. *JJ. Suffolk*, 1 B. & Ald. 640.
(4) See *R.* v. *George*, 6 A. & E. 305, 6 L. J. M. C. 34, 1 N. & P. 451, 1 Jur. 39.
(5) See 41 Geo. 3, c. 23, s. 4, *post*.
(6) *R.* v. *JJ. Lancashire*, 4 New Sess. Cas. 130, 19 L. J. M. C. 199, 14 Jur. 552, S. C. *nom. R.* v. *Trafford*, 15 Q. B. 200.

said justices that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions (1) and then and there finally hear and determine the same; and the said justices may award and order to the party, for whom such appeal shall be determined, reasonable costs, in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons, by an Act made in the eighth and ninth years of King William the Third (2), intituled "An Act for supplying some Defects in the Laws for the Relief of the Poor of this Kingdom."

5. Provided always, that in all corporations or franchises who have not four (3) justices of the peace, it shall and may be lawful for any person or persons in any of the cases aforesaid, where an appeal is given by this Act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate.

6. And whereas it hath been held that, upon appeals from rates and assessments, the justices of the peace may not only qnash the old rates, but make new rates and assessments from which no appeal can be had: Be it enacted by the authority aforesaid, that upon all appeals from rates and assessments the justices of the peace (where they shall see just cause to give relief) shall and are hereby required to amend the same in such manner only as shall be necessary for giving such relief without altering such rates or assessments with respect to other persons mentioned in the same; but if, upon an appeal from the whole rate, it shall be found necessary to quash or set aside the same, then and in every such case the said justices shall and are hereby required to order and direct the churchwardens and overseers of the poor to make a new equal rate or assessment, and they are hereby required to make the same accordingly (4).

7. And for the more effectual levying money assessed for the relief of the poor, Be it enacted by the authority aforesaid, that the goods of any person assessed and refusing to pay may be levied by warrant of distress, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county or precinct on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county or precinct by virtue of such warrant and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same.

8. And to prevent all vexatious actions against overseers of the poor, Be it enacted by the authority aforesaid, that where any distress shall be made for any sum or sums of money justly due for the relief of the poor, the distress itself shall not be deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers, on account of any defect or want of form in the warraut for the appointment of such overseers, or in the rate or assessment, or in the warrant of distress thereupon; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the party or parties distraining, but the party or parties aggrieved by such irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case, at the election of the plaintiff or plaintiffs.

9. Provided always, that where the plaintiff or plaintiffs shall recover in snch action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs.

10. Provided, nevertheless, that no plaintiff or plaintiffs shall recover in any action for any such irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining before such action brought.

11. In case any person or persons shall refuse or neglect to pay to such overseers as aforesaid any sum or sums of money that he, she, or they shall be legally rated or assessed to, it shall and may be lawful to and for the succeeding overseers, and they are hereby required to levy such arrears, and out of the money so levied to reimburse their predecessors all sums of money which they have expended for the use of the poor, and which are allowed to be dne to them in their accounts as aforesaid.

12 is set out in the note, *ante*, p. 781.

(1) *R.* v. *Eyre*, 6 E. & B. 992, 7 E. & B. 609, 26 L. J. M. C. 14, 121.
(2) 8 Will. 3, c. 30.
(3) Now six, 1 Geo. 4, c. 36.
(4) See *R.* v. *Cheshunt*, 2 T. R. 623; and see 41 Geo. 3 c. 23, s. 7, *post*.

POOR RATE COLLECTION ACT, 1801.

41 GEO. III. c. 23.

An Act for the better Collection of Rates made for the Relief of the Poor.
[18*th April*, 1801.]

Secs. 1—4.

On appeal from any poor rate, the quarter session may amend it without quashing it, or, if necessary to grant relief, may quash the rate, but the sum assessed shall notwithstanding be levied.

1. [After reciting 17 Geo. II. c. 38, *ante*, p. 1338, proceeds] . . . . . from and after the passing of this Act, upon all appeals from any rate or assessment made for the relief of the poor of any parish, township, vill, or place, the court of general or quarter sessions of the peace shall, and such court is hereby authorised and required (in all cases where they shall see just cause to give relief) to amend such rate or assessment, either by inserting therein or striking out the name or names of any person or persons, or by altering the sum or sums therein charged on any person or persons, or in any other manner which the said court shall think necessary for giving such relief, and without quashing or wholly setting aside such rate or assessment: Provided always, that if the said court shall be of opinion that it is necessary, for the purpose of giving relief to the person or persons appealing, that the rate or assessment should be wholly quashed, then the said court may quash the same; but, nevertheless, all and every the sum and sums of money in and by such rate or assessment charged on any person or persons shall and may be levied and recovered by such ways and means, and in such and the same manner, as if no appeal had been made against such rate or assessment; and all and every the sum and sums of money which any person or persons charged in such rate or assessment shall pay, or which shall be levied upon or recovered from him, her, or them, shall be deemed and taken as payments on account of the next effective rate or rates, assessment or assessments, which shall be made for the relief of the poor of the same parish, township, vill, or place.

Notice of appeal not to prevent distress being made for the recovery of the rate, provided the sum be not greater than that assessed in the last effective rate.

2. All and every the sum and sums of money at which any person or persons is or are or shall be rated or assessed, in any rate or assessment made for the relief of the poor of any parish, township, vill, or place, shall and may be levied and recovered by distress, and all other lawful ways and means, notwithstanding the person or persons so rated or assessed, or any other person or persons, shall have given notice of appeal from or against such rate or assessment, for any cause whatsoever: Provided always, that if any person, rated or assessed in any rate or assessment made for the relief of the poor, shall give such notice of appeal as hereinafter mentioned to the churchwardens and overseers of the poor of any parish, township, vill, or place, or any two of them, then, from and after the giving of such notice, and until the appeal shall have been heard and determined, no proceedings shall be commenced or carried on to recover any greater sum or sums of money from such person or persons than the sum or sums at which he, she, or they, or any occupier of the same premises, shall have been rated or assessed in the last effective rate which shall have been collected in such parish, township, vill, or place.

Quarter sessions having ordered a rate to be quashed, may order the sum charged on any person not to be paid, and stop proceedings for the recovery thereof, &c.

3. In case the said court of general or quarter sessions of the peace shall upon appeal order any rate or assessment for the relief of the poor to be quashed, it shall be lawful for the said court to order that any sum or sums of money, in and by such rate or assessment charged on any person or persons, or any part of any such sum or sums, not to be paid, and then and in every such case no proceedings shall, after making such order, be commenced; or if any proceedings have been previously commenced, such proceedings shall be no further prosecuted or carried on for the purpose of levying or enforcing the payment of any sum or sums which shall be so ordered by the said court not to be paid as aforesaid: Provided always, that no justice of the peace, constable, or other officer of the peace or other person shall be deemed a trespasser, or liable to any action, for any warrant, order, act, or thing, which such justice, constable, or other officer or person shall have granted, made, executed, or done, for the purpose of levying or enforcing the payment of any such sum or sums of money, before he shall have had notice in writing of the order for the non-payment of such sum or sums of money, which the said court is hereby authorised to make as aforesaid.

Notices of appeal to be given to churchwardens and overseers of the poor, &c.

4. All notices of appeal, from or against any rate or assessment made for the relief of the poor, or from or against the account of the churchwardens and overseers of the poor of any parish, township, vill, or place, shall be in writing, and shall be signed by the person or persons giving the same, or his, her, or their attorney on his, her, or their behalf; and such notices of appeal shall be delivered to or left at the places of abode of the churchwardens and overseers of the poor of the parish, township, vill, or place, or any two of them, and the particular causes or

grounds of appeal shall be stated and specified in such notice; and upon the hearing of any appeal from or against any such rate or assessment, or account, the court of general or quarter sessions to which such appeal shall be made, shall not examine or inquire into any other cause or ground of appeal than such as are or is stated and specified in the notice of appeal.

Appeals may be decided, if the parties consent, although notice be not given.

5. Provided, nevertheless, that with the consent of the overseers, signified by them or their attorney in open court, and with the consent of any other person interested therein, the said court of sessions may proceed to hear and decide upon such appeal, although no notice thereof shall have been given in writing; and also that with the like consent such court may hear and decide upon grounds of appeal, not stated or misstated in such written notice, where any notice shall have been given in writing.

Persons appealing against any rate, shall give notice, not only to the churchwardens, &c., but also to the persons interested, &c.

6. If any person or persons shall appeal against any rate or assessment made for the relief of the poor, because any other person or persons is or are rated or assessed in such rate or assessment, or is or are omitted to be rated or assessed therein, or because any other person or persons is or are rated or assessed in any such rate or assessment at any greater or less sum or sums of money than the sum or sums at which he, she, or they ought to be rated or assessed therein, or for any other cause that may require any alteration to be made in such rate or assessment with respect to any other person or persons, then and in every such case the person or persons so appealing for the causes aforesaid, or any of them, shall give such notice of appeal, in writing as hereinbefore mentioned, not only to the churchwardens or overseers of the poor, or any two or more of them, but also to the other person or persons so interested or concerned in the event of such appeal as aforesaid; and such other person or persons shall, if he, she, or they shall so desire, be heard upon the said appeal; and it shall be lawful for the court of general or quarter sessions of the peace, on the hearing of such appeal, to order the name or names of such other person or persons to be inserted in such rate or assessment, and him, her, or them to be therein rated and assessed at any sum or sums of money, or to order the name or names of such other person or persons to be struck out of such rate or assessment, or the sum or sums at which he, she, or they is or are rated or assessed therein, to be altered, in such manner as the said court shall think right; and the proper officer of the said court shall forthwith add to or alter the rate or assessment accordingly.

The rate shall be recovered as altered by the quarter sessions.

7. If upon the hearing of any appeal from or against any rate or assessment, the said court shall order the name or names of any person or persons to be inserted therein, and him, her, or them to be rated or assessed at any sum or sums of money, or shall order the sum or sums at which any person or persons is or are therein rated or assessed to be raised or increased, then and in such case all and every the sum and sums of money, at or to which such person or persons shall be so ordered to be rated or assessed, or to be raised or increased, or so much thereof as shall not have been already paid, shall and may be recovered in such and the same manner, and by such and the same means, as if he, she, or they had been originally named in such rate or assessment, and rated or assessed therein at such sum or sums of money.

In case in the rate the name of any person shall be struck out, or any sum lowered, the quarter sessions shall order the money which ought not to have been recovered to be repaid.

8. If upon the hearing of any appeal from any rate or assessment for the relief of the poor, the court of general or quarter sessions of the peace shall order the name or names of any person or persons to be struck out of such rate or assessment, or the sum or sums rated or assessed on any person or persons to be decreased or lowered; and if it shall be made appear to the said court, that such person or persons hath or have previously to the hearing of such appeal paid any sum or sums of money, in consequence of such rate or assessment, which he, she, or they ought not to have paid or been charged with, then and in every such case the said court shall order all and every such sum and sums of money to be repaid and returned, by the said churchwardens and overseers of the poor, to the person or persons having paid the same respectively, together with all reasonable costs, charges, and expenses occasioned by such person or persons having paid or been required to pay the same; and all and every the sum and sums of money so ordered to be repaid or returned by the churchwardens and overseers of the poor, or any of them, shall and may, together with all such costs, charges, and expenses as aforesaid, be levied and recovered from them, or any of them, by distress and all such other ways and means as the money charged, rated, or assessed on any person, by any rate or assessment made for the relief of the poor can or may be by law levied or recovered.

PAROCHIAL ASSESSMENT ACT, 1836.

6 & 7 WILL. IV. c. 96.

An Act to regulate Parochial Assessments. [19*th August*, 1836.]

Secs. 1—6.

All rates to be made on the net annual value of the property.

1. From and after such period, not being earlier than the twenty-first day of March next after the passing of this Act, as the Poor Law Commissioners shall by any order under their seal of office direct, no rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year (1), free of all usual tenants' rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain them in a state to command such rent: Provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable.

Proviso.

Rates to be made in a given form.

2. Every such rate made after the said period shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the form given in the schedule to this Act annexed, so far as the same can be ascertained; and the churchwardens and overseers, or other officers whose duty it may be to make and levy the said rate, or such a number of the said churchwardens and overseers or other officers as are competent to the making and levying of the same, shall, before the rate is allowed by the justices, sign the declaration given at the foot of the said form; and otherwise the said rate shall be of no force or validity: Provided always, that nothing herein contained shall be construed to prevent the owners of tenements from compounding for the rates to be assessed on the same, in such manner as they were by any statute or statutes enabled to do before the passing of this Act, so that the gross estimated rental of the hereditaments compounded for be entered on the rate in the proper column.

Nothing herein to prevent owners from compounding for rates.

3. [Power to order new survey and valuation.]

4. [Power for surveyors to enter and examine lands, &c., for purposes of survey and plans.]

Power to take copies or extracts of rates gratis.

5. It shall be lawful for any person or persons rated to the relief of the poor of the parish in respect of which any rate shall be made, at all seasonable times, to take copies thereof or extracts therefrom without paying anything for the same, anything in any Act of Parliament to the contrary notwithstanding; and in case the person or persons having the custody of such rate shall refuse to permit or shall not permit such person or persons so rated as aforesaid to take copies thereof or extracts therefrom, the person or persons so refusing or not permitting such copy or extract to be made shall forfeit and pay any sum not exceeding five pounds, to be recovered in a summary way before any justices of the peace having jurisdiction in the parish or place.

Penalty for refusal to permit.

Justices acting in petty sessions to hold four special sessions in the year to hear appeals.

6. The justices acting in and for every petty sessions division shall four times at least in every year hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes, twenty-eight days at the least before the holding of the same; and such special sessions shall and may be adjourned from time to time by the justices there present as they may think fit; and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the grounnd of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall within fourteen days after the same shall have been made cause notice to be given in writing of his, her, or their intention of appealing against such decision, and of the matter or cause of such appeal, to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice (2) shall enter into a recognisance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof;

(1) See *R.* v. *Chaplin*, 1 B. & Ad. 926, *R.* v. *Hull Dock Co.*, 5 M. & S. 394.
(2) See *R.* v. *St. Albans*, 8 Ad. & E. 932, 8 L. J. M. C. 33, 1 P. D. 148

and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing or appealed against as they shall think proper, and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever: Provided always, that no such objection shall be inquired into by the said justices in special session unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseers, or other persons by whom such rate was made: Provided also, that the said justices in special session shall not be authorised to inquire into the liability of any hereditaments to be rated, but only into the true value thereof and into the fairness of the amount at which the same shall have been rated.

Seven days' notice to be given of objections.

Proviso.

7. The justices present at any such special or adjourned session shall for the aforesaid purpose have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs, which any court of quarter sessions of the peace has upon appeals from any such rate, except as herein excepted: Provided always, that no order of the said justices shall be removed by *certiorari* or otherwise into any of His Majesty's Courts of Record at Westminster: Provided also, that nothing in this Act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions: Provided also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal.

Justices may act with all the powers of justices in quarter sessions.

SCHEDULE.

Schedule.

SCHEDULE to which this Act refers.

Form of Rate.

An ASSESSMENT for the RELIEF of the POOR of the Parish of Merton in the County of Surrey, and for other Purposes chargeable thereon according to Law, made this Thirtieth Day of March in the Year of our Lord One thousand eight hundred and thirty-seven, after the Rate of Sixpence in the Pound.

No.	Arrears due, or if excused.	Name of Occupier.	Name of Owner.	Description of Property rated.	Name or Situation of Property.	Estimated Extent.	Gross estimated Rental.	Rateable Value.	Rate at 6*d.* in the Pound.
	£ s. d.					A. R. P.	£ s. d.	£ s. d.	£ s. d.
1	- - -	James Smith.	John Green	Land and Buildings.	Whiteacre Farm.	40 0 0	60 0 0	55 0 0	1 7 6
2	- - -	Ditto	Ditto	House and Garden.	In West Street.	0 1 0	30 0 0	25 0 0	0 12 6
3	- - 7½ Excused	John Poor	Ditto	House.	In Brick lane.	- - -	1 10 0	1 5 0	0 0 7½
&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.

Declaration of Overseers and Churchwardens.

We, do declare the several particulars specified in the respective columns of the above rate to be true and correct, so far as we have been able to ascertain them, to which end we have used our best endeavours.

THOMAS JONES, Overseer.
JOHN THOMAS, [Churchwarden, *&c., &c.*]

COSTS OF DISTRAINING FOR RATES ACT, 1849.

12 VICT. c. 14.

An Act to enable Overseers of the Poor and Surveyors of the Highways to recover the Costs of distraining for Rates. [11*th May*, 1849.]

Secs. 1—5.

. . . . . .

Where a warrant of distress is granted for a poor rate or highway rate, &c., the costs of obtaining it may also be levied.

it shall be lawful hereafter for all justices of the peace, if in their discretion they shall so think fit, in any warrant of distress they shall make and issue for the levying of any sum or sums to which any person or persons is or are now or may hereafter be rated or assessed in or by any rate or assessment for the relief of the poor or for the highways in England or Wales, or in or by any other rate or assessment which by law now or hereafter is or shall be directed to be enforced or recovered in the same manner as a poor rate, or in any warrant for the levying of any arrears of the same, to order that a sum, such as they may deem reasonable, for the costs and expenses which such overseers or surveyors, or the persons applying for such warrant, shall have incurred in obtaining the same, shall also be levied of the goods and chattels of the person or persons against whom such warrant shall be granted, together with the reasonable charges of the taking, keeping, and selling of the said distress.

Power to order imprisonment not exceeding three months in default of distress.

2. . . . . , ...

(1) when to any warrant of distress for the levying of any sum or sums to which any person or persons (1) may hereafter be rated or assessed in or by any rate or assessment herein-before mentioned it shall be returned by the constable or person having the execution of such warrant that he could find no goods or chattels, or no sufficient goods or chattels, whereon to levy such sum or sums, together with the costs of or occasioned by the levying of the same, it shall be lawful for any two or more justices of the peace before whom the same shall be returned, or for any two or more justices of the peace for the same county, riding, division, liberty, city, borough, or place, if in their discretion they shall so think fit, to issue their warrant of commitment against the person with relation to whom such return shall be so made as aforesaid, in the Form (D.) in the schedule to this Act annexed, or in any form to the like effect, and thereby order such person to be imprisoned in the common gaol or house of correction for any time not exceeding three calendar months, unless the sum or sums therein mentioned shall be sooner paid; and every such warrant of commitment made or issued for default of distress as aforesaid shall be made as well for the non-payment of the costs and expenses so as aforesaid incurred in obtaining such warrant of distress, if the same shall be so ordered as aforesaid, and the costs attending the said distress, and also the costs and charges of taking and conveying the party to prison (the amount of such several costs, expenses, and charges being stated in such warrant of commitment), as for the non-payment of the sum or sums alleged to be due for the said rates respectively.

One warrant may be issued against several ratepayers; but otherwise as to a commitment in default of distress.

3. For the saving of expense in the levying of any sum or sums for rate and costs as aforesaid it shall be lawful to make and issue one warrant of distress against any number of persons neglecting or refusing to pay the same, in the form in the schedule to this Act annexed; but nothing herein shall be deemed or construed to authorise justices in like manner to grant or issue one warrant of commitment against several persons in default of distress as aforesaid (2).

To whom warrants of distress or commitment to be directed.

4. The warrants aforesaid may be directed to the churchwardens and overseers of the poor, or the overseers of the poor, or the surveyors of the highways respectively, and to the constable of the parish or township, and to any other person or persons, or to any one or more of them, as by the justices granting the same shall be deemed fit.

Summons, and how served;

5. Every summons to be issued against any person for non-payment of any sum for which he or she is or shall be so rated or assessed as aforesaid shall be directed to such person, and may be in the Form (B.) in the schedule to this Act annexed, or in any form to the like effect; and the same may be served by any churchwarden or overseer of the poor, or surveyor of the highways, respectively, or constable or other person, to whom it shall be delivered for that purpose, upon the person to whom it is so directed, by delivering the same to the party personally or by leaving the same with some person for him or her at his or her last place of abode; and the person who

(1) See Statute Law Revision Act, 1875.

(2) Now by 25 & 26 Vict. c. 82, s. 1, any number of local rates and taxes, whether of the same or of different kinds due from the same person may be included in the same information, complaint, summons, order, warrant, &c., and the invalidity of such document as respects any one rate or tax shall not affect its validity as respects any other rate or tax comprised in it; and no costs shall be allowed in respect of several informations, &c., where in the opinion of the justices having jurisdiction over such costs one information might have sufficed, regard being had to this Act.

Secs. 5—9.

shall serve the same in manner aforesaid shall attend at the time and place and before the justices in the said summons mentioned, to depose if necessary to the service of the said summons; and if, upon the day and at the place appointed in and by the said summons for the appearance of the party so summoned, such party shall fail to appear accordingly in obedience to such summons, then and in every such case, if it be proved upon oath or affirmation to the justices then present that such summons was duly served as aforesaid a reasonable time before the time so appointed for his or her appearance as aforesaid, it shall be lawful for such justices of the peace in their discretion, if they shall so think fit, to proceed *ex parte*, in the same manner to all intents and purposes as if such party had personally appeared before them in obedience to the said summons.

If not obeyed, the justices may proceed *ex parte*.

6. In all cases where any proceedings shall be taken to compel payment of any sum for which any such person shall be so rated or assessed as aforesaid, if at any time before such person shall be committed to and lodged in prison for non-payment thereof, or for or by reason of its being returned to such warrant of distress as aforesaid that there are no goods or chattels or no sufficient goods or chattels of such person whereon the same may be levied as aforesaid, such person shall pay or tender to the churchwardens or overseers of the poor, or any of them, or to the surveyor of highways respectively, or other person authorised to collect or receive such rate, the sum so sought to be recovered, together with the amount of all costs and expenses up to that time incurred in the proceedings so taken to compel payment thereof as aforesaid, then and in every such case the person to whom such sum and costs shall be so paid or tendered shall receive the same, and thereupon no further proceedings for the recovery of the same shall be had or taken (1).

On payment or tender of rate and costs proceedings to cease.

7. [Costs already recovered or proceeded for deemed legal (2).]

8. The forms in the schedule to this Act contained, or forms to the same or the like effect, shall be deemed good, valid, and sufficient in law.

Forms in schedule valid.

9. [Imprisonment for non-payment of church rate limited (3).]

SCHEDULE.

Schedule.

(A. 1.)

Complaint of the Overseers or Surveyors against one Ratepayer.

to wit. { Be it remembered, that on the day of in the year of our Lord the [churchwardens and overseers of the poor, *or* the surveyors of the highways] of the parish of in the county of aforesaid, by *C. D.*, one of the said [overseers *or* surveyors], complain to the undersigned, [*one*] of Her Majesty's justices of the peace in and for the said [*county*], that *A. B.* of the said [*parish*], being a person duly rated and assessed to [the relief of the poor, *or* the maintenance of the highways] of the said parish, in and by a rate *made on the day of in the year in the sum of hath not paid the same or any part thereof, but hath refused so to do: Wherefore the said [churchwardens and overseers *or* surveyors], by *C. D.* aforesaid, pray that the said *A. B.* may be summoned to appear before two of Her Majesty's justices of the peace, to show cause why he hath not paid and refuses to pay the said sum.

C. D.

Made and exhibited before me at in the county of on this day of 1849. *E. F.*

* *Or*, in and by several rates made on and on in the several sums of and of .

(A. 2.)

Complaint against several Ratepayers.

to wit. { Be it remembered, that on the day of in the year of our Lord the [churchwardens and overseers of the poor, *or* the surveyors of the highways] of the parish of in the [*county*] of aforesaid, by *C. D.*, one of the said [overseers *or* surveyors], complain to the undersigned [*one*] of Her Majesty's justices of the peace in and for the said [*county*], that the several persons whose names are mentioned and set out in the schedule hereunder written, being persons duly rated and assessed to [the relief of the poor, *or* the maintenance of the highways] of the said parish, in and by the rates in the said schedule mentioned, in certain sums set down opposite to their respec-

(1) This section is amended in accordance with Statute Law Revision Act, 1875.
(2) Repealed by Statute Law Revision Act, 1875.
(3) Repealed by Summary Jurisdiction Act, 1884, 47 & 48 Vict. c. 43.

Schedule.

tive names in the said schedule, have not respectively paid the said sums or any part thereof, but have respectively refused so to do: Wherefore the said [churchwardens and overseers, *or* surveyors], by *C. D.* aforesaid, pray that said several persons may respectively be summoned to appear before two of Her Majesty's justices of the peace, to show cause respectively why they have not paid and refuse to pay the said sums respectively.

SCHEDULE.

Names of the Rate-payers.	Residence.	Under Rate dated the 1849.	Arrears due under Rate dated the 1848.	Total Sum due.
		£ s. d.	£ s. d.	£ s. d.
A. B. - - -	(here state it)	1 7 0	1 7 0	2 14 0
I. K. - - -	- - - - -	0 13 0	- - -	0 13 0
L. M. - - -	- - -	- - -	0 18 6	0 18 6
N. P. - - -	- - - -	0 14 3	0 14 3	1 8 6

C. D.

Made and exhibited before me
at in the county of
on this day of 1849.
E. F.

(B.)

Summons upon the Complaint.

To *A. B.* of

Whereas complaint hath this day been made before the undersigned [*one*] of Her Majesty's justices of the peace in and for the [*county*] of by the [churchwardens and overseers of the poor, *or* surveyors of the highways] of the parish of in the said [*county*], that you, being a person duly rated and assessed to [the relief of the poor, *or* the maintenance of the highways] of the said parish, in and by a rate made on the day of 1849, in the sum of , hath not paid the same or any part thereof, but hath refused so to do: These are therefore to command you, in Her Majesty's name, to be and appear on at o'clock in the forenoon, at before such two or more justices of the peace for the said [*county*] as may then be there, to show cause why you have not paid and refuse to pay the same, otherwise you shall be proceeded against by default as if you had appeared, and be dealt with according to law.

Given under my hand and seal, this day of in the year of our Lord at in the [*county*] aforesaid. *E. F.*

Take notice, that you have already incurred the under-mentioned costs; viz.

	s.	d.
Clerk to the justices		
Overseer [*or* surveyor], for obtaining the summons...		
Constable, for serving ditto	1	0
Ditto, travelling expenses at threepence per mile		
Total ...		

If the amount of these charges, together with the rate claimed, be paid to the overseer [*or* surveyor] before the day on which the summons is returnable, all further proceedings will be stopped.

(C. 1.)

Warrant of Distress against One Ratepayer.

To the overseers of the poor [*or* to the surveyors of the highways] of the parish of in the [*county*] of and to the constable of and to all other peace officers in the said [*county*].

Whereas on last past a complaint was made before *E. F.*, one of Her Majesty's justices of the peace in and for the [*county*] of by the [churchwardens and overseers of the poor, *or* surveyors of the highways] of the parish of in the said [*county*], that *A. B.*, being a person duly rated and assessed to the relief of the poor [*or* to the maintenance of the highways] of the said parish in and by a rate made on in the sum of had not paid the same or any part thereof, but had refused so to do; and now at this day, to wit, on at the parties aforesaid appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said county [*or* the said churchwardens and overseers, *or* surveyors, by *C. D.*, one of the said overseers, *or* surveyors,

appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said county; but the said *A. B.*, although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said *A. B.* has been duly served with the summons in this behalf, which required him to be and appear here at this day before such two or more justices of the peace as should now be here, to answer the said complaint, and to be further dealt with according to law]; and now having heard the matter of the said complaint, and it being now duly proved to us upon oath [in the presence and hearing of the said *A. B.*], that an assessment for the [relief of the poor, *or* the maintenance of the highways] of the said parish of and for other purposes chargeable thereon according to law, dated the was duly made, allowed, and published, and that the said *A. B.* is therein and thereby assessed at the sum of aforesaid,* and that the said sum hath been duly demanded of the said *A. B.*, but that he hath not paid, and hath refused and still refuses to pay the same; and the said *A. B.* now not showing to us any sufficient cause for not paying the same, these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the said *A. B.*; and if within the space of [*five*] days after the making of such distress the said sum, and the sum of for the costs incurred by the said [churchwardens and overseers, *or* surveyors] in obtaining this warrant, together with the reasonable charges for taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale you retain the said sums of and rendering the overplus, on demand, to the said *A. B.*, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if no such distress can be found that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

Given under our hands and seals, this day of in the year of our Lord at in the [*county*] aforesaid.

E. F.
G. H.

* "And that a certain other assessment for the relief," *&c., to the asterisk, if there be arrears.*

(C. 2.)

Warrant of Distress against several Ratepayers.

To the overseers of the poor *or* the surveyors of the highways of the parish of in the [*county*] of and to the constables of and to all other peace officers in the said [*county*].

Whereas on last past a complaint was made before *E. F.*, one of Her Majesty's justices of the peace in and for the [*county*] of by the [churchwardens and overseers of the poor, *or* the surveyors of the highways] of the parish of in the said [*county*], that the several persons whose names are mentioned and set forth in the schedule hereunder written, being persons duly rated and assessed to [the relief of the poor, *or* maintenance of the highways] of the said parish, in and by the rates in the schedule in that complaint and in this warrant underwritten, in certain sums set down opposite to their respective names in the said schedule, had not respectively paid the said sums or any part thereof, but had respectively refused so to do; and now at this day, to wit, on at the said [churchwardens and overseers, *or* surveyors] by *C. D.*, one of the said overseers, *or* surveyors, and *A. B.*, *I. K.*, and *L. M.*, some of the said parties in the said schedule mentioned, appear before us, the undersigned, two of Her Majesty's justices of the peace in and for the said [*county*]; but the said *N. P.*, although duly called, doth not appear by himself, his counsel or attorney, and it is now satisfactorily proved to us on oath that the said *N. P.* has been duly served with the summons in this behalf, which required him to be and appear here at this day before such two or more justices of the peace as should now be here to answer the said complaint, and to be further dealt with according to law; and now having heard the matter of the said complaint against the said several parties, and it being now duly proved to us upon oath, in the presence of the parties so appearing as aforesaid, that an assessment for [*the relief of the poor*] of the said parish of and for other purposes chargeable therein according to law, dated the was duly made, allowed, and published, and that the said several persons whose names are mentioned and set out in the schedule hereunder written are therein and thereby assessed at the sums set down opposite to their respective names in the said schedule, and that the said several sums have been duly demanded of them respectively, but they have not nor hath any of them paid the said sums or any of them, or any part thereof respectively, but they have refused and still do refuse to pay the same respectively, and have not, nor hath any of them, showed to us sufficient cause for not paying the same; these are therefore to command you, in Her Majesty's name, forthwith to make distress of the goods and chattels of the several persons whose names are mentioned and set out in the schedule hereunder written; and if within the space of *five* days after the making of such distresses respectively the said several sums set opposite to their respective names at which they were so rated and assessed as aforesaid, and the said several sums for costs incurred by the said [churchwardens and overseers, *or* surveyors] also set opposite to their respective names, together with the reasonable charges of taking and keeping the said distress in each case, shall not be paid, that then you do sell the goods and chattels of the party so making default so by you distrained, and out of the money arising by such sales respectively you retain the sums so set opposite to the name of each party whose goods you shall have so sold, rendering to him the overplus, the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if in any of the cases

Schedule.

mentioned in the schedule hereunder written no such distress can be found, that then you certify the same unto us, to the end that such further proceedings may be had herein as to the law doth appertain.

SCHEDULE.

Names of Rate-payers.	Residence.	Under Rate dated 1849.	Arrears due under Rate dated 1848.	Costs.	Total.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.
A. B. - -	(here state it)	1 7 0	1 7 0	0 6 0	3 0 0
I. K. - -	- - -	0 13 0	- - -	0 2 0	0 15 0
L M. - -	- - -	- - -	0 18 6	0 3 0	1 1 6
N. P. - -	- - -	0 14 3	0 14 3	0 5 0	1 13 6

Given under our hands and seals, this day of in the year of our Lord at in the [*county*] aforesaid.

E. F.
G. H.

(D.)

Warrant of Commitment in default of Distress.

To the overseers of the poor [*or* the surveyors of the highways] of the parish of in the [*county*] of and to the constable of and to all other peace officers in the said [*county*], and to the keeper of the [*house of correction*] at in the said [*county*].

Whereas on last past a complaint was made before *E. F.*, Esquire, one of Her Majesty's justices of the peace in and for the said [*county*] of by the [churchwardens and overseers of the poor, *or* surveyors of the highways] of the parish of in the said [*county*], that *A. B.*, being a person duly rated to the [relief of the poor, *or* maintenance of the highways] of the said parish, in and by a rate made on in the sum of had not paid the same or any part thereof, but had refused so to do; and afterwards on at the parties aforesaid appeared before *E. F.* and *G. H.*, Esquires, two of Her Majesty's justices of the peace in and for the said county [*or* the said churchwardens and overseers, *or* surveyors by *C. D.*, one of the said overseers, *or* surveyors, appeared before *E. F.* and *G. H.*, Esquires, two of Her Majesty's justices of the peace in and for the said county; but the said *A. B.*, although duly called, did not appear by himself, his counsel or attorney, and it was then satisfactorily proved to the said justices that the said *A. B.* had been duly served with the summons in that behalf, which required him to be and appear there at that day before such two or more justices of the peace as should then be there, to answer the said complaint, and to be further dealt with according to law]; and then having heard the matter of the said complaint, and it being then duly proved to the said justices upon oath [in the presence and hearing of the said *A. B.*] that an assessment for the [relief of the poor, *or* the maintenance of the highways] of the said parish of dated the was duly made, allowed, and published, and that the said *A. B.* was therein and thereby assessed at the sum of aforesaid, and that the said sum had been duly demanded of the said *A. B.*, but that he had not paid, and had refused and still refused to pay the same, and the said *A. B.* then not showing to the said *E. F.* and *G. H.* any sufficient cause for not paying the same, the said justices thereupon then issued a warrant to commanding them to levy the said sum of and the sum of for the costs incurred in obtaining that warrant, by distress and sale of the goods and chattels of the said *A. B.*: And whereas it now appears to me, the undersigned, one of Her Majesty's justices of the peace in and for the said [*county*], as well by the return of the said to the said warrant of distress as otherwise, that the said hath made diligent search for the goods and chattels of the said *A. B*, but that no sufficient distress whereon to levy the said sums above mentioned could be found: These are therefore to command you the said [churchwardens and overseers, *or* surveyors] and constable and peace officers, or some or one of you, to take the said *A. B.*, and him safely to convey to the [*house of correction*] at aforesaid, and there deliver him to the said keeper, together with this precept: And I do hereby command you the said keeper of the said [*house of correction*], to receive the said *A. B.* into your custody in the said [*house of correction*], there to imprison him for the space of unless the said sums of and together with the sum of for the costs attending the said distress, and the further sum of being the costs and charges of this commitment, and of taking and conveying the said *A. B.* to prison, making in the whole the sum of shall be sooner paid unto you the said keeper; and for so doing this shall be your sufficient warrant.

Given under my hand and seal, this day of in the year of our Lord at in the [*county*] aforesaid.

J. S. (L.S.)

UNION ASSESSMENT COMMITTEE ACT, 1862.

25 & 26 VICT. c. 103.

An Act to amend the law relating to Parochial Assessments in England. [*7th August*, 1862.]

Secs. 1–11.

1. The words used in this Act shall be construed in like manner as the words contained in the Act fourth and fifth of King William the Fourth, chapter seventy-six, and the word "committee" shall signify the assessment committee provided for by this Act; and this Act shall be termed "The Union Assessment Committee Act, 1862."

Interpretation.

2. The board of guardians of every union, formed under the Act fourth and fifth years of King William the Fourth, chapter seventy-six, shall, as soon as convenient after the passing of this Act and in every subsequent year, at their first meeting after the annual election of guardians, appoint from among themselves any number not less than six nor more than twelve to be a committee, consisting partly of *ex-officio* and partly of elected guardians, to be called the assessment committee of the union, for the investigation and supervision of the valuations to be made as hereinafter mentioned within such union, and for the performance of such said acts and duties as hereinafter mentioned; Provided always, that one-third at least of such committee shall consist of *ex-officio* guardians, in case there shall be an adequate number of such *ex-officio* guardians; but in case an adequate number of such *ex-officio* guardians shall not exist, then the number so deficient shall be made up of elected guardians.

Appointment of the assessment committee by board of guardians.

3. Where any union shall have the same bounds as a municipal borough, the clerk to the guardians of such union shall, upon the appointment of the assessment committee, if directed by the said guardians to do so, transmit in writing the names of the persons so appointed to the town council of such borough, and such council may thereupon, if they think fit, appoint from themselves a certain number, not exceeding the number appointed by the board of guardians, who shall, until they respectively cease to be members of the town council or decline to act, forthwith form part of the assessment committee for such union, and the said council may from time to time supply any vacancies in the number of persons appointed by them.

Where union has the same bounds as borough names of assessment committee to be transmitted to town council, who may appoint additional members.

4. If the guardians shall neglect or be prevented from making such appointment at the meeting above specified, the poor law board shall by their order appoint some other day on which the guardians shall make such appointment.

Provision for neglect to appoint.

5. If any *ex-officio* or elected guardian being a member of the committee cease to be guardian or resign his seat at such committee, or die, or become incapable of acting as such member, the board of guardians shall with all convenient speed appoint an *ex-officio* or elected guardian, as the case may be, to supply the vacancy.

Provision for vacancies.

6. During any vacancy in any assessment committee the other or continuing members of such committee may act, and shall have the same powers and jurisdiction as if no such vacancy had happened.

Continuing members may act during vacancies.

7. The authority of the committee appointed for any union under this Act shall extend over every parish comprised in such union.

Extent of committee's authority.

8. The committee shall hold their first meeting at the board room of the union on a day to be fixed by the board of guardians, and the subsequent meetings of the committee shall be holden at such times and at such place and upon such notice and requisition as they shall from time to time appoint; and any guardian of the union may be present at any meeting of the committee, but shall not be entitled to take part in the proceedings thereof.

First meeting when to be holden.

9. All acts, orders, matters, and things by this Act authorized or directed to be made or done by the committee may be made or done by the major part of the members of such committee who shall be present at a meeting, the whole number present together at such meeting not being less than three, and not less in any case than one-third of the whole number of which such committee consists; and when upon any question there shall be an equality of votes the presiding chairman shall have a second or casting vote.

Quorum of meetings.

10. The committee shall employ the clerk or assistant clerk of the board of guardians as their clerk, with such remuneration for his services as the Poor Law Board shall sanction.

Committee may employ and pay clerk.

11. The committee shall cause a minute of their proceedings, and of the names of the members who attend each meeting, to be duly made from time to time in books to be provided for that purpose, which shall be kept by their clerk, under their superintendence, and every such entry shall be signed by the presiding chairman of the assessment committee present at the meeting at which the proceeding took place; and such entry, purporting to be so signed, shall be received as evidence in all courts, and before all judges, justices, and others, without proof of such meeting having been duly convened or held, or of the persons attending such meeting

Proceedings to be entered in books and signed.

Such entries evidence.

Secs. 11–17.

Books to be open to inspection.

having been or being members of the committee, or of the signatures of the members, all of which facts shall be presumed until the contrary be proved; and all such books shall at all seasonable times be open to the inspection of every person rated to the relief of the poor in any parish or place in the union, without any fee being demanded for such inspection; and all such persons shall be entitled at all seasonable times to take copies or extracts from the said books, without paying any fee for the same; and if, on request made for that purpose, the clerk of the committee refuse to permit any such person to inspect any such books, or to take copies or extracts therefrom, as aforesaid, such clerk shall for every such offence be liable to a penalty not exceeding five pounds, upon a summary conviction for the same before two justices of the peace.

Proceedings of committees to be reported.

12. The board of guardians shall in the month of April in every year report the proceedings of their assessment committee to the Poor Law Board.

Committee may require returns from overseers, &c.;

and may require production of rates, &c., and examine persons attending before them.

13. The committee by their order may from time to time require the overseers, assistant overseers, constables, assessors, collectors, and any other persons having the custody of any books of assessment of any taxes or rates, parliamentary or parochial, or of the valuations of any parish, or having the collection or management of any such taxes or rates, to make returns in writing to the committee, at such times and places as they may appoint, of all such particulars as they may direct in relation to such taxes, rates, or valuations, or any property included therein, so far as relates to the union for which they act, and may require the persons having the custody of any such books as aforesaid to make and transmit to the committee copies of or extracts from such books, or to permit such copies or extracts to be made by such persons as the committee may in that behalf direct; and may from time to time require any persons having the custody of any such books, or the collection or management of any such taxes or rates as aforesaid, to attend before them at a time and place to be mentioned in the order in this behalf and to produce all parochial and public books of assessment, rates, rate books, valuations, apportionments, tithe and other maps, plans, surveys, and other public documents in their custody or power, and may examine all persons who shall attend before them: Provided always, that nothing herein contained shall authorize the production of valuations or assessments which by any provision of law at present are not suffered to be made public.

Overseers to prepare valuation lists.

14. Subject to any order as hereinafter referred to which may be made by the committee, the overseers of each parish in the union shall within three calendar months after the appointment of such committee, make a list of all the rateable hereditaments in such parish, with the annual value thereof respectively, in so much of the form shown in the schedule annexed to the Act sixth and seventh William the Fourth, chapter ninety-six, as is set out in the schedule to this Act; and unless such overseers think that the valuation then last acted upon in assessing the rate for the relief of the poor correctly shows the full annual rateable value of all such hereditaments, they shall revise such valuation, and such overseers shall sign every list so made by them as aforesaid, and such list shall be styled "The Valuation List."

Definition of gross estimated rental.

15. The gross estimated rental for the purpose of the schedule to this Act shall be the rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rentcharge, if any: Provided that nothing herein contained shall repeal or interfere with the provisions contained in the first section of the said Act (six and seven William the Fourth, chapter ninety-six) defining the net annual value of the hereditaments to be rated.

Committee may enlarge the time for making valuation lists, and may give directions concerning valuations and valuation lists, and may appoint persons to make the same.

16. The committee by their order may from time to time enlarge the time within which the first valuation lists under this Act shall be made by the overseers of all or any of the parishes in the union, and for ensuring a uniform and correct valuation of every parish in the union may direct that any existing valuation of the rateable hereditaments in any parish be revised, in whole or in part, or a new valuation of such hereditaments be made by the overseers, or the committee may, with the consent of the board of guardians of the union, after notice shall have been sent to every guardian thereof, in any case appoint some person for either of the purposes aforesaid, and may direct such person to make and sign the valuation list instead of the overseers, and every valuation list so made and signed shall be delivered by such person to the overseers of the parish to which the same relates.

Valuation lists to be deposited for inspection, and afterwards transmitted to the committee.

17. The valuation list for each parish, made and signed by the overseers, or delivered to them, as hereinbefore provided, shall be deposited by the overseers in the place in such parish in which rate books are deposited or kept, and a copy of such valuation list shall be forthwith delivered to the board of guardians, and the overseers shall give public notice of the deposit of such list on the Sunday next following the deposit of such list, and such notice shall be given in the same manner, and all persons assessed or liable to be assessed to the relief of the poor of such parish shall have the like right of inspecting, and of demanding and taking copies of and extracts from such list, as in the case of a poor rate allowed by the justices, and the overseers shall, at the

expiration of fourteen days from the time of the notice given of the deposit of such list, transmit the same to the committee, and any overseer or other ratepayer within the union shall have the right of inspecting and taking copies of and extracts from any of the lists so transmitted.

Objections to valuation list.

18. Any overseer or overseers of any parish in any union who shall have reason to think that such parish is aggrieved by the valuation list of any parish within such union, or any person who may feel himself aggrieved by any valuation list on the ground of unfairness or incorrectness in the valuation of any hereditaments included therein, or on the ground of the omission of any rateable hereditament from such list, may at any time after the deposit as aforesaid of such list, and before the expiration of twenty-eight days after the notice of the deposit as aforesaid, give to the committee and to the overseers a notice in writing of his objection, specifying the grounds thereof, and where the ground of any objection shall be unfairness or incorrectness in the valuation of any hereditament in respect of which any person, other than the person objecting, is liable to be rated, or the omission of such hereditament, also give notice in writing of such objection, and of the ground thereof, to such other person.

Committee to hold meetings to hear objections.

19. The committee shall hold such meetings as they may think necessary for hearing objections to the valuation lists, and shall, twenty-eight days at least before holding every meeting for hearing objections to valnation lists, other than meetings by adjournment, cause notice of such meeting to be given to the overseers of the several parishes to which such lists relate, and such overseers shall, on the Sunday next following the receipt of such notice, publish the same in the manner in which notice of a rate allowed by justices is by law required to be given, and the committee may at any such meeting hear and determine such objections, or may from time to time adjourn any such meeting, and adjourn or postpone the hearing or further hearing and determination of any such objections, and may, where they think fit, direct notice of any such objections to be given by the overseers or by the persons objecting to third parties before the further hearing thereof; but the committee shall not be required to hold a meeting for hearing objections to the valuation list of any parish, nnless such notice in writing as hereinbefore mentioned of some objection or objections thereto have been given to the committee; and where a meeting is holden for hearing objections to the valuation list of any parish, the committee shall not hear any objection to such valuation list unless such notice as aforesaid of such objection have been given to the committee and to the overseers; and where the ground of such objection is unfairness or incorrectness in the valuation of any hereditament of any other person than the person objecting, or the omission of such hereditament, also to such other person by the person objecting, except where the overseers, by themselves or any other person on their behalf, and in the case aforesaid such other person as aforesaid, by himself or any other person on his behalf, consent to the hearing of such objection, and in such case the committee may, if they see fit, hear the same; and where the committee see fit to hear the same they shall act in relation thereto in like manner as if notice of snch objection had been duly given.

Board may direct further valuation and correct valuation lists, and when corrected to approve the same.

20. The committee may, whether any objection be or be not made to any such valuation list, and either before or after any meeting for hearing objections, make such alterations in the valuation of any hereditaments included in any valuation list, and insert therein any rateable hereditament omitted therefrom, and make such corrections in names, descriptions, and particulars in any valuation list, and upon such information, as to them may seem sufficient, and may with the consent of the guardians as aforesaid, appoint or employ a person to survey and value the rateable hereditaments comprised in any such valuation list or any of them, or omitted therefrom, or may take such other means as they may think necessary for ascertaining the correctness thereof, and when the committee have heard and determined all such objections as aforesaid, and have made such alterations, insertions, and corrections in any valuation list as to them may seem proper, they shall approve the same nnder the hands of three members of the committee present at the meeting at which the same is approved, with the date of such approval.

Valuation list when altered to be deposited, &c.

21. Where the committee make any alteration in the valnation of any hereditaments included in, or insert therein any rateable hereditament omitted from any such valuation list, they shall cause such valuation list, with such alteration or insertion, to be deposited for inspection in manner hereinbefore provided concerning the valuation list made by or delivered to the overseers, and shall cause the like notice to be given of such deposit as is required in the case of a valuation list so made or delivered as aforesaid, and shall appoint a day, not less than seven days nor more than fourteen days from the re-deposit of such valuation list, for the hearing of any objections to the valuation list as so altered; and when the committee have heard and determined any such objections, or have made such further alterations, insertions, and corrections in such valuation list, they shall approve the same in manner hereinbefore provided.

If on appeal a rate is amended the valuation

22. In case any ratepayer shall under the existing law appeal to the special sessions or quarter sessions against any rate made for the relief of the poor in any parish, and the result of such

Secs. 22–30.

appeal shall be to amend the rate appealed against, the assessment committee shall alter the valuation list of the said parish in conformity with the decision so made.

List to be altered.

Custody, &c., of valuation list after approval.

23. Every valuation list, when approved by the committee, shall be delivered to the overseers of the parish to which the same relates, and shall be preserved at the like place and in the like custody, and be subject to the like resort thereto, and be delivered over from time to time in like manner, as the books are wherein rates and assessments for the relief of the poor for the same parish are entered, and shall be produced by the overseers before the justices, upon application, for the allowance of rates, and at the special or general or quarter sessions when any appeal is to be heard, and also at such times and places as the committee may from time to time direct.

What shall be deemed valuation lists in force.

24. Every valuation list approved by the committee, and delivered to the overseers of the parish to which the same relates, shall, with and subject to the alterations and additions for the time being made therein or thereto by any supplemental valuation lists so approved and delivered, be the valuation list in force in such parish, except in the case of any parish, as is hereinafter referred to, in which the poor rate, or assessment for the poor rate, is made under the authority of a local act, until a new valuation list in substitution for the same be approved and delivered in like manner.

Overseers to prepare supplemental valuation lists in case of additions to or alterations in the rateable property of the parish.

25. When and so often as any property not included in the valuation list in force in any parish becomes rateable, or where, by reason of any alteration in the occupation of any property included in such list, such property becomes liable to be rated in parts not mentioned in such list as rateable hereditaments and separately valued therein, and when and so often as it shall appear to the overseers that any rateable property included in such list has been increased or reduced in value since the valuation thereof, whether by building, destruction of building, or other alteration in the condition thereof or otherwise, the overseers of the parish in each of the cases aforesaid shall, as soon as conveniently may be, make a supplemental valuation list showing the annual rateable value according to the judgment of the overseers of the property so become rateable, or of the parts so become liable to be rated separately, or of the property so increased or reduced in value, as the case may be.

Committee may from time to time direct new valuation and new or supplemental valuation list.

26. The committee by their order may from time to time, where they see fit, upon the application of any person aggrieved by the valuation list in force in any parish, or where they themselves think the same expedient, direct a new valuation of all or any of the rateable hereditaments in such parish, and a new valuation list in substitution for such valuation list as aforesaid, or a supplemental list in substitution for any part thereof or in addition thereto, to be made by the overseers, or the committee may, with such consent as aforesaid, appoint a person for such purposes; and the committee may, in directing such new valuation and the making up of such new or supplemental valuation list, give and make all such or the like directions and provisions in relation thereto as they are authorized under this Act to give and make in relation to the valuations and valuation lists first directed and authorized to be made under the Act.

This Act as to valuation list first directed to be made to apply to new and supplemental valuation lists.

27. All the provisions of this Act in relation to signature, deposit, objections, approval, and otherwise concerning the valuation list first directed and authorized to be made under this Act of the rateable hereditaments in any parish shall be applicable to every new or supplemental valuation list to be made under this Act.

After a valuation list is approved no rate to be allowed unless made according to such list.

28. In every parish where a valuation list under this Act has been approved and delivered to the overseers, no rate for the relief of the poor, or other rate which by law is required to be based upon the poor rate, shall be of any force, unless the hereditaments included in such rate, except as hereinafter provided, be rated according to the annual rateable value thereof appearing in the valuation list in force in such parish; and instead of the declaration required by the second section of the said statute of the sixth and seventh years of William the Fourth, chapter ninety-six, the overseers shall, before the rate shall be allowed by the justices, sign a declaration according to the form set forth in the schedule hereunto annexed: Provided always, that where by reason of any alteration in the occupation of any property included in such list such property has become liable to be rated in parts not mentioned in such list as rateable hereditaments, and separately rated therein, such parts may, where a supplemental valuation list shewing the annual rateable value of such parts has not been approved and delivered as hereinbefore required, and whether such list has or has not been made, be rated according to such amounts as shall be fair apportioned parts of the annual rateable value appearing in such valuation list in force as aforesaid of the hereditaments out of which such parts have been constituted.

Provision for places under local Acts.

29. The provisions of section twenty-eight shall not apply to any poor rate made by any vestry, trustees, guardians, commissioners, overseers, or other persons authorized by any local Act to make the rate for the relief of the poor in any parish, or the assessment on which such rate is made.

In computing

30. When the assessment committee for any union shall have approved valuation lists for all

the parishes comprised within such union, the guardians of such union, in computing the amount of contribution to the common fund for the several parishes, shall thenceforward take the annual rateable value of the property in such parishes respectively from the valuation lists for the time being lastly approved of for such parishes respectively, any statute to the contrary notwithstanding: Provided that in case any parish comprised in any union shall receive any sum of money as a contribution in aid of the poor rate of such parish, for or in respect of Government property within such parish and used for public purposes, the annual value of such property according to the estimate (if any) of such value on which the amount of the sum of money so received is computed, or, if there be no such estimate, then the annual value of such property, estimated in the mode provided by the Act sixth and seventh William the Fourth, chapter ninety-six, for making an estimate of the annual rateable value of property liable to be rated to rates for the relief of the poor, shall be included by the overseer or overseers in the valuation list of such parish, and shall be added to the annual rateable value of the property in such parish in computing the amount of contribution to the common fund for the several parishes in such union.

amount of contributions to common fund the annual rateable value to be taken from approved valuation lists.

31. The committee shall cause a copy of the valuation list for the time in force for every parish in the union to be made and deposited at the board room or other convenient place to be appointed by the board of guardians in the custody of the clerk, which copy shall be open at seasonable times to the inspection of any of the guardians of the union, and of any overseer of any parish within the union, without charge, and of any ratepayer within the union on payment of one shilling, such fee to be carried to the account of the common fund.

Copy of valuation lists to be deposited in board room.

32. If the overseer or overseers of any parish in any union shall have reason to think that such parish is aggrieved by the valuation list of any parish within such union, whether it be on the ground that the rateable hereditaments comprised in the valuation list of such parish are valued at sums beyond the annual rateable value thereof, or on the ground that the rateable hereditaments comprised in the valuation list of some other parish in such union are valued at sums less than the annual rateable value thereof, it shall be lawful for such overseer or overseers, with the consent of a vestry summoned for the purpose of considering the expediency of giving such consent, to appeal to the quarter sessions for the county or borough in which the greatest number of parishes belonging to the union is situate, or, in case the number of parishes in any two or more such jurisdictions is equal to the quarter sessions for the county or borough having jurisdiction over the parish in which the workhouse of the union is situate, at the sessions to be holden after the expiration of a month after the allowance of and deposit of such valuation list as aforesaid, against such valuation list of the parish which shall appear to be over-valued or under-valued; and if in any case any such overseer or overseers appeal against the valuation list of any other parish on the ground that the rateable hereditaments in such list are valued at less than the annual rateable value thereof, such overseer or overseers shall give fourteen clear days notice in writing previous to the first day of the said quarter sessions at which the appeal is to be made of the intention to appeal, and the grounds thereof, to the overseers of the poor of such parish, and to the guardians of the union comprising such parish; and if any overseer or overseers of any parish appeal against the valuation list of such parish on the ground that the rateable hereditaments in such list are valued beyond the annual rateable value thereof, such overseer or overseers shall give fourteen days notice in writing previous to the quarter sessions at which the appeal is to be made of the intention to appeal, and the grounds thereof, to the guardians of the union in which such parish is situate, the said court shall be empowered to hear and determine such appeal, and either confirm such valuation list, or correct such irregularities or inaccuracies as shall be proved to exist therein, as to them may appear fair and just; but no such valuation list shall upon such appeal be quashed or destroyed in regard to any other parish unless the court deem it necessary to proceed to the making of an entire new valuation list as hereinafter provided.

Appeal against valuation list.

33. It shall be lawful for the court of quarter sessions upon any such appeal, instead of hearing the said appeal, to adjourn the same, and to order, upon the application of the appellant or respondent in such appeal, a survey or valuation of any of the parishes in respect of which such appeal shall be made, and to fix the next or some subsequent session for receiving such survey or valuation, and for hearing and determining such appeal; and such court shall also thereupon appoint a proper person to make such survey or valuation, and the person so appointed shall have power, with or without assistants, to enter upon and survey, measure, and value all the hereditaments liable to be assessed to the rates for the relief of the poor within the parish or parishes mentioned in such order, and such survey and valuation shall be reported to the quarter sessions on adjournment fixed as aforesaid for receiving the same, and the court then and there assembled shall hear and determine the said appeal in the manner hereinbefore set forth.

Hearing and determining appeals

Secs. 34–44.

Costs of valuation and appeal.

34. The charges and expenses of any such survey and valuation so ordered shall be deemed costs in such appeal, and abide the event thereof, and the court before which any such appeal is heard and determined may order the costs in and about the appeal to be paid by either the appellant or respondent party, as they in their discretion may think fit; but where any appeal is made on the ground that the rateable hereditaments of any parish comprised in the valuation list of such parish are valued beyond the annual rateable value thereof, if the court on such appeal determine in favour of the appellants, such court shall ascertain the costs and charges incurred by such appellants in and about such appeal, and shall order the board of guardians of the union in which such parish is situate to pay the same to the appellants out of the money raised for the common fund for the several parishes in such union.

Act not to prevent composition for rates.

35. Nothing herein contained shall be construed to prevent the owners of tenements from compounding for the rates to be assessed on the same, in such manner as they were by any statute or statutes enabled to do before the passing of this Act.

Saving of exemptions and special rules of rating.

36. Nothing herein contained shall extend or be taken to render liable to be rated any property, or any person in respect of any occupation not now by law rateable of any property, or to deprive any property, or the occupier of any property, of the benefit of any exemption, in whole or in part, to which such property or occupier is now by law entitled, from any poor rate or other rate which by law is required to be based upon the poor rate, or to render liable to be rated, according to the annual rateable value thereof, any property which under any local Act or otherwise is entitled to be rated upon a fixed amount, or according to any special or exceptional principle of valuation, whether such property shall or shall not be included in any valuation list in force under this Act, or shall in anywise affect the provisions of "The Cambridge Award Act, 1856," or the Act of the seventeenth and eighteenth Victoria relating to the relief of the poor in the city of Oxford.

Board may allow compensation for returns, &c., and expenses.

37. The committee may allow such compensation for any returns, copies, or extracts, or any valuation, or valuation list, or other act, matter, or thing to be made or done in pursuance of their order, and such expenses connected therewith, as to the committee in each case seems just.

Remuneration to clerk and certain expenses of committee to be paid out of common fund.

38. The remuneration allowed by the committee to their clerk and all expenses incurred by them for the common use and benefit of the several parishes within the union for which they are appointed, shall be paid by the guardians of the said union, and be charged upon the common fund thereof.

Expenses of valuation, &c., to be paid out of poor rates.

39. The expenses of making any valuation and valuation list of any parish, or any of such expenses, whether such valuation and valuation list respectively be made by the overseers, or by any person appointed by the committee, shall be charged upon the poor rates of such parish if the valuation made by direction of the committee shall exceed by one-sixth the amount of the valuation delivered to them by the overseers, and upon the common fund of the said union if the valuation so made as last mentioned shall not exceed by one-sixth the valuation so delivered as aforesaid.

Penalty for non-attendance, &c., in obedience to order of the committee.

Injuring, &c., rate books a misdemeanor.

40. Every person who wilfully refuses to attend in obedience to any lawful order of any such committee, or to give evidence, or refuses to produce any rate book, assessment, or valuation which may be lawfully required to be produced before such committee, shall for every such offence be liable to a penalty not exceeding twenty pounds upon a summary conviction for the same before two justices of the peace; and every person who wilfully injures, defaces, conceals, or destroys such rate book, or who upon any examination before any such committee wilfully gives false evidence, shall be deemed guilty of a misdemeanor.

Authentication and service of orders and notices of the committee.

41. Every order and notice made or given by the committee under this Act may be in writing or print, or partly in writing and partly in print, and shall be sufficiently authenticated if signed by their clerk, and may be served by the same or a copy thereof being delivered personally or sent by the post to the party on or to whom such order or notice purports to be made or given, or by being delivered at his usual place of abode.

Service of notices, &c., on the committee.

42. Any notice or statement required to be served upon the committee may be served by being left at the office of the clerk to the board of guardians, or sent through the post office, addressed to the committee at such clerk's office, or by being delivered personally to their clerk, or at his usual place of abode.

Provision as to form of poor rate.

43. In every parish, until a valuation list has been approved, and delivered to the overseers under this Act, every rate made for the relief of the poor in such parish shall be made in the form and contain the particulars required by the said Act of the sixth and seventh years of King William the Fourth; and after such valuation list has been so approved and delivered, every such rate, except in any parish where the poor rate or the assessment for the same is made under the provisions of a local Act as aforesaid, shall show the annual rateable value of each hereditament comprised therein according to the valuation list in force in such parish.

Provisions concerning the

44. All the powers, authorities, provisions, clauses, and regulations now in force relating to

the assessment, collection, and levying of poor rates (save so far as the same are hereby repealed or altered) shall be good, valid, and effectual for the purposes of assessing, levying, collecting, and enforcing the payment of such rate and for carrying this Act into execution.

Secs. 44, 45.

assessment, &c. of poor rates to be applicable to rates made according to this Act.

45. And whereas there are divers unions or incorporations for the relief of the poor formed under local Acts and under the Act of the twenty-second year of King George the Third, chapter eighty-three, which may desire to adopt the provisions of this Act: Be it enacted, that any such union or incorporation, on resolution to that effect of a majority, at two successive meetings of the body, having under the constitution of such union or incorporation the management of the relief of the poor within the same, may, by writing under the hand of the presiding chairman of the second of such meetings, apply to the Poor Law Board to be included in this Act; and such union or incorporation, upon the consent of the Poor Law Board being given to such application under its seal, shall be so included; and such consent so signified shall be evidence that such application was in all respects duly made according to the provisions above mentioned; and such regulations shall hereafter be made from time to time by the said Board, with the consent of such body, as may be necessary to render the provisions of this Act conformable with the provisions of the Act under which the said union or incorporation shall have been formed.

Power for unions under Gilbert's or local Acts to be included in this Act.

SCHEDULE.

Schedule.

VALUATION LIST for [*the parish or place for which the list is made*] in the county of

Name of Occupier.	Name of Owner.	Description of Property.	Name or Situation of Property.	Estimated Extent.	Gross estimated Rental.	Rateable Value.

Signed this day of

A. B. } Overseers of the poor of the
C. D. } parish aforesaid.

DECLARATION TO BE ADDED TO THE RATE.

We, the undersigned, do hereby declare that one of us, or some person on our behalf, has examined and compared the several particulars in the respective columns of the above rate with the valuation list made under the authority of the Union Assessment Committee Act of 1862, in force in this parish (*or* township), and the several hereditaments are, to the best of our belief, rated according to the value appearing in such valuation list.

} Churchwardens.

} Overseers.

POOR RATE ASSESSMENT AND COLLECTION ACT, 1869.

32 & 33 VICT. c. 41.

An Act for amending the Law with respect to the rating of Occupiers for short terms, and the making and collecting of the Poor's Rate. [26*th July*, 1869.]

Secs. 1, 2.

Occupiers of tenements let for short terms may deduct the poor rate paid by them from their rents.

1. The occupier of any rateable hereditament let to him for a term not exceeding three months shall be entitled to deduct the amount paid by him in respect of any poor rate assessed upon such hereditament from the rent due or accruing due to the owner, and every such payment shall be a valid discharge of the rent to the extent of the rate so paid.

Amount of rate payable by occupier.

2. No such occupier shall be compelled to pay to the overseers at one time or within four weeks a greater amount of the rate than would be due for one quarter of the year.

Secs. 3—10.

Owners may agree to pay the rate, and be allowed a commission.

3. In case the rateable value of any hereditament does not exceed twenty pounds, if the hereditament is situate in the metropolis, or thirteen pounds if situate in any parish wholly or partly within the borough of Liverpool, or ten pounds if situate in any parish wholly or partly within the city of Manchester or the borough of Birmingham, or eight pounds if situate elsewhere, and the owner of such hereditament is willing to enter into an agreement in writing with the overseers to become liable to them for the poor rates assessed in respect of such hereditament, for any term not being less than one year from the date of such agreement, and to pay the poor rates whether the hereditament is occupied or not, the overseers may, subject nevertheless to the control of the vestry, agree with the owner to receive the rates from him, and to allow to him a commission not exceeding twenty-five per cent. on the amount thereof.

Vestries may order the owner to be rated instead of the occupier.

4. The vestry of any parish may from time to time order that the owners of all rateable hereditaments to which section three of this Act extends, situate within such parish, shall be rated to the poor rate in respect of such rateable hereditaments, instead of the occupiers, on all rates made after the date of such order; and thereupon and so long as such order shall be in force the following enactments shall have effect:

(1.) The overseers shall rate the owners instead of the occupiers, and shall allow to them an abatement or deduction of fifteen per centum from the amount of the rate:

(2.) If the owner of one or more such rateable hereditaments shall give notice to the overseers in writing that he is willing to be rated for any term not being less than one year in respect of all such rateable hereditaments of which he is the owner, whether the same he occupied or not, the overseers shall rate such owner accordingly, and allow to him a further abatement or deduction not exceeding fifteen per centum from the amount of the rate during the time he is so rated:

(3.) The vestry may by resolution rescind any such order after a day to be fixed by them, such day being not less than six months after the passing of such resolution, but the order shall continue in force with respect to all rates made before the date on which the resolution takes effect:

Provided that this clause shall not be applicable to any rateable hereditament in which a dwelling-house shall not be included (1).

Owners omitting to pay rates before the fifth day of June to forfeit commission.

5. When an owner who has become liable to pay the poor rate omits or neglects to pay, before the fifth day of June in any year, any rate or any instalment thereof which has become due previously to the preceding fifth day of January, and has been duly demanded by a demand-note delivered to him or left at his usual or last known place of abode, he shall not be entitled to deduct or receive any commission, abatement, or allowance to which he would, except for such omission or neglect, be entitled under this Act, but shall be liable to pay, and shall pay, such rate or instalment in full.

6. Repeal of 13 & 14 Vict. c. 99, &c.

Constructive payment of the rate.

7. Every payment of a rate by the occupier, notwithstanding the amount thereof may be deducted from his rent as herein provided, and every payment of a rate by the owner, whether he is himself rated instead of the occupier, or has agreed with the occupier or with the overseers to pay such rate, and notwithstanding any allowance or deduction which the overseers are empowered to make from the rate, shall be deemed a payment of the full rate by the occupier for the purpose of any qualification or franchise which as regards rating depends upon the payment of the poor rate (2).

Where owners omit to pay rates, the occupiers paying the same may deduct the amount from the rent.

8. Where an owner who has undertaken, whether by agreement with the occupier or with the overseers, to pay the poor rates, or has otherwise become liable to pay the same, omits or neglects to pay any such rate, the occupier may pay the same and deduct the amount from the rent due or accruing due to the owner, and the receipt for such rate shall be a valid discharge of the rent to the extent of the rate so paid.

Owners to give lists of occupiers, and liable to penalties for wilful omission.

9. Every owner who agrees with the overseers to pay the poor rate, or who is rated or liable to be rated for any hereditament instead of the occupier, shall deliver to the overseers, from time to time, when required by them, in writing, a list containing the names of the actual occupiers of the hereditaments comprised in such agreement, or for which he is so rated or liable to be rated; and if any such owner wilfully omits to deliver such list when required to do so, or wilfully omits therefrom or misstates therein the name of any occupier, he shall for every such omission or misstatement be liable, on summary conviction, to a penalty not exceeding two pounds.

Notice to occupiers of rates in arrear.

10. Section twenty-eight of "The Representation of the People Act, 1867," with respect to

(1) See the Highway Rate Assessment and Expenditure Act, 1882, 45 & 46 Vict. c. 27, s. 3, *post*.

(2) And see now the Assessed Rates Act, 1879, 42 & 43 Vict. c. 10, s. 2.

otice to be given of rates in arrear, shall apply to occupiers of premises capable of conferring ne parliamentary franchise, although the owners of such premises have become liable for the ates assessed thereon under the provisions of this Act.

Liability of owner under agreement.

11. Where the owner has become liable to the payment of the poor rates, the rates due from im, together with the costs and charges of levying and recovering the same, may be levied on ne goods of the owner, and be recovered from him in the same way as poor rates may be ecovered from the occupier.

Recovery of rates unpaid by the owner.

12. Notwithstanding the owner of any such rateable hereditament as aforesaid has become able for payment of the poor rates assessed thereon, the goods and chattels of the occupier shall e liable to be distrained and sold for payment of such rates as may accrue during his occupaion of the premises, at any time whilst such rates remain unpaid by the owner, subject to the ollowing provisions:

(1.) That no such distress shall be levied unless the rate has been demanded in writing by the overseers from the occupier, and the occupier has failed to pay the same within fourteen days after the service of such demand:

(2.) That no greater sum shall be raised by such distress than shall at the time of making the same be actually due from the occupier for rent of the premises on which the distress is made:

(3.) That any such occupier shall be entitled to deduct the amount of rates for which such distraint is made, and the expense of distraint, from the rent due or accruing due to the owner, and every such payment shall be a valid discharge of the rent to the extent of the rate and expenses paid.

Owner may appeal against valuation list and rate.

13. Every owner of any hereditament for the rates of which he has become liable shall have he same right of appeal (subject to the same conditions and consequences) against the valuation ists and the poor rates as if he were the occupier thereof.

The overseer to state the period for which poor rate is made. Proviso.

14. The overseers of every parish when they make a poor rate shall set forth in the title of he rate the period for which the same is estimated, and if the same is payable by instalments he amount of each instalment and the date at which each instalment is payable; provided that f the necessities of the parish shall require it another rate may be made before such period hall have elapsed.

Overseers may make poor rate payable by instalments.

15. The overseers who make the poor rate for a period exceeding three months may leclare that the same shall be paid by instalments at such times as they shall specify, and thereipon each instalment only shall be enforceable as and when it falls due, and the payment of ny such instalment shall, as respects any qualification or franchise depending upon the paynent of the poor rate, be deemed a payment of such rate in respect of the period to which such instalment applies.

Provision for successive occupiers, and for occupiers coming into unoccupied hereditaments.

16. If the occupier assessed in the rate when made shall cease to occupy before the rate hall have been wholly discharged, or if the hereditament being unoccupied at the time of he making of the rate become occupied during the period for which the rate is made, the overseers shall enter in the rate book the name of the person who succeeds or comes into the occupaion, as the case may be, and the date when such occupation commences, so far as the same shall be known to them, and such occupier shall thenceforth be deemed to have been actually rated rom the date so entered by the overseer, and shall be liable to pay so much of the rate as shall be proportionate to the time between the commencement of his occupation and the expiration of the period for which the rate was made, in like manner, and with the like remedy of appeal, as if he had been rated when the rate was made; and an outgoing occupier shall remain liable in like manner for so much and no more of the rate as is proportionate to the time of his occupation within the period for which the rate was made (1); [and the twelfth section of the statute 17 Geo. II. c. 38, shall be repealed (2).]

When the poor rate shall be deemed to be made.

17. A poor rate shall be deemed to be made on the day when it is allowed by the justices, and if the justices sever in their allowance then on the day of the last allowance.

18. The production of the book purporting to contain a poor rate, with the allowance of the rate by the justices, shall, if the rate is made in the form prescribed by law, be *primâ facie* evidence of the due making and publication of such rate.

(1) By the Poor Rate Assessment and Collection Amendment Act, 1882, 45 & 46 Vict. c. 20, s. 3, the provisions of the above section so far as regards payment of rates by an outgoing occupier shall extend and apply to any outgoing occupier assessed in the rate, and such outgoing occupier shall only be liable to pay so much of the rate as shall be proportionate to the time of his occupation within the period for which the rate was made, notwithstanding he may not be succeeded in his occupation by an incoming tenant.

(2) The words within brackets are repealed by the Statute Law Revision Act, 1883, but this does not revive the former enactment.

Secs. 19, 20.

Evidence of making and publication of rates.
Overseers to insert names of all occupiers in the rate.
Penalty for omission.
Saving of franchises.

19. The overseers in making out the poor rate shall, in every case, whether the rate is collected from the owner or occupier, or the owner is liable to the payment of the rate instead of the occupier, enter in the occupiers column of the rate book the name of the occupier of every rateable hereditament, and such occupier shall be deemed to be duly rated for any qualification or franchise as aforesaid; and if any overseer negligently or wilfully and without reasonable cause omits the name of the occupier of any rateable hereditament from the rate, or negligently or wilfully misstates any name therein, such overseer shall for every such omission or misstatement be liable on summary conviction to a penalty not exceeding two pounds; Provided that any occupier whose name has been omitted shall, notwithstanding such omission and that no claim to be rated has been made by him, be entitled to every qualification and franchise depending upon rating, in the same manner as if his name had not been so omitted (1).

Interpretation of terms.

20. The word "overseer" shall include every authority that makes an assessment for the poor rate; the words "poor rate" shall mean the assessment for the relief of the poor, and for the other purposes chargeable thereon according to law, and in the metropolis shall extend to every rate made by the overseers, and chargeable upon the same property as the poor rate; the word "owner" shall mean any person receiving or claiming the rent of the hereditament for his own use, or receiving the same for the use of any corporation aggregate, or of any public company, or of any landlord or lessee who shall be a minor, a married woman, or insane, or for the use of any person for whom he is acting as agent; the word "parish" shall signify every place for which a separate overseer can be appointed; the word "vestry" shall include not only the vestry of a parish existing under the authority of some general or special Act of Parliament, or by special custom or otherwise, but also the meeting of the inhabitants of any township, vill, or place having a separate overseer, and for which a separate poor rate is made, held after notice given in like manner as is required by law in regard to the meetings of vestries; and the word "metropolis" shall include only the metropolis as defined by the Metropolis Management Act, 1855.

RATING ACT, 1874.

37 & 38 VICT. c. 54.

An Act to amend the Law respecting the Liability and Valuation of certain Property for the purpose of Rates. [*7th August*, 1874.]

Secs. 1—4.

Short title.

1. This Act may be cited as "The Rating Act, 1874."

Extent of Act.

2. This Act shall not apply to Scotland or Ireland.

Abolition of certain exemptions from rating.

3. Whereas by the Act of the forty-third year of the reign of Queen Elizabeth, chapter two, intituled "An Act for the relief of the Poor," it is provided that a poor rate shall be raised in every parish by taxation of, amongst other persons, every occupier of certain hereditaments in such parish; and it is expedient to extend the said Act, and the Acts amending the same (which Act and Acts are in this Act referred to as the Poor Rate Acts), to hereditaments other than those mentioned in the said Act: Be it therefore enacted that,—

From and after the commencement of this Act the Poor Rate Acts shall extend to the following hereditaments in like manner as if they were mentioned in the recited Act of the forty-third year of the reign of Queen Elizabeth; that is to say,

(1.) To land used for a plantation or a wood or for the growth of saleable underwood, and not subject to any right of common;

(2.) To rights of fowling, of shooting, of taking or killing game or rabbits, and of fishing, when severed from the occupation of the land; and

(3.) To mines of every kind not mentioned in the recited Act.

Valuation of land used as plantation, &c.

4. The gross and rateable value of any land used for a plantation or a wood, or for the growth of saleable underwood, shall be estimated as follows:—

(*a.*) If the land is used only for a plantation or a wood, the value shall be estimated as if the land instead of being a plantation or a wood were let and occupied in its natural and unimproved state:

(*b.*) If the land is used for the growth of saleable underwood, the value shall be estimated as if the land were let for that purpose:

(1) See now the Parliamentary and Municipal Registration Act, 1878, 41 & 42 Vict. c. 26, s. 14.

(c.) If the land is used both for a plantation or a wood and for the growth of saleable underwood, the value shall be estimated either as if the land were used only for a plantation or a wood, or as if the land were used only for the growth of the saleable underwood growing thereon, as the assessment committee may determine.

Deduction of rate by tenant of plantation, &c.

5. Where the rateable value of any land used for a plantation or a wood, or both for a plantation or wood and for the growth of saleable underwood, is increased by reason of the same being estimated in accordance with this Act, the occupier of that land under any lease or agreement made before the commencement of this Act, may, during the continuance of the lease or agreement, deduct from his rent any poor or other local rate or any portion thereof, which is paid by him in respect of such increase of rateable value, and every assessment committee, on the application of such occupier, shall certify in the valuation list or otherwise the fact and amount of such increase.

Valuation and rating of rights of shooting, &c.

6. (1.) Where any right of fowling, or of shooting, or of taking or killing game or rabbits, or of fishing (hereinafter referred to as a right of sporting) is severed from the occupation of the land and is not let, and the owner of such right receives rent for the land, the said right shall not be separately valued or rated, but the gross and rateable value of the land shall be estimated as if the said right were not severed; and in such case if the rateable value is increased by reason of its being so estimated, but not otherwise, the occupier of the land may (unless he has specifically contracted to pay such rate in the event of an increase) deduct from his rent such portion of any poor or other local rate as is paid by him in respect of such increase; and every assessment committee, on the application of the occupier, shall certify in the valuation list or otherwise the fact and amount of such increase.

(2.) Where any right of sporting, when severed from the occupation of the land, is let, either the owner or the lessee thereof, according as the persons making the rate determine, may be rated as the occupier thereof [1].

(3.) Subject to the foregoing provisions of this section, the owner of any right of sporting, when severed from the occupation of the land, may be rated as the occupier thereof.

(4.) For the purposes of this section, the person who, if the right of sporting is not let, is entitled to exercise the right, or who, if the right is let, is entitled to receive the rent for the same, shall be deemed to be the owner of the right.

Gross and rateable value of tin, lead, and copper mines.

7. Where a tin, lead, or copper mine is occupied under a lease or leases granted without fine on a reservation, wholly or partly of dues or rent, the gross value of the mine shall be taken to be the annual amount of the whole of the dues payable in respect thereof during the year ending on the thirty-first day of December preceding the date at which the valuation list is made, in addition to the annual amount of any fixed rent reserved for the same which may not be paid or satisfied by such dues.

The rateable annual value of such mine shall be the same as the gross value thereof, except that where the person receiving the dues or rent is liable for repairs, insurance, or other expenses necessary to maintain the mine in a state to command the annual amount of dues or rent, the average annual cost of the repairs, insurance, and other expenses for which he is so liable shall be deducted from the gross value for the purpose of calculating the rateable value.

In the following cases, namely,—

(1.) Where any such mine is occupied under a lease granted wholly or partly on a fine; and

(2.) Where any such mine is occupied and worked by the owner; and

(3.) In the case of any other such mine which is not excepted from the provisions of this Act and to which the foregoing provisions of this section do not apply;

the gross and rateable annual value of the mine shall be taken to be the annual amount of the dues or dues and rent at which the mine might be reasonably expected to let without fine on a lease of the ordinary duration, according to the usage of the country, if the tenant undertook to pay all tenants rates and taxes and tithe rentcharge, and also the repairs, insurance, and other expenses necessary to maintain the mine in a state to command such annual amount of dues or dues and rent.

The purser, secretary, and chief managing agent for the time being of any tin, lead, or copper mine, or any of them, may, if the overseers or other rating authority think fit, be rated as the occupier thereof.

In this section—

The term "mine," when a mine is occupied under a lease, includes the underground workings and the engines, machinery, workshops, tramways, and other plant, buildings

[1] See *Kenrick* v. *Guilsfield* (Overseers), L. R. 5 C. P. D. 41, 49 L. J. M. C. 27, 41 L. T. N. S. 624, 28 W. R. 372, 44 J. P. 202.

Secs. 7—14.

(not being dwelling-houses), and works and surface of land occupied in connexion with and for the purposes of the mine, and situate within the boundaries of the land comprised in the lease or leases under which the dues or dues and rent are payable or reserved:

The term "dues" means dues, royalty, or toll, either in money or partly in money and partly in kind; and the amount of dues which are reserved in kind means the value of such dues:

The term "lease" means lease or sett, or license to work, or agreement for a lease or sett, or license to work:

The term "fine" means fine, premium, or foregift, or other payment or consideration in the nature thereof.

Deduction of rate by tenant of mine.

8. Where any poor or other local rate which at the commencement of this Act any lessee, licensee, or grantee of a mine is exempt from being rated to in respect of such mine, becomes payable by him in respect of such mine during the continuance of his lease, grant, or license, or before the arrival of the period at which the amount of the rent, royalty, or dues is liable to revision or re-adjustment, he may (unless he has specifically contracted to pay such rate [1] in the event of the abolition of the said exemption) deduct from any rent, royalty, or dues payable by him one half of any such rate paid by him:

Provided that he shall not deduct any sum exceeding what one half of the rate in the pound of such poor or other local rate would amount to if calculated upon the rent, royalty, or dues so payable by him.

General provision as to deduction of rates.

9. Where any occupier, lessee, licensee, grantee, or other person is authorised by this Act to deduct any rate or sum in respect of a rate from any rent, royalty, or dues payable by him, then—

(1.) Any payment so authorised to be deducted shall be a good discharge for such amount of rent, royalty, or dues as is equal to the amount of such payment, and shall be allowed accordingly.

(2.) Any payment so authorised to be deducted may be recovered as an ordinary debt from the person to whom the rent, royalty, or dues may be payable.

(3.) The person receiving the rent, royalty, or dues shall have the same right of appeal and objection with reference to the rate and to the valuation of the hereditament in respect of which the rate is payable as he would have if he were the occupier of such hereditament.

Liability of property to local rates as well as poor rates.

10. After the commencement of this Act, the hereditaments to which the Poor Rate Acts are extended by this Act, and which are thus made rateable to the relief of the poor, shall be rateable to all local rates in like manner as if the Poor Rate Acts had always extended to such hereditaments.

Commencement of Act.

11. This Act, for the purpose of enabling any hereditament to be included in or omitted from or valued for the purposes of a valuation list or a supplemental or provisional valuation list which will come into force after the sixth day of April one thousand eight hundred and seventy-five, shall come into operation on the passing thereof; but save as aforesaid, or as is otherwise expressly provided by this Act, shall come into operation on the sixth day of April one thousand eight hundred and seventy-five; and the expression "commencement of this Act" shall in this Act be construed accordingly.

As to provisions of Sanitary Acts as defined by 35 & 36 Vict. c. 79.

12. The provisions of the Sanitary Acts, as defined by the Public Health Act, 1872, with respect to any special assessment of wood lands for the purpose of any rate under those Acts shall be deemed to extend to and include land used for a plantation or a wood, or for the growth of saleable underwood, or for both such purposes, and made rateable by this Act to the poor rate [2].

Saving as to mine where dues payable in kind.

13. Nothing in this Act shall apply to a mine of which the royalty or dues are for the time being wholly reserved in kind, or to the owner or occupier thereof [3].

Repeal of 43 Eliz. c. 2, as to saleable underwood.

14. So much of the Act of the forty-third year of the reign of Queen Elizabeth, chapter two [4], intituled "An Act for the relief of the poor," as relates to the taxation of an occupier of saleable underwoods is hereby repealed as from the date at which the provisions of this Act with respect to the taxation of occupiers of land used for the growth of saleable underwood come into operation.

Provided that this repeal shall not affect anything duly done or suffered before the said date, or any right acquired or liability accrued before the said date, or any legal proceeding or remedy

(1) See *Chaloner* v. *Bolckow*, L. R. 3 App. Cas. 933, 47 L. J. C. P. 562, 39 L. T. N. S. 134, 26 W. R. 541; *Devonshire (Duke)* v. *Barrow Hæmatite Steel Co.*, L. R. 2 Q. B. D. 286, 46 L. J. Q. B. 435, 36 L. T. N. S. 355, 25 W. R. 469.

(2) See the Public Health Act, 1875, section 313, *ante*, p. 215.

(3) *Van Mining Co.* v. *Llanidloes (Overseers)*, L. R. 1 Ex. D. 310, 45 L. J. M. C. 138, 34 L. T. N. S. 692.

(4) See note (3), *ante*, p. 799.

in respect of any such right or liability, and every such legal proceeding or remedy may be carried on and enforced in like manner as if this repeal had not been enacted [1].

Definitions of terms (see sect. 15 of 25 & 26 Vict. c. 103).

15. In this Act, unless the context otherwise requires,—

The term "gross value" has the same meaning as gross estimated rental in the Union Assessment Committee Act, 1862:

The term "local rate" means any county rate, borough rate, highway rate, and other local rate leviable upon property rateable to the relief of the poor:

The term "valuation list" means, as regards any parish or place for which there is no valuation list, the poor rate:

The term "assessment committee" means, in relation to any parish or place where there is no assessment committee, the persons having power to make and assess the poor rate in such parish or place.

[1] This section is itself repealed by the Statute Law Revision Act, 1883, but the earlier Act is not thereby revived.

STATUTES RELATING TO POOR LAW.

THE POOR LAW AMENDMENT ACT, 1844.

7 & 8 VICT. c. 101.

An Act for the further amendment of the Laws relating to the Poor in England.

[*9th August*, 1844.]

Section 32. 32. [It shall be lawful for the said commissioners from time to time by order under their hands and seal to combine the parishes and unions in England and Wales into districts for the audit of accounts, and from time to time to add any parish or union to any such district or separate any parish or union therefrom (1)] and the chairman and vice-chairman of each board of guardians constituted under the said first recited Act (2) or any other Act, or if there be no chairman or vice-chairman of any guardians constituted under any other Act, then some two of their number to be selected by such last mentioned guardians or if there be no such body then some two of the overseers, to be selected by the overseers respectively acting within the district shall elect at the time and in the manner to be prescribed by the said commissioners a person to be the auditor of the district, but in any case in which there are two vice-chairmen appointed in any board of guardians, such board of guardians shall select one of the vice-chairmen who shall vote in the election of such auditor, and the said commissioners shall have all the powers with regard to the salaries of the said auditors to be charged on the poor rates, and to all other matters relating to auditors for such districts as they have under the said first recited Act with regard to paid officers, and every auditor appointed for such a district shall have full powers to examine, audit, allow or disallow of accounts and of items therein relating to moneys assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief, and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting or of any sum for which any such person is accountable but not brought by him into account against such person and shall certify on the face of every account audited by him any money, books, deeds, papers, goods or chattels found by him to be due from any person, and when any such auditor has so certified any money, books, deeds, papers, goods or chattels, to be due from any person he shall forthwith report the same to the said commissioners, and the person from whom any money is so certified to be due shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish if there be any such treasurer; and in the case of a union such money shall be applied by the guardians to the use of all or any of the parishes included in such union according as all or any of such parishes may be interested in the sum so paid, and all books, deeds, papers, goods and chattels, and in the case where there is no treasurer as aforesaid, all moneys so certified to be due shall be delivered over or paid within seven days of the same being certified to the person or persons authorised to receive the same, and if any such money, books, deeds, papers, goods or chattels, be not duly paid or delivered over

(1) Repealed by 42 Vict. c. 6, s. 11.
(2) 4 & 5 Will. IV. c. 76, repealed by Statute Law Revision Act, 1875.

as hereinbefore directed, the said auditor or any auditor subsequently appointed shall proceed as soon as may be to enforce the payment or delivering over of the same; and all moneys so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorising the illegal payment or otherwise answerable for such moneys and shall be recovered on the application of such auditor or of any such auditor subsequently appointed or by any person for the time being entitled or authorised to receive the same, in the same manner as penalties and forfeitures may be recovered under the provisions of the said first recited Act and the expenses attending such proceeding or recovery shall (except so far as the same may be paid by the person against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union or by the district board of the district to which the proceedings may respectively relate and shall be charged in their accounts in such manner and in such proportions as the said commissioners may direct, and if any person from whom any such books, deeds, papers, goods or chattels, may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorised to receive the same, the person so neglecting or refusing shall be liable on the complaint of any such auditor for the time being or of the person entitled or authorised to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels, and other things in their hands, and any churchwarden, surveyor of the highways, overseer, or other officer of a parish or union who shall wilfully anthorise or make an illegal or fraudulent payment from the church rate, highway rate, or other public fund of a parish or union, or shall unlawfully make any entry in his accounts for the purpose of defraying or making up to himself or any other person the whole or any part of any sum of money unlawfully expended from the poor rate or disallowed or surcharged in the accounts of any parish or union by such auditor shall upon conviction thereof before any two justices forfeit and pay for every such offence any sum not exceeding twenty pounds and also treble the amount of such payment or of the sum so entered in his accounts.

33. Seven clear days at least before the day fixed for the audit of accounts the overseers or other officers employed in any parish in carrying the laws for the relief of the poor into execution and every collector or assistant overseer acting for such parish shall cause their rate books and other accounts to be made up and balanced; and the books so made up shall forthwith be deposited at the house within the parish of some one of such overseers or other officers or of such collector or assistant overseer or at some other house within the parish, and notice shall forthwith be affixed at the usual place or places of giving parish notices stating the time and place of audit as notified by the auditor and the place where the books are deposited, and such books shall on each of such days be open between the hours of eleven and three for the inspection of every person liable to be rated to the relief of the poor; and such auditor shall give or send by post or otherwise to the said overseers or other officers fourteen days notice of the said audit, but it shall not be necessary for the auditor to give or send separate notices to each of such overseers or other officers, and it shall be sufficient if it be proved that any one of them had notice, and if any such overseer or other officer, collector, or assistant overseer, neglect to make up such account or alter such account or allow it to be altered when so made up or refuse to allow such inspection thereof he shall be liable, on conviction thereof, to forfeit forty shillings, and if any such overseer or other officer, collector, or assistant overseer, refuse or wilfully neglect to affix such notice of audit and of the time and place for the inspection of such accounts as above provided, he shall be liable, on conviction thereof, to forfeit forty shillings, and it shall be lawful for every ratepayer in any parish or union to be present at the audit of the accounts relating to such parish or union, and to make any objection to any such accounts before such auditor, and it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods or chattels, relating to the poor's rate or the relief of the poor to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts, and so often as such person neglects or refuses to attend either at the audit or any adjournment thereof when so required by such auditor, or to produce to him such accounts or vouchers or any of them, or to make or sign a declaration with respect to his accounts if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings, to be recovered as penalties and forfeitures under the said first recited Act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of, perjury.

35. If any person aggrieved by any allowance, disallowance or surcharge by any such auditor require such auditor to state the reasons for the said allowance, disallowance or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance or surcharge may be made, and it shall be lawful for every person aggrieved by such allowance and for every person aggrieved by such disallowance or surcharge, if such last mentioned person have first paid or delivered over to any person authorised to

Secs. 35, 36.

receive the same, all such money, goods and chattels, as are admitted by his account to be due from him or remaining in his hands, to apply to the court of Queen's Bench for a writ of certiorari to remove into the said court the said allowance, disallowance or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of certiorari for the removal of orders of justices of the peace, except that the condition of such recognizance shall be to prosecute such certiorari at the costs and charges of such person without any wilful or affected delay, and if such allowance, disallowance or surcharge be confirmed to pay to such auditor or his successor within one month after the same may be confirmed his full costs and charges to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer and shall appear before the said court, and defend the allowance, disallowance or surcharge, so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary, and that on the removal of such allowance, disallowance or surcharge, the said court shall decide the particular matter of complaint set forth in such statement and no other, and if it appear to such court that the decision of the said auditor was erroneous they shall by rule of the court order such sum of money as may have been improperly allowed, disallowed or surcharged, to be paid to the party entitled thereto by the party who ought to repay or discharge the same, and they may also, if they see fit, by rule of the court order the costs of the person prosecuting such certiorari to be paid by the parish or union to which such accounts relate as to such court may seem fit, which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable.

36. Provided always and be it enacted that it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance or surcharge, in lieu of making application to the court of Queen's Bench for a writ of certiorari, to apply to the said commissioners to inquire into and decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein under their hands and seal as they may deem requisite for determining the question.

PAROCHIAL DEBT AND POOR LAW AUDIT ACT, 1848.

11 & 12 VICT. c. 91.

An Act to make Provision for the Payment of Parish Debts, the Audit of Parochial and Union Accounts, and the Allowance of certain Charges therein. [31*st August*, 1848.]

Secs. 3—5.

3. [Parties who have advanced money on behalf of unions and parishes to be reimbursed: 4 & 5 Will. IV. c. 76 (1).]

Appeal against disallowances and surcharges may be determined by the Poor Law Board on the merits, and such disallowances, &c., may be remitted in certain cases.

4. Where any appeal shall be made to the said commissioners against any allowance, disallowance, or surcharge made by any auditor in the accounts of any guardians, overseers, or their officers, it shall be lawful for the said commissioners to decide the same according to the merits of the case; and if they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may, by an order under their seal, direct that the same shall be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge (2).

Mode of certifying as to balances to officers.

5. Where any overseer or officer shall be continuing in office at the time when the accounts are audited, the auditor shall certify as due such sums of money only as shall be disallowed or surcharged by him in the accounts so audited; but where the term of office of such overseer or officer shall have expired at the time when the accounts are audited, he shall ascertain the balance which he shall find to be then due on the accounts so audited, together with the sums (if any) which he shall have disallowed or surcharged, and shall give credit for all sums which shall be proved before him to have been paid in respect of such balance to the succeeding over-

(1) Repealed by Statute Law Revision Act, 1875.

(2) The remission need not now be by order: Poor Law Amendment Act, 1866, 29 & 30 Vict. c. 113, s. 5, *post*, p. 1367.

seers or officers, or otherwise lawfully applied on behalf of the parish or union interested therein, before the date of his audit, and he shall certify, report, and recover, in the manner provided by law, the balance remaining due after such credit shall have been given; and every certificate made by any auditor, if made according to the forms set forth in the schedule hereunto annexed, or to the like effect, shall be deemed to be sufficient: Provided always, that where the sum, or the aggregate of the sums, disallowed by the auditor in the account of any officer, shall not amount to forty shillings, the same may be paid over with the balance due from such officer, instead of being paid to the treasurer.

Notice of audit to be advertised.

7. In addition to the notices now required by law to be given by the auditor, he shall also give notice by advertisement in some newspaper circulating in the county wherein the union or the greater part of it, or, in the case of a parish not comprised in a union, wherein such parish shall be situated, a reasonable time prior to the holding of his audit; and the production of a copy of such newspaper shall in all courts and for all purposes be deemed sufficient evidence of the notice of the audit; and, except where a party, not being an officer bound to account to the auditor, shall be surcharged by such auditor, it shall not be necessary to prove that the audit of any accounts was adjourned, and that notice of any such adjourned audit was given.

As to proceedings necessary to be taken against persons now liable to be surcharged by auditor, and to whom no notice is required to be given.

8. If an auditor shall see cause to surcharge any person now liable by law to be surcharged by him, and to whom no notice is now required by law to be given, with any sum of money in reference to any payment considered by him to have been illegally or improperly made, he shall, if the person be not present at such audit, cause notice in writing of his intention to make such surcharge to be given, by post or otherwise, to the person against whom he shall propose to make this surcharge, addressed to him at his last known place of abode, and shall adjourn the audit, so far as it shall relate to such particular matter, for a sufficient time to allow of such person appearing before him, and showing cause against such surcharge, and at such time the said auditor shall hear the party, if present, and determine according to the law and justice of the case.

What shall be required to be proved by auditors in order to recover sums certified by them to be due.

9. In any proceedings to be taken by an auditor, or by his attorney, before justices, to recover sums certified by him to be due, it shall be sufficient for him to produce a certificate of his appointment under the seal of the Poor Law Commissioners, or of the commissioners aforesaid, and to state and prove that the audit was held, that the certificate was made in the book of account of the union or parish to which the same relates, and that the sum certified to be due had not been paid to the treasurer of the guardians of the union or of the parish, as the case may require, within seven days after the same had been so certified, nor within three clear days before the laying of the information, of which non-payment a certificate in writing, purporting to be signed by the treasurer, shall be sufficient proof on the part of the auditor; and if at the hearing of such information it shall be proved that the said sum had been paid to the treasurer subsequently to the date of such last-mentioned certificate, the costs incurred by such auditor shall be paid by the party against whom the information shall be laid, unless he prove that notice of such payment had been given to the auditor twenty-four hours at least prior to the laying of the information.

Auditor may upon cause being shown appoint a deputy.

10. The said commissioners may at any time, upon sufficient cause being shown to them, authorise any person, selected by the auditor, to act temporarily as his deputy, and shall communicate to the several unions and places forming his district the name of the person so appointed to act as his deputy, and such person shall thereupon be empowered to act in all respects, and with the same authorities, and subject to the same duties and liabilities as the auditor himself is entitled or subject to.

SCHEDULE.

Schedule.

SCHEDULE to which this Act refers.

FORMS OF CERTIFICATES.

1. *Against an Accounting Officer.*

I do hereby certify, that in the account of *A.B.*, the [*set out the name of the office*] of the parish of [*or* of the union], I have disallowed [*or* surcharged] the sum of .

As witness my hand, this day of , 1848.

M. N.,
Auditor of the district, which comprises the above-named parish or union.

Schedule.

2. *Against a Person not an Accounting Officer.*

I do hereby certify, that in the accounts of the union [*or* of the parish of] I have disallowed the sum of £ as a payment illegally made out of the funds of such union [*or* parish] and I find that *C.D.* of authorised the making of such illegal payment, and I do hereby surcharge the said *C.D.* with the same.

As witness my hand, this day of , 1848.

M. N.,

Auditor of the district, which comprises the above-named union or parish.

POOR LAW UNION CHARGES ACT AMENDMENT ACT, 1849.

12 & 13 VICT. c. 103.

An Act to continue an Act of the last Session of Parliament, for charging the maintenance of certain Poor Persons in Unions upon the Common Fund; and to make certain Amendments in the Laws for the Relief of the Poor. [1*st August*, 1849.]

Secs. 7—11.

Recovery of contributions when copy of the order served upon one overseer.

7. Where the guardians of any union or parish shall make any order for the payment of money upon overseers or other officers of any parish upon whom they are empowered by law to make it, and a copy of such order shall be served upon any one of such overseers or other officers, it shall be lawful for the said guardians to enforce such order against the person so served as fully and as effectually as if a copy thereof had been also served upon every one of such overseers or other officers.

8. [On vacancy in the office of auditor, Poor Law Board to appoint a temporary auditor to audit accounts incomplete (1).]

Certain limitation in 11 & 12 Vict. c. 43, not to apply to proceedings by auditors.

9. [After reciting the Summary Jurisdiction Act, 1848, 11 & 12 Vict. c. 43, and that doubts have arisen whether it applies to proceedings by auditors to recover sums, proceeds] . . . . nothing in the provision of the said Act herein recited shall be deemed to apply to any such proceeding by any auditor, but that no auditor shall commence any such proceeding after the lapse of nine calendar months from the disallowance or surcharge by such auditor, or, in the event of an application by way of appeal against the same to the Court of Queen's Bench or to the Poor Law Board, after the lapse of nine calendar months from the determination thereupon.

In proceedings for penalties and forfeitures under Act 5 Will. 4, or any subsequent statute, full costs to be allowed.

10. In the case of the prosecution of any information, or the proceeding for any penalty or forfeiture, or for enforcing any order under the said statute of the fifth year of the reign of His late Majesty King William the Fourth, or of any subsequent statute incorporated therewith, where judgment shall be given against the defendant, and the justices shall order or direct such defendant to pay the costs, such costs shall, in addition to other costs lawfully chargeable, include all such costs and expenses incurred in respect of such prosecution or the laying of such information, or the preferring of the complaint, or the making of the application, and the attendance of the party, or his counsel or attorney, and the summoning and attendance of the witnesses required to prove the case, as the justices shall think fit to allow, and find to have been reasonably and properly incurred.

Auditors may recover costs of proceedings to enforce due attendance at the audit.

11. Where any auditor shall lay any information for a penalty in consequence of the default of any officer or other person to attend the audit, or the adjournment thereof, or to produce the proper account or vouchers, or to make or sign the proper declaration before him, the costs incurred by such auditor, when not recovered from the defendant in such information, shall, if the Poor Law Board consent thereto, be payable to such auditor, and be chargeable in like manner as the costs incurred by an auditor in enforcing the payment of sums certified by him to be due.

(1) Repealed by District Auditors Act, 1879, 42 Vict. c. 6, s. 11, *ante*, pp. 1248, 1249.

POOR LAW AMENDMENT ACT, 1866.

29 & 30 VICT. c. 113.

An Act to amend the Act providing Superannuation Allowances to Officers of Unions and Parishes, and to make other amendments in the Laws relating to the Relief of the Poor.

[10*th August*, 1866.]

Secs. 5—18.

Remission of surcharges and disallowances need not be made by order under seal.

5. So much of the fourth section of the statute of the eleventh and twelfth years of the reign of Her Majesty, chapter ninety-one, as requires the Poor Law Board to issue an order under their seal in cases where they direct any surcharge or disallowance made by an auditor to be remitted, shall be repealed; and such direction, if given in writing under the hand of the president of the said Board, and countersigned by a secretary or assistant-secretary, shall have the same effect as if such direction were given by such an order as aforesaid.

Effect of an extraordinary audit.

6. When the Poor Law Board shall require an auditor to hold an extraordinary audit of the accounts of any guardians or overseers, or of any officer, whether still continuing or upon his resignation or removal from office, such audit shall be deemed to be an audit within the meaning of the several Acts relating to the audit of the accounts of the poor rate, and may be held after three days notice thereof given in the usual manner.

Auditor empowered to inspect books at any time.

7. The auditor who shall be authorised to audit the accounts of any guardians, overseers, or officers may at any time, when authorised or required by the Poor Law Board so to do, inspect the accounts and books of account of any guardians, overseer, or any officer liable to account to him; and any such guardian, overseer, or officer who shall thereupon refuse to allow him to inspect the same, or shall obstruct him in such inspection, or shall conceal any such account or book for the purpose of preventing such inspection, shall forfeit a sum not exceeding five pounds, to be recovered as a penalty under the statute of the fourth and fifth of King William the Fourth, chapter seventy-six, and to be applied to the use of the parish or union for which such guardian, overseer, or officer respectively shall act.

Interpretation of terms, and consolidation of the Acts.

18. In all statutes, except there shall be something in the context inconsistent herewith, the word "parish" shall, among other meanings applicable to it, signify a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed, and all the other words used herein shall be construed in the like manner as in the said statute passed in the fourth and fifth years of King William the Fourth; and the provisions contained therein and in the subsequent statutes explaining and extending the same, and not repealed, shall, so far as they shall be consistent herewith, be extended to this statute.

DIVIDED PARISHES AND POOR LAW AMENDMENT ACT, 1876.

39 & 40 VICT. c. 61.

An Act to provide for the better arrangement of divided Parishes and other local areas, and to make sundry amendments in the Law relating to the Relief of the Poor in England.

[15*th August*, 1876.]

Secs. 1—4.

The Local Government Board may make provision for divided parishes.

1. Where any parish shall be divided so as to have its parts or any of them isolated in some other parish or parishes or otherwise detached, the Local Government Board may, as and when they shall see fit, after local inquiry to be held upon notice duly given to the clerk of the peace of the county or counties in which the parts of the parish are situated, and in the parishes to be affected in the manner prescribed or usually adopted therein for the publication of parochial notices, make an order, to take effect at the expiration of some period not less than three months from the day when a copy of such order shall have been sent to the overseers, either for con-

Secs. 1—11.

stituting separate parishes out of the divided parish or for amalgamating some of the parts thereof with the parish or parishes in which the same may be locally included, or to which they may be annexed, as shall appear to such board to be most convenient, and providing where requisite for a change of the county of the parish or part of a parish (1).

If one-tenth of ratepayers object, the order shall be provisional only.

2. If one tenth in number and rateable value of the persons appearing on the rate in force for the time being to be rated to the relief of the poor in any parish affected by such order shall give notice to the Local Government Board in writing of objection to the same, within three months after copies of such order shall have been sent to the overseers of the parishes affected thereby, the order shall be deemed to be a Provisional Order only, and shall be dealt with accordingly.

State of parishes after new order.

3. From and after the twenty-fifth day of March next ensuing the day when such order, if not objected to, shall take effect, and in the case of a Provisional Order next ensuing the date of the Act of Parliament confirming the same, the several parts of every parish to which such order shall apply, shall be and continue to be constituted in the manner directed by the said order, and the officers of the several parishes affected thereby shall be empowered and shall be required to act as if such parishes had been constituted in the manner directed prior to the issue of such order.

Ecclesiastical divisions and municipal boundaries not to be affected.

4. Nothing herein contained shall apply to the ecclesiastical divisions of parishes, nor to the constitution of school districts, without the sanction of the Education Department, or shall alter the boundaries of any municipal borough, and for the purposes of the election of members of Parliament and of burgesses in municipal boroughs, of the jury lists, of the action of the justices, and of the police and constables, the parishes shall continue to be deemed unaltered until new lists are made and new constables are appointed.

Provision for highway district.

5. Where a parish affected by the order shall be included in a highway district, its condition therein and the appointment of the waywarden thereof shall be changed according to the terms of the order, whether its area or contents be diminished or increased thereby (2).

Overseers to be appointed for the parish so created.

6. Every parish constituted under this Act by the order of the Local Government Board shall, notwithstanding the prohibition as to the appointment of overseers contained in the twenty-second section of the Poor Law Amendment Act, 1844, be a parish for which an overseer shall be appointed, and for all other lay and civil purposes to which a parish may be liable or entitled.

The meeting of inhabitants of the same qualified as in the case of any ordinary parish shall be deemed the vestry meeting thereof, and the rector, vicar, or perpetual curate having cure of souls in the greater part thereof shall, when present, be the chairman thereof, unless the Local Government Board shall determine in their order which of such incumbents shall be such chairman, and all the documents of the respective parishes shall be deposited and kept in such place as the Local Government Board by their order shall appoint.

Provision for compensation.

7. If any person shall be deprived of any office or employment, or if his profits in respect thereof shall be diminished under or by reason of any provision of this Act, the Local Government Board may, if they see fit, award by their order a compensation to him, according to their judgment, to be paid out of such fund and in such manner as shall appear to them to be equitable.

Adjustment to be made of property and debts.

8. The said Board shall make due adjustment of the property, if any, and of the debts or liabilities of the parishes among the several parts thereof according to the alterations caused by the order, and the arrears of rates due at the time when the order takes effect shall be recovered by the overseers or other officers properly competent to do so, and from the persons liable, as if there had been no alteration, and the justices, who shall make a county rate upon any such parishes before a new basis for the same shall be established, shall make due provision therein for the alterations aforesaid.

Provided that no person shall be liable to any rate made in the parish to which the part of the parish wherein his land or premises shall be situated may be added before the said twenty-fifth day of March.

Endowments for benefit of divided parish not to be affected.

9. Nothing herein contained shall prejudice, vary, or affect any right, interest, or jurisdiction in or over any charitable endowment which now is, or hereafter shall be, applicable for the benefit of a divided parish, as defined by section one of this Act, or the inhabitants thereof.

Local Government Board under certain

11 If it shall appear to the Local Government Board that it is expedient for rectifying or simplifying the areas of management or otherwise for the better administration of the relief of

(1) See now the Poor Law Act, 1879, 42 & 43 Vict. c. 54, ss. 4, 5, 6, *post*, and the Divided Parishes and Poor Law Amendment Act, 1882, 45 & 46 Vict. c. 58, ss. 2, 3, 4, *post*.

(2) See now the Poor Law Act, 1879, 42 & 43 Vict. c. 54, s. 7, *post*, and the Divided Parishes and Poor Law Amendment Act, 1882, 45 & 46 Vict. c. 58, s. 6, *post*.

the poor that any union, whether formed under the Poor Law Amendment Act, 1834, or otherwise, should be dissolved, the said board may, after inquiry held in some one of the unions to be affected, after public notice, so that all persons interested in the same may attend and be heard thereat, issue their order for the dissolution of any such union, and such dissolution shall have the same effect and be attended with the same consequences as in the case of a union dissolved under the provisions of the said Act of 1834.

circumstances may dissolve a union.

12. [The nineteenth section of the Poor Law Amendment Act, 1844, shall be repealed (1),] and the Local Government Board may by their order divide any parish into wards for the election of guardians, and determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward shall for the purposes of such election be deemed to be a separate parish, except so far as the said Board may otherwise order.

Division of parish into wards for election of guardians.

13. The Local Government Board may, when they see fit, by their order change the name of any union and direct how such change of name shall be published; no such change of name shall affect any rights or obligations of, or securities given by or to the said union, or render defective any legal proceedings instituted by or against the said union; and any legal proceedings may be continued or commenced by or against the said union by their new name which might have been continued or commenced by or against the union by their former name.

Change of name of union.

15. [Guardians of unions and parishes may pay for information required for the effectual discharge of duties.]

16. [Local Government Board to settle payments to officers for the same.]

17. If any officer seek a superannuation allowance from the guardians of any union or parish, or from the overseers of any such parish under any statute applicable to such allowance, his service as a registrar of marriages, or under any of the provisions of the Sanitary Acts, as defined by the "Public Health Act, 1875," or of that Act, shall not operate to prevent him from obtaining the same.

Superannuation allowances not affected by services as registrar of marriages or sanitary officer.

21. [Extension of 7 & 8 Vict. c. 101, s. 56.]

22. [Extension of 12 & 13 Vict. c. 103, s. 14.]

23. [Trustees may pay cost of pauper's relief out of annuity payable to such pauper (2).]

37. From and after the twenty-fifth day of March next, when an overseer shall make and levy any rate or assessment which is not now subject to be audited by the district auditor, or by any auditor or auditors appointed under or by virtue of the Metropolis Local Management Act, such rate or assessment, and the accounts relating thereto, shall be submitted by him, and by the collector thereof, if any, to the said auditor, in the like manner, and with the like incidents, consequences, liabilities, and power of appeal as in the case of the poor rate made by such overseer; and every other audit of such rate or assessment, if any, shall cease.

Rates made by overseers not now audited made subject to the audit of district auditor.

And the Local Government Board shall have the same power to make orders to regulate the keeping of such accounts as they have in regard to other local rates.

38. When an auditor shall have allowed, disallowed, or surcharged a sum in any account rendered to him jointly, and an appeal shall be made against the same, the decision of the auditor may be reversed by the court or the Local Government Board, as the case may be, and the disallowance or surcharge may be remitted by the said Board in favour of one or more of the persons appealing only without discharging the other person or persons against whom such decision of the auditor was pronounced.

Auditor's decision upon a joint account may be reversed or remitted in favour of one or some only of the parties.

(1) The part within brackets repealed by Statute Law Revision Act, 1883.
(2) See now 42 & 43 Vict. c. 12.

POOR LAW ACT, 1879.

42 & 43 VICT. c. 54.

An Act to make better provision for the adjustment of Parish Boundaries, and to make further amendments in the Acts relating to the Relief of the Poor in England. [15*th August*, 1879.]

Secs. 1—8.

Short title.

1. This Act may be cited as the Poor Law Act, 1879.

Extent of Act.

2. This Act shall not extend to Scotland or Ireland.

Commencement of Act.

3. This Act shall come into operation on the first day of September, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

Parish Boundaries.

Applying certain provisions of 39 & 40 Vict. c. 61, to inconvenient divisions of parishes.

39 & 40 Vict. c. 61.

4. Where part of a parish is on one side while the residue of the parish is on the other side of the boundary of a municipal borough or county, or of a river, estuary, or branch of the sea, or where part of a parish is so situate as to be nearly detached from the residue of the parish, or is otherwise so situate as to render the administration of the relief of the poor in or the local government of such part in conjunction with the residue of the parish inconvenient, the said parish shall be deemed to be a divided parish within the meaning of section one of the Divided Parishes and Poor Law Amendment Act, 1876 (1), and the provisions of that Act shall apply accordingly in like manner as if the said part were isolated as mentioned in that section.

Removing doubts as to construction of 39 & 40 Vict. c. 61, s. 1.

5. [After reciting 39 & 40 Vict. c. 61, s. 1 (1), and that doubts have arisen proceeds] . . . . An order under the said Act may deal with several divided parishes at the same time, and may constitute separate parishes out of any of such divided parishes or out of parts of several divided parishes, and may unite any parts of a divided parish or of several divided parishes with each other, and amalgamate the parts so united with any adjoining parish, and may amalgamate any part of a divided parish or parts of several divided parishes with an adjoining parish or adjoining parishes.

Extension of 39 & 40 Vict. c. 61, to certain places formerly extra-parochial.

6. Where a parish was at the time of the passing of the Act of the twentieth year of Her present Majesty, chapter nineteen, intituled "An Act to provide for the Relief of the Poor in extra-parochial places," an extra-parochial place, and a representation is made to the Local Government Board that, by reason of the relative size and shape of such parish, and its position in respect to other parishes, the relief of the poor could be better administered if the same, or any part or parts thereof, were amalgamated with the adjoining parish or parishes, an order may be made in pursuance of the Divided Parishes and Poor Law Amendment Act, 1876 (1), in relation to such parish, in like manner as if the said parish were a divided parish.

39 & 40 Vict. c. 61.

Removing doubts as to effect of an order under 39 & 40 Vict. c. 61, s. 5.

39 & 40 Vict. c. 61.

7. [After reciting 39 & 40 Vict. c. 61, s. 5 (2), and that doubts have arisen proceeds] . . . . Where a parish is a place separately maintaining its own highways, an order made either before or after the commencement of this Act under the Divided Parishes and Poor Law Amendment Act, 1876, shall be deemed to have dealt with that parish for highway as well as for poor law purposes.

39 & 40 Vict. c. 61.

Where a parish is not a place separately maintaining its own highways, an order under the Divided Parishes and Poor Law Amendment Act, 1876, dealing with such poor law parish or any part thereof, may deal with any area affected by the order for highway purposes in like manner as it deals with the same for poor law purposes.

Where any such order has been made before the passing of this Act, a supplemental order may be made under the said Act for the purposes of dealing with the area so far as regards highways.

For the purposes of this section, any parish, township, or place separately maintaining its own highways or entitled to return a separate waywarden to a highway board under the Highway Acts, shall be deemed to be a place separately maintaining its own highways.

Miscellaneous Amendments of Law.

Combination of unions not in the metropolis.

8. Where on any representation it appears to the Local Government Board that the combination of two or more unions not in the metropolis for any purpose connected with the administration of the relief of the poor would tend to diminish expense, or would otherwise be of public or local advantage, the Board may, with the consent of the guardians of the unions to be combined, make

(1) *Ante*, p. 1367. (2) *Ante*, p. 1368.

an order for combining such unions for the purposes named therein, and for constituting for the execution of such purposes a joint committee of the guardians of each of the combined unions.

The order shall define the powers, rights, duties, liabilities, and obligations of the joint committee, and regulate the election, meetings, and officers of the joint committee, the mode of defraying the expenses of the joint committee, and any other matter or thing (including the adjustment of present and future liabilities and property) which it appears necessary or proper to regulate for the better carrying into effect the order.

The guardians of a union included in such a combination shall, save as otherwise provided by the order, cease to exercise any powers and rights, and to be subject to any duties, liabilities, and obligations vested by the order in the joint committee.

All property acquired by the joint committee shall be vested in the boards of guardians of the unions included in the combination as tenants in common.

An order may be made for amending, adding to, or revoking any order previously made under this section.

Transfers of buildings, &c., to rural sanitary authority for use as infection hospitals.

14. If it appear to the guardians of any union desirable that any hospital or building vested in them as guardians under the Acts relating to the relief of the poor should be vested in them as the rural sanitary authority of such union, for the reception of persons suffering from any dangerous infectious disorder, the guardians may, by resolution, to be confirmed by an order of the Local Government Board, transfer such hospital or building accordingly; and from and after the date named in the order such hospital or building shall be deemed to be vested in the guardians as the rural sanitary authority of the union, for the use of the inhabitants of the union or part thereof named in the resolution and order.

If the same is to be for the use of the inhabitants of any part of the union comprised in an urban sanitary district the order may determine the contribution to be made by the urban sanitary authority of such district towards the maintenance of the hospital or building.

Where an urban sanitary district comprises part of the union, and the said hospital or building is not to be for the use of the inhabitants of that part, the order may determine the value of the interest of that part of the union in such hospital or building, and the manner in which such value is to be paid to that part by the residue of the union for whose use the hospital or building is to be kept and the application of the sum so paid.

Power to remunerate poor rate collectors for collecting rates in parts of parishes.

17. Where a rate is levied by the overseers of a parish over part of the parish only, the officers ordinarily employed in the collection of the poor rate shall, if required by the overseers, collect such first-mentioned rate, and shall receive out of the same such remuneration for the additional duty as the overseers, with the consent of the vestry, may determine.

Definitions.

18. In this Act, unless inconsistent with the context,—

"Metropolis."

The expression "the metropolis" means all parishes and places in which the Metropolitan Board of Works have for the time being power to levy the consolidated rate:

"Metropolitan Asylums Board."

The expression "Metropolitan Asylums Board" means the managers of the Metropolitan Asylums District:

"Parish."

The expression "parish" means any parish, township, or place for which a separate poor rate is or can be made:

"Municipal borough." 5 & 6 Will. 4, c. 76.

The expression "municipal borough" means a borough for the time being subject to the Municipal Corporation Act, 1835, and the Acts amending the same [1]:

"Urban and rural sanitary district." 38 & 39 Vict. c. 55.

The expressions "urban sanitary district" and "rural sanitary district" mean respectively an urban sanitary district and rural sanitary district within the meaning of the Public Health Act, 1875:

"Union."

The expression "union" means a union of parishes under a general or local Act, with a separate board of guardians, and includes a parish for which there is a separate board of guardians:

"Guardians." 4 & 5 Will. 4, c. 76.

The expression "guardians" means guardians appointed under the Poor Law Amendment Act, 1834, and the Acts amending the same, and includes guardians or other body of persons performing under any local Act the like functions as guardians under the Poor Law Amendment Act, 1834.

Saving as to 39 & 40 Vict. c. 61, s. 43.

19. Nothing in this Act contained shall repeal, alter, or affect any of the provisions of the forty-third section of the Divided Parishes and Poor Law Amendment Act, 1876.

(1) See now the Municipal Corporations Act, 1882, *ante*, p. 269.

DIVIDED PARISHES AND POOR LAW AMENDMENT ACT, 1882.

45 & 46 VICT. c. 58.

An Act to amend the Divided Parishes and Poor Law Amendment Act, 1876; *and for other purposes.* [18*th August,* 1882.]

Secs. 1—7.

Short title. 39 & 40 Vict. c 61.

1. This Act may be cited as the Divided Parishes and Poor Law Amendment Act, 1882, and shall be construed as one with the Divided Parishes and Poor Law Amendment Act, 1876, in this Act referred to as the principal Act, and the Acts amending the same.

Detached Parts of Parishes.

Detached parts of parishes to form parts of parishes surrounding them.

2. Where any part of a parish is isolated or detached from the other part or parts of the parish, and is wholly surrounded by another parish, such part shall, from and after the twenty-fifth day day of March one thousand eight hundred and eighty-three, be amalgamated with the last-mentioned parish in the same manner and with the same consequences and limitations in every respect, subject nevertheless as hereinafter mentioned, as if the amalgamation had been effected by an order of the Local Government Board under the principal Act, and such part shall be deemed to be within the same county as the parish with which it is amalgamated.

Provided as follows:

(1.) If two or more isolated or detached parts of parishes adjoin each other, and such parts together are wholly surrounded by another parish, the same shall for the purposes of this Act be deemed one isolated or detached part.

(2.) If any question should arise as to whether part of a parish is isolated or detached from the other part or parts of the parish, or is wholly surrounded by another parish, the Local Government Board may by order determine the question.

(3.) This section shall not apply to any parish situate wholly or partly in the metropolis.

Provision for parishes not separately maintaining highways.

3. Where the parish with which any such isolated or detached part of a parish as aforesaid becomes amalgamated, under the provisions of this Act, is not a place separately maintaining its own highways, or entitled to return a separate waywarden to a highway board, the Local Government Board may deal with such parish for highway purposes by an order in like manner as they would have been enabled to deal with the same by a supplemental order under section seven of the Poor Law Act, 1879 (1), if the amalgamation had been effected prior to the passing of that Act by an order under the principal Act.

42 & 43 Vict. c. 54.

Detached parts with a population exceeding 300 may be made separate parishes.

4. If the population of any such isolated or detached part of a parish as aforesaid exceeds three hundred persons, one tenth in number and rateable value of the persons appearing on the rate in force for the time being to be rated to the relief of the poor in respect of property within such part may apply to the Local Government Board, in writing, on or before the first day of December next, to have the same declared to be a separate parish, and the Board may by order either dismiss the application or constitute such part a separate parish from and after a day to be fixed by the order; and if an order is made dismissing the application, section two of this Act shall not take effect with respect to such part until such order is made.

An order constituting a parish under this section shall have the same consequences and may contain the same provisions as if the same were made under the principal Act, but section two of that Act shall not apply to such order.

Provision as to school districts.

5. Notwithstanding anything contained in the principal Act, any alteration of an area made by or pursuant to this Act shall extend to alter the constitution of the school districts, unless the Education Department otherwise direct.

Extension of 39 & 40 Vict. c. 61, s. 5.

6. Section five of the principal Act (2) shall apply to any parish in a highway district, although it may not be a parish for which a waywarden can be elected.

Interpretation of county.

7. For the purposes of the principal Act, and the Acts amending the same, a riding or other division of a county having a separate court of quarter sessions, or for which a separate county treasurer may be appointed, shall be deemed to be a separate county.

(1) *Ante,* p. 1370. (2) *Ante,* p. 1368.

Power to alter wards for election of guardians in certain cases. 35 & 36 Vict. c. 79. 38 & 39 Vict. c. 55.

8. Any wards already formed or hereafter to be formed by the Local Government Board under the Public Health Act, 1872, or the Public Health Act, 1875, for the election of guardians of the poor, and the number of guardians to be elected for such wards respectively, may be altered from time to time by that Board as they may think fit.

Provision for separate rate.

10. If, for the purpose of giving effect to any adjustment which the Local Government Board are authorised or required to make under the Poor Law Amendment Act, 1834, or the Acts amending the same, it is necessary that a separate rate should be levied on part of a parish only, the Board may in the order of adjustment direct such rate to be made, and the same shall be assessed, made, allowed, published, collected, and levied in the same manner and by the same persons as if it were a poor rate and extended to the whole parish.

Adjustment of liabilities not required in certain cases.

11. It shall not be incumbent on the Local Government Board to make an adjustment under the Poor Law Amendment Act, 1834, or the Acts amending the same, in any case where the circumstances appear to them to render such adjustment inexpedient or unnecessary.

Mode of consent by guardians and managers.

12. Where, under the Poor Law Amendment Act, 1834, or any of the Acts amending the same, the consent in writing of a majority of the guardians of a union or the managers of a school district is required it shall be deemed a sufficient compliance with such requirement if a resolution giving consent is passed at a meeting of the guardians or managers, of which meeting, and of the business to be transacted thereat, not less than fourteen days notice shall be given to each guardian or manager.

STATUTES RELATING TO HIGHWAYS.

HIGHWAY RATE ASSESSMENT AND EXPENDITURE ACT, 1882.

45 & 46 VICT. c. 27.

An Act to extend certain Provisions of the Poor Rate Assessment and Collection Act, 1869, *to the Highway Rate, and for other purposes.* [12*th July,* 1882.]

Secs. 3, 4.

Power to rate and compound with owner of small tenements. 32 & 33 Vict. c. 41.

3. Where in any parish the vestry have, under section four of the Poor Rate Assessment and Collection Act, 1869 (1), ordered or shall hereafter order that the owners of all rateable hereditaments to which section three of that Act extends shall be rated to the poor rate in respect of such hereditaments instead of the occupiers, such order shall be deemed to extend to and include the highway rate, and whilst such order is in force the respective owners of such hereditaments shall be rated and assessed instead of the occupiers thereof to the highway rates made after the passing of this Act for any highway parish which is co-extensive with such parish or with any part thereof, and to which otherwise such occupiers might by law be rated; subject nevertheless to the abatements or deductions and to the conditions specified in sections four and five of the said Act; and for the purposes of this section the term "overseers" in section four of the said Act shall be construed to mean "surveyor of highways or other person authorised by law to make and levy a highway rate" (2).

The surveyor of highways, or other person authorised by law to make and levy a highway rate, shall have the same powers, remedies, and privileges for recovering the rates made under this Act upon owners, as the overseers of the poor have under the said Poor Rate Assessment and Collection Act, 1869, for the recovery of a poor rate, and when the overseers are required by law to levy the highway rate, and such rate applies to the whole parish, they may levy the same as part of the poor rate.

5 & 6 Will. 4, c. 50.

Section thirty of the Highway Act, 1835, relating to the composition for rates in certain cases under local Acts is hereby repealed.

Valuation lists conclusive for highway rate.

4. In every highway rate made after the passing of this Act the several hereditaments included therein and assessable to the poor rate shall be rated according to the annual rateable value thereof appearing in the valuation list for the time being in force in the parish which is co-extensive with or includes the highway parish to which the highway rate relates, and where any valuation list has been amended on objection pursuant to section one of the Union Assessment Committee Amendment Act, 1864, the assessment committee shall give notice of such

27 & 28 Vict. c. 39.

(1) *Ante,* p. 1356.
(2) See the Highway Act, 1864, section 32, *ante,* p. 866.

amendment to the surveyor of highways or other person authorised to make and levy the highway rate, who shall thereupon alter the then current highway rate accordingly [1].

Secs. 4—10.

Provision for balances of outgoing surveyors.

5. If the rates levied by a surveyor of highways, together with any other sums received by him during his term of office, prove insufficient to meet the whole of the expenditure lawfully incurred by him, and such deficiency has not arisen from any neglect or default on his part, his successor in office may reimburse to him the amount of such deficiency.

Power to maintain mile stones and to fence.

6. The expenses incurred by a highway authority in maintaining, replacing, or setting up mile stones on any highway, and in fencing by posts and rails or otherwise a highway where such fencing is required for the protection of persons travelling thereon against danger, shall be a lawful charge upon the highway rate.

Waywardens rate accounts. 41 & 42 Vict. c. 77. 42 & 43 Vict. c. 6.

7. The provisions of section nine of the Highways and Locomotives (Amendment) Act, 1878 [2], as amended by the District Auditors Act, 1879 [3], in relation to the audit of the accounts of highway authorities and their officers shall extend to the accounts of a waywarden of any highway parish within a highway district with respect to the highway rates levied by him.

Recovery and payment of certified balances.

8. Moneys, goods, or chattels certified by an auditor at a highway audit to be due from any person shall be recoverable by the like process and with the like powers as in the case of moneys, goods, or chattels certified at the audit of the poor rate accounts, and where an auditor shall take proceedings for the recovery of any moneys, goods, or chattels certified at a highway audit or shall lay any information for a penalty in consequence of the default of any officer or other person to attend any such audit or to produce the proper accounts or vouchers, or to make or sign the proper declaration before him, the costs incurred by the auditor, when not recovered from the defendant, shall, if the Local Government Board consent thereto, be paid to the auditor by the highway authority, and may be recovered from such authority in a summary manner.

The moneys certified at a highway audit shall, where there is a treasurer of the highway authority, be paid to such treasurer, and where there is no such officer to the highway authority for the time being; and the goods or chattels so certified shall be delivered over to the person authorised to receive the same.

Provision as to excluded parts of parishes. 38 & 39 Vict. c. 55.

9. When at the time of the passing of this Act part of a parish is excluded from an urban sanitary district, but such excluded part is for purposes connected with the repairs of highways and the payment of highway rates treated as forming part of the district, the owners and ratepayers of the excluded part may by resolution passed at a meeting to be convened and conducted in manner provided by Schedule Three of the Public Health Act, 1875 [4], decide that such part shall be a highway parish, and if the resolution is approved by an order of the Local Government Board the excluded part shall from a date to be fixed by the said order be for all purposes connected with highways, surveyors of highways, and highway rates, considered and treated as a separate highway parish.

Interpretation.

10. In this Act—

"Highway audit" means the audit of the accounts of a highway authority or their officers or of any waywarden:

"Highway authority" means as respects a highway district, the highway board, and as respects a highway parish not included in a highway district, the surveyor or surveyors or other officers performing similar duties:

"Highway rate" means a rate made for the repairs of the highways and includes any separate rate made to meet the orders or precepts of a highway authority:

"Parish" means a place for which a separate poor rate can be made:

"Highway parish" means a place separately maintaining its own highways, and, in a highway district, a place for which a waywarden may be elected or a separate highway rate be made.

HIGHWAY AMENDMENT ACT, 1845.

8 & 9 VICT. c. 71.

An Act to extend certain provisions in the Act for consolidating and amending the Laws relating to Highways in England. [31*st July*, 1845.]

Section 1.

1. [After reciting 5 & 6 Will. IV. c. 50, s. 48 [3], proceeds] . . . . . from and after the passing of this Act, the recited Act [5] and all the provisions therein con-

(1) See the Union Assessment Committee Act, 1862, 25 & 26 Vict. c. 103, s. 24, *ante*, p. 1352.
(2) *Ante*, p. 881. (3) *Ante*, p. 1246.
(4) *Ante*, p. 243; and see section 216 of that Act, *ante*, p. 165.
(5) *Ante*, p. 790.

Secs. 1, 2. tained shall apply, and extend not only to the lands in the said Act specified, but to all lands belonging, or which hereafter may belong, to parishes, or to the surveyor of the highways for the purposes aforesaid, which have been or hereafter shall be lawfully used for the purpose of obtaining materials for the repair of the highways in such parish, the materials in which lands have been or hereafter may be exhausted.

2. And be it enacted, that the said Act (1) and this Act shall be construed together as one Act.

HIGHWAY AMENDMENT ACT, 1841.

4 & 5 VICT. c. 51.

An Act to amend an Act of the third year of Geo. IV. for regulating Turnpike Roads in England; and also an Act of fifth and sixth years of Will. IV. for consolidating the Laws relating to Highways in England. [21*st June*, 1841.]

Section 1. 1. [After reciting 3 Geo. IV. c. 126 (2), s. 6, and 5 & 6 Will. IV. c. 50 (3), s. 53, proceeds] . . . . . from and after the passing of this Act, all lands and grounds which shall be in the exclusive occupation of one or more persons for agricultural purposes shall be deemed and taken to be inclosed lands or grounds within the meaning of the said recited Acts, although the same may not be separated from any adjoining lands or grounds of other persons, or from the highway by any fence or other inclosure.

SALE OF EXHAUSTED PARISH LANDS ACT, 1876.

39 & 40 VICT. c. 62.

An Act to make provision for the Disposal of certain Lands appropriated for the supply of Materials for the Repair of Public and Private Roads. [15*th August*, 1876.]

Secs. 1—5. 1. Where land has been allotted to or otherwise acquired by a parish, whether in the name of the surveyor of highways or other trustees, or generally for the purpose of the supply of materials for the repair of the public roads and highways in such parish, and also for the repair of private roads therein, or for some other purpose, public or private, and the materials in such land shall be exhausted, or shall not be suitable or required, and the land shall not be available for such other purpose, if any, the same shall be dealt with as land which falls within the operation of the third section of the Union and Parish Property Act, 1835 (4), and the Parish Property and Parish Debts Act, 1842 (5), subject to the provisions hereinafter contained.

Sale of exhausted gravel pits wherein there are private or other interests.

Local Government to hear and decide on objections and claims.

2. Before issuing their order for the sale of the land, the Local Government Board shall hear and decide upon every objection and claim made in writing by any person claiming an interest therein, within three months from the passing of the resolution for the sale of the land, and shall either refuse to sanction the sale, or allow it to proceed, providing, if necessary, for the interest of every person establishing the same out of the purchase-money.

Disputed claims and interests of disabled persons.

3. If there be disputed claims to any interest in the said land, or if the person entitled to such interest be under legal disability, the board shall direct that proceedings may be taken in the High Court of Justice, or, where the amount of the value in question shall not exceed fifty pounds, in the county court, for the settlement of such dispute, or for the proper disposal of such amount where there is no such dispute.

Right of pre-emption by adjoining owner.

4. When the board shall see fit, they may order that the land shall be offered to the owner or owners, as the case may be, of the adjoining land, at a price to be settled in such manner as the board shall deem most expedient, and if such owner or owners shall be willing to purchase the same at such price, the same shall be sold to such owner or owners, and not otherwise; and the declaration of such owner or owners as to their willingness to purchase shall be given within a time to be appointed by the said board.

Mines how to be dealt with.

5. Where any right to mines or minerals under the land is claimed by the lord of the manor

(1) *I.e.*, the Highway Act, 1835, 5 & 6 Will. IV. c. 50, *ante*, p. 756.
(2) *I.e.*, the General Turnpike Act, 1822, section 6.
(3) *I.e.*, the Highway Act, 1835, section 53, *ante*, p. 792.
(4) 5 & 6 Will. IV. c. 69, s. 3.
(5) 5 & 6 Vict. c. 18, s. 3.

or other person, the board may, if they see fit, reserve the same in their order for sale, or may order the sale subject to the right so claimed.

Appropriation of the interest of the parish in the produce of the sale.

6. The said board, in dealing with the interest of the parish in the produce of the sale, shall cause such produce to be applied as far as practicable in the repair of the highways in the parish, or in some permanent improvement of the highways, or in an investment, so that the annual dividends may be applicable in aid of the highway rate until the board shall otherwise order; and the said board shall have the like power of dealing with the produce of the sale of lands under the Highway Acts, if applied to by the surveyor of highways or any authority exercising the powers of such surveyor, where such produce cannot be conveniently appropriated in the manner provided by those Acts.

Interpretation of the word "parish."

7. The word "parish" shall include every township or other place separately maintaining its own highways, except that where such township is not a parish within the operation of the above-mentioned Acts of the years 1835 and 1842 respectively, the proceedings to be taken under them shall be restricted to such township or place; provided that the churchwardens and overseers, or the overseers only, as the case may be, of the parish, as defined in the Poor Law Amendment Act of 1866 (1), comprising such township or place, shall discharge all the duties hereby rendered necessary for it in like manner as if it were co-extensive with such parish.

LAW OF EVIDENCE AMENDMENT ACT, 1877.

40 & 41 VICT. c. 14.

An Act for the Amendment of the Law of Evidence in certain cases of Misdemeanour.

[28*th June*, 1877.]

Section 1.

Defendant, and wife or husband of defendant, may be witness in certain trials.

1. On the trial of any indictment or other proceeding for the non-repair of any public highway or bridge, or for a nuisance to any public highway, river, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

(1) *Ante*, pp. 1366, 1367.

STATUTES RELATING TO HIGHWAYS (TURNPIKE ROADS).

GENERAL TURNPIKE ACT, 1822.

3 GEO. IV. c. 126.

An Act to amend the general laws now in being for regulating turnpike roads in that part of Great Britain called England. [6*th August*, 1822.]

Secs. 26-87.

. . . . . .

26. [Exemptions from toll on manure, &c., contained in any Act to be in force notwithstanding the same should be carried into or brought from an adjoining parish (1).]

27. [Tolls payable on waggons going empty for road materials, &c., to be repaid when returning laden (1).]

28. [Toll not to be taken on account of baskets, &c., being in waggons, &c., laden with manure, &c. (1).]

32. [Exemptions from tolls: horses and carriages attending his Majesty, &c., or conveying materials for roads and bridges (1).]

Penalty not exceeding 5*l*. on fraudulently taking the benefit of exemption.

36. If any person or persons shall by any fraudulent or collusive means whatsoever claim or take the benefit of any exemption from toll or from overweight, or for using any additional horse or horses, or of any other exemption or exemptions whatsoever in this Act contained, every such person shall for every such offence forfeit and pay any sum not exceeding five pounds; and in all cases the proof of exemption shall be upon the person claiming the same.

The property of toll houses, &c., vested in trustees.

60. The right, interest, and property of and in all the toll gates and toll houses, weighing machines, and other erections and buildings, lamps, bars, toll boards, direction boards, milestones, posts, rails, fences, and other things which shall have been or shall be erected and provided in pursuance of any Act of Parliament for making turnpike roads, with the several conveniences and appurtenances thereunto respectively belonging, and the materials of which the same shall consist, and all materials, tools, and implements which shall be provided for repairing the said roads, and the scrapings of the said roads, shall be vested in the trustees (2) or commissioners acting in pursuance of such Act for the time being, and they are hereby authorized and empowered to apply and dispose of the same as they shall think fit, and to bring or cause to be brought any action or actions, and to prefer and prosecute or order and direct the preferring and prosecuting of any informations or indictments, against any person or persons who shall dig up, break or pull down, steal, take or carry away, spoil, destroy, injure, or damage any of the toll gates or toll houses, weighing machines, or other erections or buildings, lamps, bars, toll boards, direction boards, milestones, posts, rails, fences, and other things, or any of the conveniences and appurtenances thereto belonging, or any of the tools, implements, or matorials aforesaid, or shall interrupt them the said trustees or commissioners, or any of their officers, in the possession thereof; in all which proceedings it shall be sufficient to state generally such articles to be the property of the clerk for the time being to the said trustees or commissioners.

Actions may be brought in the name of the clerk.

87. [How expenses of jury and witnesses are to be borne.]

(1) This section will be found set out in the note *ante*, p. 852.

(2) The trustees have no interest in the soil of the road, *Davison* v. *Gill*, 1 East 69; *R.* v. *Thomas*, 9 B. & C. 114.

88. When any turnpike road shall be diverted or turned, and the new road shall be made and completed, such new road shall be in lieu of the old road, and shall be subject to all the provisions and regulations in any Act of Parliament contained or otherwise to which the old road was subject, and shall be deemed and taken to be a common highway, and shall be repaired and maintained as such; and the old road shall be stopped up and the land and soil thereof shall be sold by the trustees or commissioners to some person or persons whose lands adjoin thereto, as hereinafter mentioned with regard to pieces of ground not wanted; but if such old road shall lead to any lands, house, or place which cannot in the opinion of the said trustees or commissioners be conveniently accommodated with a passage from such new road which they are hereby authorised to order and lay out, if they find it necessary, then and in such case the old road shall be sold, but subject to the right of way and passage to such lands, house, or place respectively, according to the ancient usage in that respect; and the money arising from such sale in either of the said cases shall be applied towards the purchase of the land where such new road shall be made, or in the same manner as the tolls arising on such road, as the trustees or commissioners thereof shall think fit; and upon the completion of any contract whereby any part of the old road shall be given in payment for the value of the ground taken for the new road, or upon payment of the price of any part of the old road, the soil of such old road shall become vested in the purchaser thereof and his heirs, but all mines, minerals, and fossils lying under the same shall continue the property of the person or persons who would from time to time have been entitled to the same if such old road had continued.

When new road shall be completed, old highway to be stopped up, and the land sold.

89. Where the trustees or commissioners of any turnpike road shall have purchased or shall be possessed of any piece or pieces of ground not wanted for the purposes of such road, it shall and may be lawful for such trustees or commissioners to sell and dispose of the same: Provided always, that the said trustees or commissioners, before they shall sell and dispose of any such piece or pieces of ground not wanted for the purposes of such turnpike road as aforesaid to any other person or persons, shall first offer the same to the person or persons of whom the same shall have been purchased, or to the person or persons whose lands shall adjoin thereto, and if such person or persons respectively shall then and thereupon refuse or shall not agree (except with respect to or on account of the price thereof) to purchase the same respectively, on an affidavit being made and sworn before a master or master extraordinary in the High Court of Chancery, or before one of his Majesty's justices of the peace for the county, liberty, or place where such ground is situate, (who are hereby respectively empowered to take such affidavit,) by some person or persons no way interested in the said piece or pieces of ground, stating that such offer was made by or on the behalf of such trustees or commissioners, and that such offer was then and therenpon refused or was not agreed to by the person or persons to whom the same was made, such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made, and was refused or not agreed to by the person or persons to whom such offer was made (as the case may be); and in case such person or persons shall be desirous of purchasing such piece or pieces of ground, and he, she, or they, and the said trustees or commissioners shall differ or not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury in manner in this Act directed with respect to disputed value of premises to be taken and used in pursuance of this Act, and the expense of hearing and determining such difference shall be borne and paid in manner hereinbefore directed with respect to such purchases made by the said trustees, *mutatis mutandis;* and the money to arise by the sale or sales of such pieces or parcels of ground shall be applied by the trustees or commissioners to the purposes of the Act for repairing and maintaining such turnpike road, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or non-application of such money; and the conveyances of such piece or pieces of ground shall be made to the purchaser or respective purchasers thereof, and in such manner and form as is hereinbefore directed with respect to the conveyances to be made of the land constituting any part of the roads hereinbefore directed to be sold.

When any parts of land not wanted for the purposes of roads are to be sold, the first offer to be made to the original or adjoining owners.

What shall be evidence of such offer and refusal.

In case of dispute as to price, the value to be ascertained by a jury.

90. [Application of compensation money exceeding £200.

91. [Application of compensation money when less than £200 and not less than £20.]

92. [Application of compensation money when less than twenty pounds.]

97. It shall be lawful for the surveyor or surveyors to the trustees or commissioners of every turnpike road, and for all such persons as he or they shall appoint, to search for, dig, gather, take, and carry away any materials for making or repairing any turnpike road, out of any common river or brook (not being within fifty yards of any bridge, dam, weir, or jetty), or out of or from any waste or common in any parish, hamlet, or place in which any part of such road may lie, or in any adjoining parish, hamlet, or place, and to haul and carry away any such materials when got over any common or waste lands, without paying anything for such materials,

Power to get materials from any river or brook, or from any common or waste lands without expense, filling up the pits, &c.;

Secs. 97–99.

and without being deemed a trespasser or trespassers; the said surveyor or surveyors, or other person or persons, filling up the pits or quarries, levelling the grounds, or sloping down the banks wherefrom such materials shall be taken, or railing or fencing off such pits or quarries, so that the same shall not be dangerous to any persons or cattle, and paying or tendering for the damage done by going through and over any inclosed lands [1] or grounds for or with such materials, and such damages to be ascertained as hereinafter mentioned; and also that it shall be lawful for the said surveyor or surveyors, and such person or persons as he or they shall appoint, to search for, dig, get, gather, take, and carry away any such materials in or out of the land of any person or persons where the same may be had or found, in any parish, hamlet, or place, in which any part of such road shall lie or be situate, or in any adjoining parish, hamlet, or place (not being a garden, yard, park, paddock, planted walk or avenue to any house, or any piece of ground planted and set apart as a nursery for trees), making or tendering such satisfaction for such materials, and for the damage done, to the owners or occupiers of the lands where and from whence the same shall be dug, gathered, and carried away, or over which the same shall be carried, as the said trustees or commissioners shall judge reasonable; and also to land on and carry through or over any inclosed lands [2] or grounds (not being a garden, yard, park, paddock, planted walk or avenue to a house, or any piece of ground planted and set apart as a nursery for trees), or on, through, or over any open land or common, any stone or other materials for making or repairing any such road, or for building or repairing any present or future toll house or toll houses on or by the sides thereof, from any river, stream, or canal in any parish, hamlet, or place in which any such road lies, or in any adjoining parish, hamlet, or place, paying or tendering for the damage done in landing on or going through or over any inclosed lands or grounds for or with such materials such sum or sums of money as the said trustees shall judge reasonable; and in case of any difference between such trustees or commissioners, surveyors, or other persons appointed or employed as aforesaid, and the owners and occupiers of such lands or any of them, concerning such payments and damages as aforesaid, any two or more justices of the peace for the county, riding, or place wherein the place from whence such materials shall have been taken shall be situate, on ten days' notice thereof being given in writing by either party to the other, shall hear, settle, and determine the matter of such payments and damages, and the costs attending the hearing and determining the same.

or from the lands of any person, not being garden ground, &c., on tendering satisfaction for damages;

and materials may be carried through any inclosed or open lands, on tendering damages.

Any difference as to damages may be settled by two justices.

98. Provided always, that it shall not be lawful for any surveyor, or any other person or persons acting under the authority of this Act, to dig, gather, get, take, or carry away any materials for making or repairing any turnpike road, or for other such purpose or purposes as aforesaid, out of or from any inclosed land or ground, until notice in writing, signed by the surveyor, shall have been given to the owner or owners of the premises from which such materials are intended to be taken, or his or her known agent, or to the occupiers of the premises from which such materials are intended to be taken, or left at the house or last or usual place of abode of such owner or occupier, to appear before any two or more justices of the peace acting in and for the county, liberty, or place where the lands from whence such materials are intended to be taken shall lie, to show cause why such materials shall not be had therefrom; and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorise such surveyor or other person to dig, get, gather, take, and carry away such materials, at such time or times as to such justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear by himself or herself, or his or her agent, the said justices shall and may (upon proof on oath of the service of such notice, and which oath they are hereby empowered to administer), make such order therein as they shall think fit, as fully and effectually to all intents and purposes, as if such owner or occupier, or his or her agent, had attended.

Notice to be given before materials are taken from private lands, and two justices shall decide therein.

99. If any surveyor of any turnpike road, or any person employed by him, shall, by reason of the searching for, digging, or getting any gravel, sand, stones, chalk, clay, or other materials for repairing any highways, make or cause to be made any pit or hole in any common or other lands or grounds, rivers or brooks, as aforesaid, wherein such materials shall be found, the said surveyor shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open, and shall, within three days after such pit or hole shall be opened or made, where no gravel, stones, or materials shall be found, cause the same forthwith to be filled up, levelled, and covered with the turf or clod which was dug out of the same, and where any such materials shall be found, within fourteen days after having dug up sufficient materials, in such pit or hole, if the same is not likely to be further useful, cause the same to be filled up, sloped down, or fenced off, and so continued, and

If pits or holes are made in getting materials, surveyor shall cause them to be filled up or fenced off.

(1) See *Lister* v. *Lobley*, 7 A. & E. 124.
(2) See *Tapsell* v. *Crosskey*, 7 M. & W. 441.

if the same is likely to be further useful the said surveyor shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle; and in case such surveyor shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he or they shall forfeit the sum of twenty shillings for every such default; and in case such surveyor shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he or they shall have received notice for either of those purposes from any justice of the peace or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before one or more of the said justices of the peace, such surveyor shall forfeit and pay any sum not exceeding ten pounds nor less than forty shillings for every such neglect, to be determined and adjudged by such justice or justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, in such manner as the said justice or justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied.

Penalty for not filling up or fencing off, 20*s*.

Penalty for not fencing off, &c., in six days after receiving notice not more than 10*l*. nor less than 40*s*.

100. Provided always, that it shall and may be lawful for the said trustees or commissioners to contract and agree with any person or persons whomsoever for the purchase or demise from him, her, or them of and to hold any land or ground for the purpose of digging stones, gravel, and materials therefrom for the repair or use of the said road, and at any time afterwards to sell the land or ground so purchased by public auction or tender: Provided also, that the entering into any such contract or agreement as last aforesaid shall not be compulsory against any person or persons unwilling to enter into the same.

Power to contract for lands to get materials.

101. If any person or persons shall take away any materials which shall have been gotten, dug, or gathered for the repair or use of any turnpike road, or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any turnpike road, before the surveyor of such road and the workmen employed for getting such materials shall have discontinued working therein for the space of six weeks (except the owner or occupier of any private grounds, and persons authorised by such owner or occupier to get materials in such quarry for his own private use and not for sale), every person so offending shall for every such offence forfeit and pay any sum not exceeding five pounds.

Penalty on taking away materials before surveyor has discontinued digging for them, 5*l*.

102. The trustees or commissioners of every turnpike road are hereby empowered to purchase or rent any piece or pieces of land or ground, not exceeding in any one place six yards square, on the sides of such road, as repositories for stone, gravel, and other materials for making or repairing the same; and in case any difference shall arise between such trustees or commissioners and the owner of such land or ground with respect to the value thereof, or the necessity or propriety of taking such land or ground, the same shall be settled and determined by any two of His Majesty's justices of the peace acting in and for the county where the said land or ground shall be situated, in manner hereinbefore directed with respect to getting materials for the repair of any turnpike road.

Repositories for materials to be provided.

Two justices shall settle any difference that may arise as to value.

103. It shall and may be lawful for the company of proprietors, or the trustee or trustees for the proprietors, of any canal or of any railway or tram-road on which any flint, gravel, stone, or other materials for the repair of any turnpike road shall or may be conveyed, and they are hereby authorised and empowered to lessen and reduce the tolls and rates imposed by any Act of Parliament by which any such company shall be appointed, or any other Act whatsoever, on the carriage of such flint, gravel, stone, or other materials carried on the said canal or railway, and to appoint such lower tolls and rates to be taken for the carriage and conveyance of the same as the said company or trustees shall think proper; and all such reduced tolls shall and may be collected, taken, and recovered by the same persons and means, and by and under the same powers, provisions, penalties, and forfeiture, as the original tolls might have been taken in case the same should not have been reduced, any Act or Acts of Parliament, bye-law, or ordinance, or trust deed, to the contrary notwithstanding.

Canal Companies may lower their tolls on materials for repairing turnpike roads.

104. [Statute labour to remain as heretofore [1].]

106. It shall and may be lawful for the trustees or commissioners of any turnpike roads to contract and agree with any person or persons liable to the repair of any part of the road under the care and management of such trustees or commissioners, or of any bridges thereon, by tenure or otherwise, for the repair thereof, for such term as they shall think proper, not exceeding three years, and to contribute towards the repair of such road or bridges such sum or sums of money as they shall think proper out of the tolls arising on such turnpike road.

Trustees may contract with persons liable to the repairs of roads by tenure.

[1] The liability to do statute labour is now abolished by the Highway Act, 1835, *ante*, p. 756.

Secs. 107—112.

Composition may be entered into by counties for repairing bridges repaired by parishes.

107 And whereas many bridges on turnpike roads are by prescription at present liable to be repaired by certain parishes, and not by the county or counties in which they are situated, and which bridges, from change of times and circumstances, are become no longer sufficiently convenient for the use of the public, without being enlarged or otherwise improved: Be it therefore further enacted, that it shall and may be lawful for any such county or counties, parish or parishes respectively, to enter into a composition or agreement with each other, and by the authority of those persons who shall be legally competent to make rates for such county and parish respectively, whereby the improvement and future repair of any such bridge shall be undertaken and lie upon the county or counties in which such bridge is locally situated; and that all rates made for carrying into effect any such composition, agreement, repairs, or improvement shall be made and assessed in the same manner as other the rates of such county or parish respectively, and shall be good and valid to all intents and purposes in the law whatsoever.

Composition may be entered into by trustees and parishes for repair of bridges

108. It shall and may be lawful for the trustees or commissioners of any turnpike road, and for such parish or parishes, in like manner to enter into a composition or agreement with each other, and by the authority of the persons at present legally competent to make rates for such parish or parishes, whereby, in consideration of such sum or sums of money as shall be agreed upon being yearly paid to the treasurer of the trustees or commissioners entering into such composition or agreement, out of the rates to be raised for the repair of the bridge or bridges the subject thereof, the repairs of any such bridge shall, during the continuance of any Act or Acts of Parliament under which such trustees or commissioners shall be appointed or act, be undertaken and carried on by the said trustees or commissioners; and that all rates and assessments raised and levied for carrying such composition or agreement into effect shall in like manner be good and valid to all intents and purposes whatsoever.

Where parish indicted for non-repair of a turnpike road, the court to apportion the fine between the parish and the trustees or commissioners.

110. When the inhabitants of any parish, township, or place shall be indicted or presented for not repairing any highway being turnpike road, and the court before whom such indictment or presentment shall be preferred [1] shall impose a fine for the repair of such road, such fine shall be apportioned, together with the costs and charges attending the same, between the inhabitants of such parish, township, or place, and the trustees or commissioners of such turnpike road, in such manner as to the said court, upon consideration of the circumstances of the case, shall seem just; and it shall and may be lawful for such court to order the treasurer of such turnpike road to pay the sum so proportioned for such turnpike road out of the money then in his hands or next to be received by him, in case it shall appear to such court from the circumstances of such turnpike debts and revenues that the same may be paid without endangering the securities of the creditors who have advanced their money upon the credit of the tolls to be raised thereupon, which order shall be binding upon such treasurer, and he is hereby authorised and required to obey the same.

Power to make causeways.

Where turnpike road is ruinous, roads may be made through adjoining grounds.

Recompence to be made to owners for damages.

In case of difference, two justices shall settle it.

111. It shall be lawful for the trustees or commissioners to make and keep in repair, or cause to be made and kept in repair, any causeway or causeways, for the use of foot passengers, in, upon, or on the sides of the turnpike road, in such manner as they shall think proper, and also to make or cause to be made a road through the grounds adjoining to any ruinous or narrow part of any turnpike road (not being the site or ground whereon any house or houses stand, not being a yard, garden, park, paddock, planted walk, or avenue to any house, or any inclosed ground planted and set apart as a nursery for trees), to be made use of by all passengers, cattle, and carriages as a public highway, whilst the old road is repairing or widening, and till such time as it shall be convenient for passengers and carriages to pass along the same, making such recompence to the owners and occupiers of such private grounds respectively for the damages they shall or may thereby sustain as shall be adjudged reasonable by the trustees or commissioners of the road under repair or alteration; and in case of any difference concerning such damages between such owners or occupiers and such trustees or commissioners, that then it shall and may be lawful for any two or more justices of the peace acting in and for the county wherein such grounds shall be situate, on fourteen days' notice in writing being given by either party to the other, to settle, adjudge, and finally determine what recompence shall be made to such owners and occupiers for the damages they shall have sustained as aforesaid.

Trustees not empowered to repair causeways unless specially authorised.

112. Provided always, that nothing herein contained as to the making or maintaining any causeway or footpath, or any other matter or provision in this Act, shall extend or be deemed or construed to extend to authorise or empower any trustees or commissioners of any turnpike road to lay down, continue, repair, or maintain any pavement, or any paved or pitched causeway or footpath, in or upon or at the side of any turnpike road within any town, village, or hamlet where such turnpike road shall pass through the same, unless provision shall have been or shall be specially made for that purpose in the Act or Acts of Parliament under which such

[1] See *R.* v. *Papworth*, 2 East, 413; *R.* v. *Pembridge*, 3 Q. B. 901.

turnpike road shall be made, maintained, or repaired; but in default of such provision all and every such pavement, paved or pitched causeway or footpath, within such town, village, or hamlet, shall be made, repaired, and maintained by and at the costs of the inhabitants of such town, village, or hamlet, or by such other persons as shall be in anywise liable to make, maintain, and repair the same.

Ditches, &c. of sufficient depth and breadth shall be made by the occupiers of lands for keeping the roads dry.

113. Ditches, drains, or watercourses, of a sufficient depth and breadth, for the keeping all turnpike roads dry, and conveying the water from the same, shall be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges shall be made and laid where any carriageways or footways lead out of the said turnpike roads into the lands or grounds adjoining thereto, by the occupier or occupiers of such lands or grounds; and every person or persons who shall occupy any lands or grounds adjoining to or lying near such turnpike road through which the water hath used to pass from the said turnpike road shall and is and are hereby required from time to time, as often as occasion shall be, to open, cleanse, and scour the ditches, watercourses, and drains for such water to pass without obstruction; and that every person making default in any of the matters or things aforesaid, after ten days' notice to him, her, or them given, shall for every such offence forfeit any sum not exceeding five pounds.

Penalty on default not exceeding £5.

For removing and preventing annoyances.

114. It shall be lawful for the surveyor of every turnpike road, and such person as he or they shall appoint, to remove and prevent all annoyances on every part of every turnpike road, by filth, dung, ashes, rubbish, or any other matter or thing whatsoever being laid or thrown upon any turnpike road, or upon any open common or waste land within eighty feet of the centre thereof, and to dispose of the same for the benefit of such road, in case the owner thereof shall neglect to remove the same within twelve hours after notice in writing, signed by any two trustees, or the surveyor of such road, given to such owner for that purpose, or in case the owner is not known, then after a like notice affixed for three days on the nearest turnpike gate, and to turn any watercourses, sinks, or drains running into, along or out of any turnpike road or any part thereof, to the prejudice of the same, and to open, scour, and cleanse any watercourses or ditches adjoining to any turnpike road, and make the same as deep and large as he shall think proper and necessary, in case the owners or occupiers of the adjoining lands shall neglect to open, scour, or cleanse such watercourses or ditches after seven days' notice in writing given for that purpose; and the charges thereof, and of removing any annoyances, to be settled by any one or more justices of the peace of the county or place where such part of the turnpike road shall lie, shall be reimbursed to the said surveyor by such owners or occupiers, and the same shall be recovered in such manner as the penalties and forfeitures are hereinafter directed to be recovered; and if after the removal of any of the said annoyances any person shall again offend in the like kind, every such person shall for every such offence forfeit and pay any sum not exceeding five pounds.

Watercourses and drains may be turned.

Penalty for a second offence, £5.

Expenses of repairing drains, &c. in towns to be defrayed equally between the trustees and the inhabitants.

115. In all cases where any gutter, drain, sink, sewer, or underdrain, made or hereafter to be made, under or at the sides or near any turnpike road, shall be used as well for the conveyance of the water from such turnpike road as for conveying water, filth, or other matters from the houses or premises of the inhabitants of any town, hamlet, village, street, or place, and no specific mode of repair, or persons liable to the expenses of maintaining the same, shall be appointed, the expense of maintaining and repairing such gutter, drain, sink, sewer, or underdrain shall be borne and defrayed equally or in proportions by the trustees or commissioners of such turnpike road and the inhabitants of the town, hamlet, village, street, or place using the same; and in order to ascertain the proportion, and recover such expenses, the surveyor of the turnpike road under or at the sides or near to which such gutter, drain, sink, sewer, or underdrain shall be situated shall as often as shall be requisite repair the same, and shall then make out an account of the cost and expenses of such reparation, and produce the same to any two or more justices of the peace acting for the county or place where such gutter, drain, sink, sewer, or underdrain, or so much thereof as shall be repaired, shall lie; and it shall and may be lawful for the said justices, and they are hereby authorised and empowered, to examine the accounts and statements to be produced to them, and to inquire as to the persons using such gutter, drain, sink, sewer, or underdrain, and to proportion the amount to be paid by the trustees or commissioners of the turnpike road, and by the inhabitants and persons using such gutter, drain, sink, sewer, or underdrain respectively, and to fix and ascertain the amount of such proportion as they the said justices shall deem just and reasonable to be paid by the said several parties respectively; and if any person or persons shall neglect or refuse to pay the sum directed by the said justices to be paid by him, her, or them, the same shall be levied by distress and sale of the goods and chattels of the person or persons so neglecting or refusing, by a warrant under the hands and seals of any two or more justices of the peace acting for the county or place where such person or persons shall reside.

An account of the expense of repairs to be laid before two justices, who shall proportion the amount to be paid by the parties.

118. If any person shall make or cause to be made any dwelling house or other building, or

Secs. 118—121.

Persons making encroachments on the roads by reducing the breadth or narrowing the limits thereof, or making drains across or otherwise injuring the roads, or turning the plough on the ground within a certain distance of the road, shall forfeit 40*s*.

Encroachments to be removed.

any hedge or other fence on or at the sides of any turnpike road, in such manner as to reduce the breadth or confine the limits thereof, or shall fill up or obstruct any ditch at the side thereof, or shall make or cause to be made any dwelling house or other building, or any hedge or other fence, on any common or waste land on the side or sides of any turnpike road, within the distance of thirty feet, if within three miles of any market town, or if beyond that distance within twenty-five feet from the middle or centre thereof, or shall make any drain, gutter, sink, or watercourse across or otherwise break up or injure the surface of any turnpike road or of any part thereof, or shall plough, harrow, or break up the soil of any land or ground, or in ploughing or harrowing the adjacent lands shall turn his or their plough or harrow in or upon any land or ground within the distances aforesaid from the middle or centre of any turnpike road, made or to be made, or make any other encroachment on any turnpike road within the distances aforesaid from the middle or centre thereof, every person so offending shall forfeit for every such offence forty shillings to such person as shall make information of the same; and it shall be lawful for the trustees or commissioners who have the care of any such road to cause such dwelling house or other building, hedge, ditch, or fence, drain, sink, watercourse, gutter, or other encroachment, to be taken down or filled up, or, where any ditch shall be filled up or obstructed, to be opened and cleansed, at the expense of the person or persons to whom the same shall belong; and it shall and may be lawful for any one or more justice or justices of the peace of the county where such offence shall be committed, upon proof thereof to him or them made upon oath, to levy as well the expenses of taking down or filling up or cleansing such dwelling house or other building, hedges, ditches, drains, or other encroachments as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, rendering the overplus (if any) to the owner, on demand (1).

Penalty on persons committing nuisances, by riding on footpaths, or damaging bridge, &c.;

by drawing timber, &c.;

by injuring the road;

by slaughtering of cattle;

by obstructing passage of travellers;

by light of blacksmith's shops;

by making bonfires:

by baiting bulls, playing at football or other games;

by leaving waggons, &c.;

121. If any person or persons shall ride upon any footpath or causeway by the side of any turnpike road made or set apart for the use or accommodation of foot passengers, or shall lead or drive any horse, ass, mule, swine, or cattle or carriage of any description, or any wheelbarrow, truck, or sledge, or any single wheel of any waggon, cart, or carriage apart therefrom, upon any such footpath or causeway, or shall cause any injury or damage to be done to the same, or the hedges, posts, rails, or fences thereof, or shall wilfully pull down or damage any bridge, wall, or any other building or erection made by the trustees or commissioners of any turnpike road, or repaired or repairable by them; or shall haul or draw or cause to be hauled or drawn upon any part of such turnpike road any timber, stone, or other thing otherwise than upon wheeled carriages, or shall suffer any timber, stone, or other thing which shall be carried principally or in part upon wheeled carriages to drag or trail upon such road, to the prejudice thereof; or shall use any tipstick, joggle, or other instrument for the purpose of retarding the descent of any cart or other carriage down any hill, in such manner as to destroy, injure, or disturb the surface of any turnpike road; or shall in or upon such road, or by the side or sides thereof, or in any exposed situation near thereto, kill, slaughter, singe, scald, burn, dress, or cut up any beast, swine, calf, lamb, or other cattle; or if any person driving any horse or other beast on the said road, carrying any iron bar or rod, basket or pannier, or any other matter or thing, shall place such bar or rod, basket or pannier, matter or thing, so that the same or any of them shall project more than thirty inches from the side of such horse or other beast, or so as in any manner to obstruct or impede the passage of any person, or any horse, beast, or carriage, travelling along such turnpike road; or if any hawker, higler, gipsy, or other person or persons travelling with any machine, vehicle, cart, or other carriage, with or without any horse, mule, or ass, shall pitch any tent, booth, stall, or stand, or encamp upon or by the sides of any part of any turnpike road; or if any blacksmith, or other person occupying a blacksmith's shop, situate near any turnpike road, and having a window or windows fronting the said road, shall not by good and close shutters every evening after it becomes twilight, bar and prevent the light from such shop shining into or upon the said road; or if any person or persons shall make or assist in making any fire or fires commonly called bonfires, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever, within eighty feet of the centre of such road; or bait or run for the purpose of baiting any bull, or play at football, tennis, fives, cricket, or any other game or games, upon such road or on the side or sides thereof, or in any exposed situation near thereto, to the annoyance of any passenger or passengers; or if any person shall leave any waggon, wain, cart, or other carriage whatever upon such road or on the side or sides thereof, without

(1) By the Annual Turpike Acts Continuance Act, 1865, 28 & 29 Vict. c. 107, s. 2, it is enacted that ss. 118 and 124 of this Act shall continue in force in relation to any turnpike road which may at any time thereafter (5th July, 1865) become an ordinary highway, and the highway board or surveyor or other local authority, as the case may be, shall be deemed to be the trustees or commissioners.

any proper person in the sole custody or care thereof, longer than may be necessary to load or unload the same, except in cases of accident, and in cases of accident for a longer time than may be necessary to remove the same, or shall not place such waggon, wain, or other carriage during the time of loading or unloading the same, or of taking refreshment, as near to one side of the road as conveniently may be, either with or without any horse or beast of draught harnessed or yoked thereto; or shall lay any timber, stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing whatsoever upon such road, or on the side or sides thereof, or the footpaths or causeways adjoining, to the prejudice of such road or footways, or to the prejudice, annoyance, interruption, or personal danger of any person or persons travelling thereon; or shall suffer any water, filth, dirt, or other offensive matter or thing whatsoever to run or flow into or upon such road or footpaths from any house, building, erection, lands, or premises adjacent thereto; or if any person driving any pigs or swine upon such road shall suffer such pigs or swine to root up or damage such road, or the fences, hedges, banks, or copse on either side thereof respectively; or if any person shall, after having blocked or stopped any cart, waggon, or other carriage in going up a hill or rising ground, cause or suffer to be or remain on such road the stone or other thing with which such cart or other carriage shall have been blocked or stopped; or if any person or persons shall pull down, damage, injure, or destroy any lamp or lamp post put up, erected, or placed in or near the side of any turnpike road or toll house erected thereon, or shall extinguish the light of any such lamp, every person offending in any of the cases aforesaid shall for each and every such offence forfeit and pay any sum not exceeding forty shillings over and above the damages occasioned thereby.

by laying timber, &c.; by running of water or filth; by swine; by leaving block stones, &c.; or by damaging lamps.

124. Where in this or any other Act of Parliament relating to turnpike roads any matter or thing is directed or forbidden to be done within a certain distance of the centre of the road, that portion of ground shall be deemed and taken to be the road which has been maintained by the trustees or commissioners as hard road, and repaired with stones, gravel, or other materials used in forming roads, for six months immediately preceding any offence committed against such regulations, and the centre of the road shall be the middle of such hard road, where, a line being drawn along the road or a point marked, an equal number of feet of hard road which have been so maintained and repaired as aforesaid for six months before shall be found on each side of such line or mark: Provided always, that nothing herein contained shall authorise any person or persons to enclose or make any encroachment on any waste lands or grounds lying on the side of any turnpike road, being part of the highway and over which the King's subjects have been used and accustomed to pass, but every person who shall inclose such waste lands and grounds, or obstruct the right of passage over the same, shall continue and be subject to the same process and penalties as if this Act had not been made (1).

What shall be deemed the centre of the road. No encroachment to be made on the waste lands lying on the side of any road.

126. [Directing the using of skid-pans or slippers; penalty on driver not using them, not exceeding twenty shillings.]

127. No person shall hereafter erect or cause any windmill to be erected within the distance of two hundred yards from any part of any turnpike road, under the penalty of five pounds for each and every day such windmill shall continue: Provided always, that nothing herein contained shall be construed to render legal the re-erection or continuance of any windmill in any case where by the common law such windmill shall be a public or private nuisance.

No windmill to be erected within 200 yards of the turnpike road, on penalty of 5*l*.

130. [One driver may take charge of two carts, provided they are drawn only by one horse each; not to extend to carts within ten miles of London.]

131. [Children not to drive carts, &c., on penalty of ten shillings.]

132. [Drivers of wagons or carts not to ride thereon unless some other person on foot guide the same (2).]

141. . . . . (3), and the moneys arising by such penalties, forfeitures, and fines, respectively, when paid or levied, if not otherwise directed to be applied by this Act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to the treasurer or treasurers to the trustees or commissioners for repairing and maintaining the road on which such offence shall have been committed, and applied and disposed of for the purposes of such road and of this Act.

Recovery and application of penalties.

147. If any action or suit shall be commenced against any person or persons for anything done in pursuance of this Act, then and in every such case such action or suit shall be commenced or prosecuted within three months after the fact committed, and not afterwards; and the same and every such action or suit shall be brought in the county or place where the cause

Limitation of actions.

(1) See note (1), *ante*, p. 1384.
(2) See now the Annual Turnpike Acts Continuance Act, 1867, 30 & 31 Vict. c. 121, s. 4.
(3) The first part of this section is repealed by the Summary Jurisdiction Act, 1884. Proceedings must now be taken under the Summary Jurisdiction Acts, 1848, 1879.

Section 147. of action shall have arisen, and not elsewhere; and the defendant or defendants in every such action or suit shall and may plead the general issue, and at the trial thereof give this Act and the special matter in evidence; and if the matter or thing complained of shall appear to have been done under the authority and in execution of this Act, or if any such action or suit shall be brought after the time limited for bringing the same, or be brought and laid in any other county or place than as aforementioned, then the jury shall find for the defendant or defendants, and if the plaintiff shall become nonsuit, or discontinue his or her action after the defendant shall have appeared, or have a verdict against him or her, or if upon demurrer judgment shall be given against the plaintiff, the defendant shall and may recover treble costs, and have the like remedy for recovery thereof as any defendant or defendants hath or have in any cases by law (1).

General issue.

Treble costs.

SCHEDULE.

Schedule.

The SCHEDULE to which the Act refers;

CONTAINING

The FORMS of PROCEEDINGS mentioned in the foregoing Act.

No. 8.—AGREEMENT between the trustees of a turnpike road and a person liable by tenure to repair some part of it.

At a meeting of the trustees of the turnpike roads, under an Act passed in the year of the reign of King George the "For [*state the principal part of the title of the Act*], held at the day of

Whereas *A.B.* of is liable by tenure, &c. [*as the case shall be*] to the repair of a certain highway leading between and of the length of yards or thereabouts, and the said highway being now made turnpike road by virtue of the said Act, will occasion a greater expense to make and keep the same in proper repair than would have been necessary if no such Act had been obtained, and the said *A.B.* attending this meeting in person [*or* by *C.D.*, his attorney or agent authorized to treat in his behalf], the said trustees and the said *A.B.*, *&c.*, in pursuance of a power given by an Act passed in the third year of the reign of King George the Fourth, "For regulating Turnpike Roads," have, in order to put and keep the said road in proper condition and repair, come to the following agreement; videlicet, that the said trustees shall on or before the day of next pay and allow the sum of out of the tolls arising upon the said turnpike roads towards putting the said road into proper repair, to be laid out and expended by the surveyor of the said turnpike road, and that the said *A.B.* shall advance and pay into the hands of the treasurer of the said turnpike road on or before the day of next the sum of to be also laid out and expended by the said surveyor in the repair of the said road, and that from and after the next the said turnpike road shall be kept in repair by the said trustees out of the said tolls as aforesaid, so long as the said Turnpike Act shall continue, upon the said *A.B.* paying into the hands of their treasurer the sum of upon the in every year, which the said *A.B.* doth hereby for himself and his heirs agree to pay accordingly, so long as the said road shall be so repaired by the said trustees as aforesaid.

[*Or if it shall be agreed that A.B. shall keep the road in repair upon having an annual allowance in money or statute duty from the said trustees, let the agreement be varied and adapted to the case.*]

No. 9.—MAGISTRATES' SUMMONS.

To the surveyors of the highways of the parish of in the county of

Upon application made by surveyor of the turnpike roads from appointed by the trustees for putting into execution an Act of Parliament passed in the year of the reign of His Majesty King George the intituled "An Act by order of the trustees for the said road to us, two of His Majesty's justices of the peace acting in and for the said county, we do hereby summon you, the surveyors of the highways of the parish or place of in the said county, to deliver a list to the said as such surveyor as aforesaid, at his house, situate in the said county, within days after the service of this summons, of the names of the several persons, inhabitants of the said parish or place, and who are by law subject and liable to do statute work for the present year upon the road situate in the said parish or place, or to the payment of any money in lieu of or as a composition for such statute work, distinguishing the nature of the work to be done, whether with teams or draughts or otherwise, and also the amount of the respective sums to be paid; and we the said justices do hereby require you to make such lists of names, in such manner and under such regulations and restrictions as is

(1) Generally as to notice of action, see note, *ante*, p. 188.

Schedule.

or are directed by any law or statute now in force and effect for the repair of the public highways.

And in case you shall refuse or wilfully neglect to give in such list as aforesaid, or shall knowingly or wilfully give in a false or imperfect list, you so offending will for every such offence forfeit and be liable to pay a sum not exceeding ten pounds.

Given under our hands and seals, this day of in the year of our Lord 182 .

No. 10.—NOTICE to be given to surveyors of highways.

To the surveyors of the highways of the parish or place of in the county of

I do hereby give you notice, that the list delivered by you to me as surveyor of the turnpike road from to in the said county of of the names of the several persons who within your said parish or place are by law liable to do statute work for the present year, or to the payment of money in lieu of or as a composition for such statute work, will be laid before two of His Majesty's justices of the peace for the said county, in pursuance of the directions of the Act passed in the year of His Majesty King George the , intituled "An Act on the day of at in the said county in order that such two justices may adjudge and determine what part or proportion of the statute work for the said year shall be done upon the said road, and also what proportion of the composition money shall be paid to the trustees of the said road, or to their treasurer: and I do hereby give you further notice, that I shall apply to the justices for [one-half, one-third, *as the case may be*], of the statute duty from your parish for this year, which according to the list delivered by you will be (*say*) days in the whole in composition money. If you object to this division, you will in course appear, but if not the same will be confirmed by the justices, if they think proper.

Dated this day of

Surveyor of the said turnpike road.

GENERAL TURNPIKE ACT OF 1841.

4 & 5 VICT. c. 59.

Secs. 1—3.

1. [After reciting the abolition of statute duty by 5 & 6 Will. IV. c. 50, *ante*, p. 756, proceeds]. It shall be lawful for the justices at any special sessions for the highways holden after the passing of this Act, upon information exhibited before them by the clerk or treasurer of any turnpike trust that the funds of the said trust are insufficient for the repairs of the turnpike roads within any parish, notice in writing of such intended information having been previously given on the part of such clerk or treasurer to the parish surveyor twenty-one days at least before such special sessions, to examine the state of the revenues and debts of such turnpike trusts, and to inquire into the state and condition of the repairs of the roads within the same, and also to ascertain the length of the roads, including turnpike roads, within such parish, and how much of such road is turnpike road, and if after such examination it shall appear to the said justices necessary or expedient for the purposes of any turnpike road so to do, then to adjudge and order what portion, if any, of the rate or assessment levied or to be levied by virtue of the said recited Act shall be paid by the said parish surveyor, and at what time or times, to the said commissioners or trustees, or to their treasurer or other officers appointed by them on that behalf, such money to be wholly laid out in the actual repairs of such part of such turnpike road as lies within the parish from which it was received (1).

2. And be it enacted, that if any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor in such manner as penalties and forfeitures are by the said recited Act authorised to be levied (2).

3. Provided always, and be it enacted, that if any person shall think himself aggrieved by any order, judgment, or determination made or by any matter or thing done by any justices of the

(1) As to the meaning of "turnpike road" and generally as to the construction of this statute, see *R.* v. *French*, L. R. 4 Q. B. D. 507, 48 L. J. M. C. 175, 41 L. T. N. S. 63, 28 W. R. 118, 43 J. P. 699, and *Sunk Island Trustees, &c.*, v. *Patrington*, 1 B. & S. 747, 31 L. J. M. C. 18, 26 J. P. 102. As to power of local board to levy rate for purposes of this Act, see *R.* v. *Worthing, &c., Trustees*, 3 E. & B. 989, 23 L. J. M. C., 187, 23 L. T. 169, 2 W. R. 478, 18 Jur. 907. An order cannot be made for payment of expenses incurred before information, *Brown* v. *Evans*, 34 L. J. M. C. 101, 13 W. R. 680, 29 J. P. 341, 11 Jur. N. S. 541.

(2) See 5 & 6 Will. IV. c. 50, ss. 101, 103, *ante*, pp. 821, 822.

Secs. 3—4.

peace at any such special sessions, in pursuance of this Act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, riding, division, or place wherein the cause of such complaint shall arise, such appellant first giving to such justices ten days (1) notice in writing of the grounds of such appeal within six days after such order, judgment, or determination shall be so made or given as aforesaid, who are hereby required, within forty-eight hours after the receipt of such notice, to return all proceedings whatever had before them respectively touching the matter of such appeal to the said justices at the general or quarter sessions aforesaid; and that in case of such appeal the said justices at the said quarter sessions, upon due proof of such notice and statement having been given as aforesaid, shall hear and determine such appeal; and the said justices at the said quarter sessions shall have power to award such costs to the parties appealing or appealed against as they the said justices shall think proper, such costs to be levied and recovered in the same manner as any penalties or forfeitures are recoverable under the said recited Act; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form: provided always, that in case there shall not be time to give such notice as aforesaid before the next sessions to be holden after such order, determination, or judgment, then and in every such case such appeal may be made to the justices at the next following sessions, who shall proceed to determine such appeal in manner aforesaid: provided always, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid [nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statements as aforesaid (2)].

4. And be it enacted, that in construing this Act the word "parish" shall be taken to mean and include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or other place or district maintaining its own highways (3).

ANNUAL TURNPIKE ACTS CONTINUANCE ACT, 1863.

26 & 27 VICT. c. 94.

An Act to amend the law relating to the repair of Turnpike Roads in England, and to continue certain Turnpike Acts in Great Britain. [28*th July*, 1863.]

Section 1.

Whereas it is expedient to amend the law relating to the repair of turnpike roads, and to continue for limited times the Acts hereinafter specified: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

For removing doubts as to highway boards established under 25 & 26 Vict. c. 61, being liable to contribute to repair of turnpike roads, in pursuance of 4 & 5 Vict. c. 59, &c.

1. Whereas doubts are entertained whether highway boards established under the Act of the session of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter sixty-one (4), are liable to contribute to the repair of turnpike roads in pursuance of the Act of the session of the fourth and fifth years of the reign of Her present Majesty, chapter fifty-nine (5), and the Acts continuing the same: Be it enacted, that where any turnpike road is situate in a parish that is included in a highway district, an order may be made on the highway board of the district to contribute to the repair of that road under the same circumstances under which an order for the same purpose may be made on the parish surveyor in pursuance of the said Act of the session of the fourth and fifth years of the reign of Her present Majesty, chapter fifty-nine, as continued as aforesaid; and for the purposes of the said last-mentioned Act, the highway board shall be deemed to be substituted for the parish surveyor, and any rate leviable in pursuance of a precept of the board for the rate or assessment levied or to be levied by the said surveyor as in the said Act mentioned, [and any moneys paid by the board for the purposes or in pursuance of the last-mentioned Act shall be deemed to be expenses incurred by the board in respect of the repair of highways in the parish in which the turnpike road is situate for which contribution is required (6)], and "parish," as used in this section, shall mean any place in a

(1) Now fourteen clear days, 12 & 13 Vict. c. 45, s. 1, *ante*, p. 815 n.

(2) The words between brackets are now repealed by Statute Law Revision Act, 1874 (No. 2). See now 12 & 13 Vict. c. 45, s. 1, *ante*, p. 815 n.

(3) See further, note (4), p. 756, *ante*.

(4) *Ante*, p. 839. (5) *Ante*, p. 1387.

(6) The portion within brackets is repealed by the Annual Turnpike Acts Continuance Act, 1871, 34 & 35 Vict. c. 115, s. 15, which provides that "when in accordance with the provisions

highway district that returns a waywarden or waywardens to the board of that district; and it is hereby declared, that "local Act," as used in the seventh section of the said Act of the twenty-fifth and twenty-sixth years of the reign of Her present Majesty, chapter sixty-one, does not include Turnpike Acts. Section 1.

ANNUAL TURNPIKE ACTS CONTINUANCE ACT, 1873.

36 & 37 VICT. c. 90.

[*5th August*, 1873.]

15. If any highway board or other local authority shall be desirous of taking upon themselves the maintenance and repair of the roads of any turnpike trusts within or passing through their districts, such highway board or other local authority may, if not less than one-half in length of such road is within the district, apply to the Local Government Board to determine the value of the existing debt and other liabilities of such turnpike trust, and the Local Government Board may by order made after such inquiry and the publication of such notice as they may think sufficient, determine the value of such debt and liabilities, and the trustees and other persons interested in such debt and liabilities shall accept a sum equivalent to the value so determined, as a full and complete discharge of such debt and liabilities, and from and after a day to be fixed by the said Local Government Board no tolls shall be levied on the roads theretofore included within the district of such turnpike trust; and in case the said turnpike trust shall extend beyond the district of the highway board or local authority making the application as aforesaid, it shall be lawful for the said Local Government Board to apportion the value of the debts and liabilities of such turnpike trust so determined as aforesaid between the several local authorities through whose districts the roads of such turnpike trust extend, and each such local authority shall raise and pay to the trustees the amount apportioned to such authority. Secs. 15, 16.

Provided that an order made under this section shall not take effect until the expiration of one calendar month after the same has been published in the *London Gazette* and some local newspaper circulating in the locality of the turnpike trust affected thereby; and if two-thirds in number and value of the creditors of the trust shall give notice in writing to the Local Government Board before such order takes effect that they object to the same, the order shall be provisional only, and shall not come into operation until it has been confirmed by Parliament.

16. [Will be found set out in note (4), *ante*, p. 872.]

ANNUAL TURNPIKE ACTS CONTINUANCE ACT, 1874.

37 & 38 VICT. c. 95.

[*7th August*, 1874.]

10. Where by any Annual Turnpike Acts Continuance Act it is or shall be provided that no money shall be expended in the repair of any turnpike road, such turnpike road shall be deemed to be a highway, and shall be repairable as such; provided that where such highway, or any portion thereof, shall pass through any highway district constituted under the Highway Acts, 1862 and 1864 (1), the costs of maintaining such highway, or any such portion thereof, shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly on the district fund. Section 10.

of the Annual Turnpike Acts Continuance Act, 1863, an order has been made on the highway board of a district to contribute to the repair of a turnpike road, any moneys paid by the board in pursuance of such order shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly to the district fund." Now by the Annual Turnpike Acts Continuance Act, 1872, 35 & 36 Vict. c. 85, s. 14, "a highway board may, if they think fit, either repair or contribute to the repair of a turnpike road within their district, notwithstanding that no order of contribution may have been made upon the board in pursuance of the first section of the Annual Turnpike Acts Continuance Act, 1863; and all moneys so expended by the board shall be deemed to be expenses incurred for the common use or benefit of the several parishes within such district, and shall be charged accordingly on the district fund."

(1) *Ante*, p. 839 and p. 858.

Section 11. 11. Where the Local Government Board in exercise of the discretionary power conferred upon them by section fifteen of "The Annual Turnpike Acts Continuance Act, 1873" (1), make an order determining the value of the existing debt and liabilities of a turnpike trust, the board may by the same order declare to whom and in respect of what claim or claims the whole or any part of the value of such debt and liabilities is to be paid. The term "existing debt and other liabilities" used in the said fifteenth section of "The Annual Turnpike Acts Continuance Act, 1873," means the bonded or mortgage debt of a turnpike trust, and any unpaid interest due thereon.

ANNUAL TURNPIKE ACTS CONTINUANCE ACT, 1882.

45 & 46 VICT. c. 52.

[18*th August*, 1882.]

Section 8. 8. The liability of any person for or to contribute towards the maintenance, watering, or lighting of any part of a turnpike road, the trust of which has expired or shall hereafter expire, shall continue in force notwithstanding the expiration of the trust; and any contract or obligation under which such liability was created, entered into with the trustees of the turnpike road, and not expressly made determinable on the happening of that event, may be enforced against the person who has entered into such contract or obligation, so far as relates to so much of the road as is within the jurisdiction of any highway authority, by such authority, in the same manner as the same might have been enforced by the trustees of the turnpike road. In this section "person" includes any body of persons, corporate or incorporate; and "highway authority" means surveyor of highways, highway board, or urban sanitary authority.

(1) *Ante*, p. 1389.

STATUTES RELATING TO BRIDGES.

THE STATUTE OF BRIDGES.

22 HEN. VIII. c. 5.

[*Made in the Parliament holden by Prorogation at Westminster, on the Sixteenth Day of January, in the Twenty-second Year of the Reign of the most illustrious and potent Prince our Sovereign Lord Henry VIII. by the Grace of God, of England and France King, Defender of the Faith, and Lord of Ireland.* *A.D.* 1530—1.]

An Act concerning the Amendment of Bridges in Highways.

Secs. 1—4.

Justices of peace may award process against them who ought to repair bridges.

Be it enacted by the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, that the justices of the peace in every shire of this realm, franchise, city, or borough, or four of them at the least, whereof one to be of the quorum, shall have power and authority to inquire, hear, and determine in the king's general sessions of peace, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make such process and pains upon every presentment afore them for the reformation of the same, against such as owen to be charged for the making or amending of such bridges, as the king's justices of his Bench use commonly to do, or as it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges.

2. "And where in many parts of this realm it cannot be known and proved what hundred, riding, wapentake, city, borough, town, or parish, nor what person certain, or body politic, ought of right to make such bridges decayed, by reason whereof such decayed bridges, for lack of knowledge of such as owen to make them, for the most part lie long without any amendment, to the great annoyance of the king's subjects :"

By whom bridges shall be repaired.

3. For the remedy thereof, be it enacted by authority aforesaid, that in every such case the said bridges, if they be without city, or town corporate, shall be made by the inhabitants of the shire or riding within the which the said bridge decayed shall happen to be ; and if it be within any city or town corporate, then by the inhabitants of every such city or town corporate wherein such bridges shall happen to be ; and if part of any such bridges so decayed happen to be in one shire, riding, city, or town corporate, and the other part thereof in another shire, riding, city, or town corporate, or if part be within the limits of any city, or town corporate, and part without, or part within one riding, and part within another ; that then in every such case, the inhabitants of the shires, ridings, cities, or towns corporate shall be charged, and chargeable to amend, make, and repair such part and portion of such bridges so decayed as shall lie and be within the limits of the shire, riding, city, or town corporate, wherein they be inhabited at the time of the same decays [1].

How justices may tax inhabitants for repair of bridges.

4. And be it further enacted, that in every such case where it cannot be known and proved what persons, lands, tenements, and bodies politic owen to make and repair such bridges, that for speedy reformation and amending of such bridges, the justices of peace within the shires or ridings wherein such decayed bridges be out of cities and towns corporate, and if it be within

[1] By 21 Edw. I. (Magna Carta), c. 15, "No town nor freeman shall be distrained to make bridges nor banks (over rivers), but such as of old time and of right have been accustomed to make them (in the time of King Henry our Grandfather)."

Secs. 4—7.

cities or towns corporate, then the justices of peace within every such city or town corporate, or four of the said justices at the least, whereof one to be of the quorum, shall have power and authority within the limits of their several commissions and authorities, to call before them the constables of every town and parish, being within the shire, riding, city, or town corporate, as well within liberty as without, wherein such bridges or any parcel thereof shall happen to be, or else two of the most honest inhabitants within every such town or parish in the said shire, riding, city, or town corporate, by the discretion of the said justices of peace, or four of them at the least, whereof one to be of the quorum; and at and upon the appearances of such constables or inhabitants the said justices of peace, or four of them, whereof one to be of the quorum, with the assent of the said constables or inhabitants, shall have power and authority to tax and set every inhabitant in any such city, town, or parish within the limits of their commissions and authorities, to such reasonable aid and sum of money as they shall think by their discretions convenient and sufficient for the repairing, re-edifying, and amendment of such bridges; and after such taxation made, the said justices shall cause the names and sums of every particular person so by them taxed to be written in a roll indented: And shall also have power and authority to make two collectors of every hundred, for collection of all such sums of money by them set and taxed; which collectors, receiving the one part of the said roll indented under the seals of the said justices, shall have power and authority to collect and receive all the particular sums of money therein contained, and to distrain every such inhabitant as shall be taxed and refuse payment thereof, in his lands, goods, and chattels, and to sell such distress, and of the sale thereof retain and perceive all the money taxed, and the residue (if the distress be better) to deliver to the owner thereof; and that the same justices, or four of them, within the limits of their commissions and authorities, shall also have power and authority to name and appoint two surveyors, which shall see every such decayed bridge repaired and amended from time to time, as often as need shall require, to whose hands the said collectors shall pay the said sums of money taxed, and by them received; and that the collectors and surveyors, and every of them, and their executors and administrators, and the executors and administrators of them, and every of them, from time to time, shall make a true declaration and account to the justices of peace of the shire, riding, city, or town corporate, wherein they shall be appointed collectors or surveyors, or to four of the same justices, whereof one to be of the quorum, of the receipts, payments, and expenses of the said sums of money: And if they or any of them refuse that to do, that then the same justices of peace, or four of them, from time to time, by their discretions, shall have power and authority to make process against the said collectors and surveyors, and every of them, their executors and administrators, and the executors and administrators of every of them, by attachments under their seals, returnable at the general sessions of peace, and if they appear, then to compel them to account as is aforesaid; or else if they or any of them refuse that to do, then to commit such of them as shall refuse, to ward, there to remain without bail or mainprize, till the said declaration and account be truly made.

Appointment of collectors. [See now 1 Ann. st. 1, c. 12, s. 2.]

And of surveyors.

Collectors and surveyors shall account to the justices. [See 1 Ann. st. 1, c. 18, s. 2, giving power to the sessions generally to make assessments, &c.]

Justices where bridges are may make process into other shires against offenders. [See 1 Ann, st. 1, c. 18, s. 5.]

5. And where any bridge or bridges lie in one shire or riding, and such persons inhabitants, bodies politic, lands, or tenements, which owen to be charged to the making and amending of such bridges, lie and abide in another shire or riding, or where such bridges be within any city or town corporate, and the persons inhabitants, bodies politic, lands, or tenements, that owen to make or repair any such bridges, lie and be out of the said cities or towns corporate: Be it enacted, that in every such case the justices of peace of the shire, city, or town corporate, within the which such decayed bridges, or any part thereof, shall happen to be, shall have power to inquire, hear, and determine all such annoyances, being within the limits of their commissions or authorities; and if the annoyance be presented, then to make process into every shire within this realm, against such as owen to make or amend any such bridges so presented before them to be decayed, to the annoyance and let of the passage of the king's subjects, and to do further in every behalf in every such case, as they might do by authority of this Act in case that the persons or bodies politic, lands or tenements, which owen to be charged to the amending or making of such bridges, or any part thereof, were in the same shire, riding, city, or town corporate where such annoyance shall happen to be: And that all sheriffs, and bailiffs of liberties and franchises shall truly serve and execute such process as shall come to their hands from the said justices of peace afore whom any presentment shall be had for any such annoyance, according to the tenour and effect of the said process to them directed, without favour, affection, or corruption, upon pain to make such fine as shall be set upon them, or any of them, by the discretion of the said justices.

Sheriffs, &c., shall serve process.

The five ports excepted.

6. Provided alway, that this Act, nor anything therein contained, be not prejudicial to the liberties of the five ports, or members of the same.

How bridges shall be repaired there.

7. And for reformation of annoyances of bridges within the said ports and members, be it enacted by authority of this present Parliament, that the warden, mayors, and bailiffs elected,

Secs. 7—9.

and jurates of the same ports, and every of them, have power and authority to inquire, hear, and determine all manner of common annoyances of bridges within the same ports and members, and to make such process, pains, taxations, and all other things within the same ports and members, as the justices of peace may do in other shires or places out of the same ports, by virtue and authority of this present Act in every behalf.

Allowance to surveyors and collectors.

8. And be it further enacted by the authority aforesaid, that the justices of peace, or four of them, shall have power and authority to allow such reasonable costs and charges to the said surveyors and collectors, as by their discretions shall be thought convenient (1).

Repairing highways at ends of bridges.

"9. Forasmuch that albeit bridges decayed were amended and repaired according to the tenour of this Act, yet nevertheless, if speedy remedy for the amendment of the ways next adjoining to every of the ends of such bridges should not be had and made, the king's subjects should take little or none avail or commodity in many parts of this realm by the making of the bridges:" In consideration whereof, be it enacted by the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by authority of the same, that such part and portion of the highways in every part of this realm, as well within franchise as without, as lie next adjoining to any ends of any bridges within this realm, distant from any of the said ends by the space of three hundred foot, be made, repaired, and amended as often as need shall require; and that the justices of the peace in every shire of this realm, franchise, city, or borough, or four of them at the least, whereof one to be of the quorum, within the limits of their commissions and authorities, shall have power and authority to inquire, hear, and determine in the king's general sessions of peace, all manner of annoyances of and in such highways, so being and lying next adjoining to any ends of bridges within this realm, distant from any one of the ends of such bridges three hundred foot, and to do in every thing and things concerning the making, repairing, and amending of such highways, and every of them, in as large and ample manner as they might and may do, to and for the making, repairing, and amending of bridges by virtue and authority of this present Act.

[*Explained and amended by Stat.* 1 *Ann. st.* 1, *c.* 18; *and see sections* 4, 5, 8 *of this present Act.*]

STATUTE OF BRIDGES OF QUEEN ANNE.

1 ANNE, STAT. 1, C. 12 (2).

An Act to explain and alter the Act made in the two-and-twentieth year of King Henry the Eighth, concerning repairing and amending of Bridges in the Highways: And for repealing an Act made in the twenty-third year of Queen Elizabeth, for the re-edifying of Cardiffe Bridge, in the County of Glamorgan: And also for changing the Day of Election of the Wardens and Assistants of Rochester Bridge. [*A.D.* 1701.]

Section 1.

22 Hen. VIII. c. 5.

"Whereas by an Act of Parliament in the two-and-twentieth year of the reign of King Henry the Eighth (3), intituled 'An Act concerning repairing and amending of Bridges in the Highways,' it is, amongst other things, therein enacted, that in every case where it cannot be known and proved what persons, lands, tenements, and bodies politic ought to make and repair such bridges, that for speedy reformation and amending of such bridges, the justices of the peace within their several counties, shires, ridings and divisions, cities and towns corporate, or any four of them, whereof one to be of the quorum, shall, within the limits of their several commissions, call before them the constables of every town and parish, or else two of the most honest inhabitants of every such town and parish, and with the assent of the said constables or inhabitants, shall tax and set every inhabitant in such city, town, and parish to such reasonable aid and sums of money as they shall think by their discretions convenient for the repairing of such bridges, and after such taxation made, shall cause the names and sums of every particular person so by them taxed, to be written in a roll indented, one part whereof is to be delivered, under the hands and seals of the said justices, to two collectors appointed by the said justices for every hundred, who are thereby empowered to collect the same; which method and manner of taxing and collecting the said money for repair of decayed bridges, and the highways thereunto adjoining, having by long experience been found very troublesome, burthensome, and chargeable to the several counties, cities, towns corporate, ridings, and divisions: And whereas in many places within this kingdom, more money than is necessary for the repair of such bridges

(1) See 1 Ann., st. 1, c. 12, s. 6, *post*, p. 1395.
(2) This Act is c. 18 in Ruffhead's Statutes. (3) *Ante*, p. 1391.

Secs. 1—5.

hath been taxed and collected, or the money which hath been so taxed and collected hath been misemployed, and not laid out in the repair of such bridges as was intended:" For remedy of all which mischiefs and inconveniences for the future, may it please your most excellent Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all and every the clauses, matters and things in the said Act of the two-and-twentieth year of the reign of the said King Henry the Eighth, not hereby altered, shall be and continue in full force and virtue, to all intents, constructions, and purposes whatsoever, relating to the repairing of decayed bridges and the highways thereunto adjoining.

Justices may assess towns, &c., in proportion for repair of decayed bridges.

2. And be it further enacted by the authority aforesaid, that for the more easy taxing and collecting of the money for the repair of decayed bridges, and that the same may be duly applied to the purposes for which it is intended, the justices of the peace, within the several limits of their commissions, shall, at their general or quarter sessions of the peace, from and after the first day of May, which shall be in the year of our Lord One thousand seven hundred and two, have full power and authority, upon due presentment to them made, that any bridge within their respective commissions or authorities is out of repair, and which by them hath usually, or ought to have been repaired and maintained, to assess upon every town, parish, or place within their respective commissions, in proportions upon each respective town and parish, as they usually have been assessed towards the repair of bridges; which money so assessed as aforesaid shall be levied and collected by the respective constables of each parish, township, hamlet or vill, or by such other person and persons, and in such manner as the said justices by their order at such sessions shall in that behalf direct and appoint, and the money thereby raised shall (by such constables or other persons, so as aforesaid by them collected) be paid over by them to the high constables of every hundred, in any such county, city, riding, or division, in six days after they shall have received the same; and the high constables shall and are hereby required, in ten days after their receipt, to pay the same into the hands of such person and persons as the said justices, by their order, at such sessions, shall direct and appoint to be treasurers and receivers of the same, and the money thereby raised shall be employed and accounted for according to the orders and directions of the said justices, for and towards the amending of such decayed bridges, and the highways at the end of the said bridges, from time to time, as need shall require; and the said assessments shall be levied by distress and sale of the goods of every person so assessed, not paying the same within ten days after demand, rendering the overplus of the value of the goods so distrained to the owner and owners thereof, the necessary charges of making and selling such distress being first deducted.

How to be levied, &c.

Treasurers to be appointed, &c.

Distress.

3. And to the end that the money which is hereby intended to be assessed and levied, may be duly collected, paid, and applied to the several purposes for which it is intended, Be it further enacted by the authority aforesaid, that every high constable, churchwarden, overseer of the poor or petty constable, or other person that shall neglect to assess, collect or pay the money hereby intended to be raised, as is hereinbefore directed, shall for every such offence forfeit the sum of forty shillings; and every treasurer that shall pay any money but by order of such justices of the peace, at such sessions (which order the said justices are hereby required and commanded to make only for the building, repairing, or amending such bridges, and the highways at the end of such bridges as aforesaid), shall for every such offence forfeit the sum of five pounds.

Constable, &c, neglecting to assess. Penalty.

Penalty.

"4. And whereas upon presentments and indictments for not repairing such bridges, and the highways at the end of such bridges, the fines imposed and set upon such presentments and indictments, and other fines and issues for not repairing, building and amending such bridges, and the highways at the end of such bridges, are returned into the Court of Exchequer or other courts": Be it therefore further enacted by the authority aforesaid, that no fine, issue, penalty, or forfeiture shall hereafter be returned into the Court of Exchequer, or other court, but shall be levied and paid into the hands of the treasurer or treasurers so as aforesaid appointed by the said justices, to be accounted for by the said treasurer, and to be applied by the said justices towards the building, repairing, or amending such bridges, and the highways at the end of such bridges, and to no other end or purpose whatsoever.

Penalties, &c., to be paid to the treasurer.

5. And be it enacted by the authority aforesaid, that all matters concerning the repairing and amending of the bridges and highways hereinbefore mentioned shall be determined in the county where they lie, and not elsewhere; and that no presentment or indictment for not repairing such bridges, or the highways at the end of such bridges, shall be removed by *certiorari* out of the said county into any other court [1].

Repair of bridges, &c., where to be determined.

[1] This only applies to indictments against the county, and does not apply where the indict-

6. And be it further enacted by the authority aforesaid, that the said justices of the peace, at such general quarter sessions as aforesaid, shall have full power and authority to allow such persons concerned in the execution of this present Act, any sum not exceeding threepence in the pound.

Justices to allow 3d. in the pound, &c.

7. And be it further enacted by the authority aforesaid, that if any action or suit shall be hereafter commenced or prosecuted against any person or persons by this Act authorised to put the same in execution, every person or persons so sued may plead the general issue, and give this Act, or the said recited Act, made in the two-and-twentieth year of the reign of King Henry the Eighth, and the special matter in evidence; [and if the plaintiff shall become non-suit, or forbear further prosecution, or suffer discontinuance, or if a verdict pass against him or her, the said defendant and defendants shall recover his and their double costs, for which he and they shall have the like remedy as in cases where costs by law are given to defendants (1).]

General issue.

Double costs.

8. Provided always, that this Act, nor anything therein contained, shall excuse or discharge any particular persons, estates, or places from repairing any bridge which they have heretofore usually repaired.

Proviso.

9. And be it further enacted by the authority aforesaid, that all the penalties and forfeitures incurred by this Act shall be applied towards the repairing the said bridges and highways at the ends of the same.

Penalties, how to be applied.

THE COUNTY RATES ACT, 1739.

12 GEO. II. c. 29.

An Act for the more easy assessing, collecting, and levying of County Rates. [*A.D.* 1739.]

13. And be it further enacted by the authority aforesaid, that no part of the money to be raised and collected in pursuance of this Act shall be applied to the repair of any bridges . . . until presentments be made by the respective grand juries at the assize, great sessions, general gaol delivery or general or quarter sessions of the peace held for any county, riding, division, city, town corporate, or liberty, of the insufficiency, inconveniency, or want of reparation of their bridges.

No repairs of bridges, but upon presentments of the grand jury.

14. Be it further enacted by the authority aforesaid, that from and after the first day of June, 1739, when any public bridges, ramparts, banks, or cops or other works are to be repaired at the expense of any county, city, riding, hundred, division, liberty, or town corporate, it shall and may be lawful to and for the justices of the peace at their general or quarter sessions respectively, or the greater part of them then and there assembled, if they think proper and convenient, after presentment to be made as aforesaid of the want of reparation of such bridges, ramparts, banks, or cops to contract and agree with any person or persons for rebuilding, repairing, and amending of such bridges, ramparts, banks, or cops as shall be within their respective counties, cities, ridings, hundreds, divisions, liberties, or towns corporate, and all other works which are to be repaired and done by assessment on the respective counties, cities, ridings, hundreds, divisions, liberties or towns corporate for any term or terms of years not exceeding seven years at a certain annual sum, payment, or allowance for the same, such contractor or contractors giving sufficient security for the due performance thereof to the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty; and that such justices at their respective general or quarter sessions shall give public notice of their intention of contracting with any person or persons for rebuilding, repairing and amending the bridges, ramparts, banks, or cops, and other works aforesaid, and that such contracts shall be made at the most reasonable price or prices which shall be proposed by such contractors respectively, and that all contracts when agreed to, and all orders relating thereto, shall be entered in a book to be kept by the respective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate, or liberty for that purpose, who is and are hereby required to keep them amongst the records of such county, city, town corporate, or liberty, to be from time to time inspected at all seasonable times by any of the said justices within the limits of their commissions, and by any person or persons employed or to be employed by any parish, township, or place contributing to the purposes of this Act, without fee or reward.

Justices may contract with persons for repairs.

ment is against a parish or private person: *R.* v. *Hamworth*, 2 Stra. 900. See also *R.* v. *Cumberland*, 6 T. R. 194, 3 B. & P. 354; *R.* v. *Mackynlleth*, 1 B. & C. 142.

(1) The portion between brackets is repealed by 5 & 6 Vict. c. 97, s. 2.

THE COUNTY BRIDGES ACT, 1740.

14 GEO. II. c. 33.

An Act to supply some Defects in the Laws for repairing and rebuilding County Bridges, for repairing, enlarging, erecting, and providing Houses of Correction, and for passing Rogues and Vagabonds. [1740].

Section 1.

Preamble, reciting the Act 13 Geo. II.

Justices at their quarter sessions may purchase lands to build county bridges.

Whereas it does and may happen that when county bridges are to be rebuilt or repaired, a piece or parcel of ground thereto adjoining may be of great use or service, either for enlarging such bridges or more commodiously rebuilding them: And whereas there is no power given by the laws in being for the rebuilding or repairing of county bridges, to the justices of the peace to purchase any such pieces or parcels of ground . . . . . Therefore for the better repairing and rebuilding county bridges . . . . . be it enacted . . . . . that from and after the twenty-fourth day of June, one thousand seven hunred and forty-one, the justices of the peace of any county, city, riding, liberty, or division, at their general sessions, or general quarter sessions assembled, or the major part of them, shall have power, and are hereby authorised to purchase of, or agree or contract with any person or persons, bodies politick or corporate, for any piece or parcel of land adjoining or near to any county bridge within the limits of their respective commissions, for the more commodious enlarging or convenient rebuilding the same; which pieces or parcels of land shall not exceed one acre in the whole for any such bridge, and shall from time to time be paid for by the respective county treasurers, out of any moneys raised or to be raised by virtue of an Act made in the twelfth year of the reign of His present Majesty, intituled, An Act for the more easy assessing, collecting, and levying of county rates; such treasurers being thereunto authorised, by orders under the hands and seals of the respective justices of the peace at their general sessions or general quarter sessions, or the major part of them; which lands so purchased, shall be conveyed to such person or persons as the said justices of the peace at their general sessions or general quarter sessions, or the major part of them, shall respectively appoint, in trust, and for the uses and purposes of enlarging or rebuilding such bridges respectively.

THE COUNTY BRIDGES ACT, 1803.

43 GEO. III. c. 59.

An Act for remedying certain Defects in the Laws relative to the building and repairing of County Bridges, and other works maintained at the Expense of the Inhabitants of Counties in England. [24*th June*, 1803.]

Section 1.

Surveyors of county bridges empowered to get materials for the repair of bridges in the same manner as surveyors of turnpike roads.

13 Geo. III. c. 78.

Whereas the inhabitants of counties in that part of the United Kingdom called England, are by law bound to repair, support, and maintain the public bridges, commonly called county bridges, within such counties respectively, and the roads at each of the ends thereof for limited distances; but the laws empowering them so to do are insufficient and defective: And whereas doubts have arisen how far the said inhabitants are liable to improve such bridges when they are not sufficiently commodious for the public: for remedy thereof, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful to and for the surveyor of bridges and other public works, in each and every county respectively within that part of the United Kingdom called England, appointed or to be appointed by the justices at any general quarter sessions of the peace to be holden for such county, and the said surveyor is hereby authorised and empowered to search for, take, and carry away gravel, stone, sand, and other materials, for the repair of such bridges and roads at the ends thereof, as the inhabitants of counties are bound to repair, and to remove obstructions and annoyances from such bridges and roads, in such and the same manner as the surveyor or surveyors of any common highway within this kingdom is or are by an Act made and passed in the thirteenth year of the reign of His present Majesty, intituled, "An Act to explain, amend, and reduce into one Act of Parliament, the statutes now in being for the Amendment and Preservation of the public highways within that part of Great Britain called England, and for other purposes," authorised to do; and the several powers and authorities thereby vested in the surveyor or surveyors of highways, as well for the getting of materials as the preventing and removing of all nuisances and annoyances from such bridges and roads, shall be and the same

are hereby vested in the surveyor and surveyors of county bridges, and the roads at the ends thereof as aforesaid; and the several penalties, forfeitures, matters, and things, in the said Act contained, relating to highways, shall be and the same are hereby extended and applied, as far as the same are applicable, to such bridges, and the roads at the ends thereof as aforesaid, as fully and effectually as if the same and every part thereof were herein repeated and re-enacted; the said surveyor or surveyors making satisfaction and compensation for all trespass and damage done in the execution of the powers of this Act, in such and the same manner as the surveyors of highways are required to make in and by the said above mentioned Act of the thirteenth year of the reign of His present Majesty.

Quarter sessions may alter the situation of county bridges, &c.

2. And be it further enacted, that where any bridge or bridges, or roads at the ends thereof, repaired at the expense of any county, shall be narrow and incommodious, it shall and may be lawful to and for the said justices at any of their general quarter sessions, to order and direct such bridge or bridges, and roads, to be widened, improved, and made commodious for the public, and that where any bridge or bridges, repaired at the expense of any county, shall be so much in decay as to render the taking the same wholly down necessary or expedient, it shall and may be lawful to and for the said justices, at any of their said general quarter sessions, to order and direct the same to be rebuilt, either on the old site or situation, or on any new one more convenient to the public, contiguous to or within two hundred yards of the former one, as to such justices shall seem meet; and if, for the purpose of altering the situation, or of widening or enlarging any such bridge or bridges, road or roads as aforesaid, it shall be necessary to purchase any land or ground, it shall and may be lawful for such county surveyor or surveyors, by and under the direction of such justices at their general quarter sessions as aforesaid, to set out and ascertain the same, not exceeding in the whole one acre at any one such bridge as aforesaid, and to contract and agree with the owner or owners of such land, and persons interested therein, for the purchase thereof, either by a sum in gross or by an annual rent, at the option of such owner or owners; and if the said surveyor or surveyors cannot agree with the said owner or owners for the purchase thereof, or the recompense to be made for the same, or by reason of such owner or owners not being to be found, shall be prevented from treating, then and in every such case, the said justices in their general quarter sessions shall impannel a jury, and assess the compensation and satisfaction for such land, and for the trespass and damage to be done by the execution of the powers of this Act, in the same manner as they are authorised and empowered to do by the said above-mentioned Act of the thirteenth year of the reign of His present Majesty, in relation to highways; and all and every the clauses, powers, provisions, exemptions, penalties, matters, and things in the said Act contained, as well with respect to impannelling juries, examining and swearing witnesses, payments of expenses, enabling bodies politic, corporate, and collegiate, and other incapacitated persons, to sell and convey, and all other the powers and provisions of the said Act, shall be, and the same are hereby extended and applied to the works by this Act authorised to be done and performed, as far as the same are applicable, as fully and effectually, to all intents and purposes, as if the same were herein particularly repeated and re-enacted; provided that no money shall be applied to the amendment or alteration of any such bridge or bridges, until presentment shall have been made of the insufficiency, inconveniency, or want of reparation of such bridge or bridges, in pursuance of some or one of the statutes made and now in force concerning public bridges.

3. [Tools and materials provided by the quarter sessions vested in the surveyor (1).]

Inhabitants of counties may sue for damages done to bridges in the name of the surveyor.

4. And be it further enacted, that the inhabitants of counties shall and may sue for any damages done to bridges and other works maintained and repaired at the expense of such counties respectively, and for the recovering of any property belonging to such counties, in the name of their surveyor, and also shall and may be sued in the name of such surveyor; and no action or prosecution to be brought or commenced by or against the inhabitants of counties, by virtue of this Act, in the name of the said surveyor, shall abate or be discontinued by the death or removal of such surveyor, or by the act of the surveyor, without the consent of the justices at their general quarter sessions assembled, but the surveyor for the time being shall be deemed the plaintiff or defendant in such actions, as the case may be: Provided always, that every such surveyor in whose name any action or suit shall be commenced, prosecuted, or defended, in pursuance of this Act, shall always be reimbursed and paid, out of the moneys in the hands of the treasurer of the public stock of such county respectively, all such costs and charges as he shall be put unto or become chargeable with by reason of his being so made plaintiff or defendant therein; and also all the costs and charges of prosecuting any indictment or indictments, or other proceedings against any person or persons whomsoever.

(1) Repealed by 7 Geo. IV. c. 64, s. 32.

Secs. 5—7.

Description of bridges inhabitants of counties shall be liable to repair.

5. And, for the more clearly ascertaining the description of bridges hereafter to be erected, which inhabitants of counties shall and may be bound or liable to repair and maintain: be it further enacted, that no bridge hereafter to be erected or built in any county, by or at the expense of any individual or private person or persons, body politic or corporate, shall be deemed or taken to be a county bridge, or a bridge which the inhabitants of any county shall be compellable or liable to maintain or repair, unless such bridge shall be erected in a substantial and commodious manner, under the direction or to the satisfaction of the county surveyor, or person appointed by the justices of the peace at their general or quarter sessions assembled, or by the justices of the peace of the county of Lancaster, at their annual general sessions; and which surveyor, or person so appointed, is hereby required to superintend and inspect the erection of such bridge, when thereunto requested by the party or parties desirous of erecting the same; and in case the said party or parties shall be dissatisfied, the matter shall be determined by the said justices respectively at their next general quarter sessions, or at their annual general sessions in the county of Lancaster.

Orders respecting county bridges in the county of York to be made by the sessions held the first week after Easter.

6. And be it further enacted, that all orders and proceedings made and had within the county of York, relative to county bridges, shall in future be made and had by the justices of the respective ridings, assembled at the annual and general quarter sessions of the peace holden the first whole week after Easter, and at no other sessions whatever within such ridings, except at such adjournment as shall be made at the above annual and general quarter sessions so holden as aforesaid, for the express purpose of carrying such orders made as aforesaid into effect: Provided nevertheless, that it shall and may be lawful for any two justices of the said ridings respectively, in cases of emergency, to give such orders for making temporary bridges or such temporary repairs as shall be necessary for the temporary accommodation of the public.

Act not to extend to bridges repaired by reason of tenure.

7. Provided always, and be it further enacted, that nothing herein contained shall extend to any bridges or roads which any person or persons, bodies politic or corporate, is, are, or shall be liable to maintain or repair by reason of tenure, or by prescription, or to alter or affect the right to repair such bridges or roads.

THE COUNTY RATES AND BRIDGES ACT, 1812.

52 GEO. III. c. 110.

[*9th July*, 1812.]

Section 1.

Quarter sessions may appoint justices to superintend repairs.

[After reciting 12 Geo. II. c. 29, ss. 13, 14 (1), proceeds as follows:]— And whereas great expense in the repairs of county bridges, ramparts, banks, cops and other works appertaining to the same, and of the roads over the same, and of so much of the roads at the ends thereof as by law is to be repaired at the expense of any county, riding, hundred, division, liberty or town corporate, and great inconvenience to the public may be often in a great measure prevented by the timely and immediate repair of any inconsiderable damage, injury, defect, or sudden want of repair or amendment of the same, without the delay which must generally arise from the necessity imposed by the aforesaid Act of a presentment by the grand jury at the assize, great sessions, or general or quarter sessions of the peace held for any county, city, riding, division, town corporate or liberty of the want of reparation of the same, by means of which delay the aforesaid want of repair is often very much increased, to the great expense of the county and great inconvenience of the public; and whereas it is also expedient that the justices of the peace of any county, city, riding, division, town corporate or liberty at their general quarter sessions respectively, before any presentment shall have been made as aforesaid, as directed by the aforesaid Act of the want of repair of such roads, should be enabled without any such presentment to contract and agree with certain persons hereinafter mentioned for the repairing and amending of the same, and also for keeping the same in repair when so repaired and amended: Be it therefore enacted, &c., that from and after the first day of July, 1812, it shall and may be lawful for the justices of the peace of any county, city, riding, division, town corporate or liberty at their general quarter sessions or great sessions respectively, to be holden in the week next after the clause of Easter, or the greater part of them then and there assembled, to appoint annually two or more justices of the peace acting in and for any division of justices in such county, city, riding, division, town corporate or liberty in or near which any such county bridge or any bridge which is in part a county bridge, ramparts, banks, cops or other works appertaining to the same or any part or parts thereof, or the roads over the same, or so much of the roads at the ends

(1) *Ante*, p. 1395.

Secs. 1—5.

thereof as by law is to be repaired at the expense of any county, city, riding, division, town corporate or liberty shall be situate, to superintend the same, and whenever it shall appear on their own inspection to be necessary for the purpose of preventing the further decay and injury of the same, to order any immediate repairs or amendments to be done to the same or to any part thereof, but it shall and may be lawful for any two such justices so to be appointed as aforesaid, and any two such justices are hereby empowered by a written order signed by their hands respectively, to order such immediate repairs to be done by such person or persons as to them shall seem fit and proper: Provided that in no case the sum to be expended by them in such repairs shall exceed the sum of twenty pounds, and further that such appointment of such justices as aforesaid shall remain in force until one week after the following Easter sessions respectively, and that in case of the death of or removal of or refusal to act by any such justice or justices so appointed as aforesaid, the said court of general quarter sessions or great sessions may at any other of the four quarterly sessions appoint any other justice or justices to act for the remainder of the then current year in the place of any such justice or justices so dying, removing or refusing to act as aforesaid.

Expenditure.

Justices to remain in office for one year.

2. And be it further enacted by the authority aforesaid, that it shall and may be lawful for the justices of the peace of any county, city, riding, division, town corporate or liberty at the general quarter sessions or great sessions which shall next happen after such repairs so ordered to be made by such justices so appointed as aforesaid shall be completed, or the greater part of them then and there assembled, to order the payment of such sum or sums of money not exceeding ten pounds as shall be sufficient to pay for such repairs to be made out of the county rate to such person or persons who shall have so repaired the same by such order of such justices as aforesaid, although no presentment shall have been made by any grand jury at the assize, great sessions or general quarter sessions of the peace of any county, city, riding, division, town corporate or liberty in which such repairs shall have been done, of the want of such reparation as by the said Act of the twelfth year of his late Majesty King George the Second above recited was directed: Provided nevertheless, that before such payment be ordered to be made as aforesaid a certificate be returned to such justices of the peace so assembled at such last mentioned sessions, signed by two at the least of such justices so appointed as aforesaid, who shall have so ordered such repairs as aforesaid, stating the nature of such repairs and the defects, damage or injuries which they had so ordered to be repaired and their reasons for so ordering such immediate repairs as aforesaid: Provided also that such justices of the peace so assembled as last aforesaid be satisfied by the parties concerned that the charges made by them for such repairs are reasonable and just.

Quarter sessions to order payment for repairs.

Certificates signed by one justice.

5. And be it further enacted by the authority aforesaid that from and after the first day of July, 1812, it shall and may be lawful for the justices of the peace of any county, city, riding, division, town corporate or liberty at their general quarter sessions respectively, or the greater part of them then and there assembled, if they shall think proper and convenient to contract and agree with the commissioner or commissioners, trustee or trustees of any turnpike road within the said county, city, riding, division, town corporate or liberty, or with their surveyor or clerk, or with both their surveyor and clerk, or with the surveyor or surveyors of the highway of any parish, place or tything within the said county, city, riding, division, town corporate or liberty respectively, or with any other person or persons for the maintaining and keeping in repair roads over any county bridges, and of so much of the roads at the ending thereof as by law is to be repaired at the expense of any such county, city, riding, division, town corporate or liberty or any part of the same, for any term not exceeding seven years nor less than one, although no presentment shall have been made as directed by the said recited Act of the twelfth year of his late Majesty King George the Second of the insufficiency, inconveniency, decay, or want of repair of the same, subject, however, to all the rules, restrictions, regulations, directions and conditions required by the above recited Act in case where the same shall have been presented or directed by that Act.

Justices may contract for repair of bridges.

12 Geo. II. c. 29 s. 13.

THE COUNTY BRIDGES ACT, 1814.

54 GEO. III. c. 90.

[14*th July*, 1814.]

Section 1.

Whereas doubts have been entertained whether the power contained in an Act passed in the forty-third year of the reign of his present Majesty, intituled "An Act for remedying certain defects in the laws relative to the building and repairing of County Bridges and other works maintained at the expense of the inhabitants of counties in England," for the purchasing of any

43 Geo. III. c. 59, extended to purchase of

Secs. 1, 2.

buildings, &c. as well as to purchase of land.

land or ground, do extend to the purchase of any building or buildings or other erections:" For remedy whereof, &c., be it enacted, &c., that all and every the powers and authorities in the said Act (1) mentioned and contained for the purchase of any land or ground for the purposes of the said Act shall extend and be deemed and construed to extend to all such building or buildings or other erections as may be necessary to be purchased for the purposes of the said Act.

Extended to bridges, &c. repaired by hundreds or other divisions of counties.

2. And whereas it is expedient that the provisions of the said Act (1) except as after mentioned should be extended to bridges repaired by the inhabitants of hundreds and other general divisions of counties: Be it further enacted, that the said Act (1) and all the powers and provisions thereof (except such provisions therein as relate to bridges thereafter to be erected and built) shall extend as well to bridges and the roads at the ends thereof repaired by the inhabitants of hundreds and other general divisions in the nature of hundreds as to bridges and the roads at the ends thereof repaired by the inhabitants of counties.

THE COUNTY BRIDGES ACT, 1815.

55 GEO. III. c. 143.

An Act to amend the Acts relating to the building and repairing of County Bridges.

[*6th July*, 1815.]

Section 1.

[Recites 43 Geo. III. c. 59, *ante*, p. 1396; 13 Geo. III. c. 49, and 54 Geo. III. c. 90, *ante*, p. 1399, and proceeds] . . . . And whereas it is expedient, that surveyors of county bridges and other persons, being under contract for the rebuilding or repairing such bridges, or bridges repaired by the inhabitants of hundreds and other general divisions of counties in the nature of hundreds, should have a more extended power for procuring materials than is at present vested in such surveyors of county bridges by the operation of the said first recited Act, so far as relates to the procuring of stone for such purposes from quarries; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act it shall and may be lawful to and for every surveyor of such bridges in each and every county within that part of the United Kingdom called England, appointed or to be appointed by the justices at any general quarter sessions of the peace to be holden for such county, and also to and for the bridge master or all and every persons or person who may at the passing of this Act, or from and after the passing thereof, be under contract for the rebuilding or repairing of any public bridge, built or repaired at the expense of the inhabitants of any such county, hundred, or general division as aforesaid, and such surveyor and surveyors, and also such other person or persons, are hereby authorised and empowered, with the consent and by the order of two justices of the peace, acting for the county in which such bridge is intended to be rebuilt or repaired, first had and obtained for that purpose, to search for, work, dig, get, and carry away any stone, in, from, or out of any quarry or quarries whatsoever, within the county or counties to which such bridge may belong, other than and except such quarries as may be situated within a garden, yard, avenue to a house, lawn, park, paddock or enclosed plantation, or as may now or hereafter have ornamental timber trees growing thereon, without the licence or consent of the owner or owners of such quarry or quarries, as such surveyor or other person or persons shall judge necessary for the rebuilding or repairing of such bridges respectively, provided such quarry or quarries shall have been worked within the last three years preceding the time when such bridge shall be about to be rebuilt or repaired; the said surveyor or other person or persons making such satisfaction and recompense for the value of such stone, and also for the damage to be done to such quarry or quarries by the getting and carrying away the same, as shall be agreed upon between him or them, and the owner, occupier or other person interested in such quarry or quarries respectively; and in case they cannot agree, or such owner or occupier or other person interested shall refuse to treat, then and in every such case the justices of the peace at their general or quarter sessions, or any two or more of them appointed for that purpose, fourteen days notice having been given to the owner or his agent of the intention to require a jury, shall cause the value of such stones and amount of such damage to be inquired into and ascertained by a jury of indifferent men of the county, riding, division, city, town, liberty, or precinct wherein the same shall be situated; and to that end shall summon and call before such jury and examine upon oath (which oath any two or more of such justices of the peace is and are hereby empowered to administer) any person or persons

Surveyors of county bridges, and other persons employed under contracts, empowered to take stones for the repair of county bridges. Consent and order of two justices of the peace necessary.

Quarries situated in gardens and pleasure grounds not to be used without consent of the owners.

Satisfaction to be made for stone, and damage done.

In case of refusal to treat, justices at general or quarter sessions shall cause the value of the stones, and amount of the damage done, to be ascertained by a jury.

(1) *Ante*, p. 1396.

whomsoever; and such justices of the peace, or any two of them, shall, by ordering a view or otherwise, use all ways and means for the information of themselves, and of such jury in the premises; and when such jury shall have inquired of and ascertained the value of such stones and amount of such damage, the said justices of the peace shall thereupon order that the sum or sums which shall so appear to be the value of such stones and amount of such damage shall be paid; which verdict or inquisition and order shall be filed of record by the clerk of the peace, or other officer having the custody of the records of the said county, riding, division, city, town, liberty, or precinct, and shall be final and conclusive to all intents and purposes whatsoever, against all parties and persons whomsoever claiming or to claim in possession, remainder, reversion, or otherwise, their heirs and successors, as well absent as present, infants, lunatics, idiots, and persons under coverture, or any other disability whatsoever, corporations, guardians, committees, husbands, trustees, and attornies, or any other person or persons whomsoever.

Witnesses called before the jury may be examined upon oath.

2. And, for the summoning and returning such juries, be it further enacted, that such justices of the peace, or any two of them, may issue their warrant or warrants to the sheriff or bailiff of any particular county, riding, division, city, town, liberty, or precinct, within the limits of which the quarry or quarries shall be situated, requiring him to impannel, summon, and return an indifferent jury of twenty-four persons, qualified to serve on juries, to appear before the said justices, or any two of them, at such time and place as in such warrant or warrants shall be appointed; and such sheriff or bailiff is and are hereby required to impannel, summon, and return such number of persons accordingly; and out of the persons so impannelled, summoned, and returned, or out of such of them as shall appear upon such summons, the justices of the peace, or any two of them, shall, and they are hereby required to draw by ballot, and to swear or cause to be sworn, twelve men, who shall be the jury for the purposes aforesaid; and in default of a sufficient number of jurymen so returned, the said sheriff or bailiff shall take such other honest and indifferent men of the bystanders, or that can speedily be procured to attend that service, to make up the number of twelve; and all persons concerned shall have their lawful challenges against any of the said jurymen when they come to be sworn; and the said justices of the peace, or any two of them, shall have power from time to time to impose a fine or fines on such sheriff or bailiff, or his deputy or deputies, making default in the premises, and on any of the persons who shall be summoned and returned on such jury, and who shall not appear, or appearing shall refuse to be sworn on the said jury, or being sworn shall refuse to give or shall not give a verdict, or shall in any other manner wilfully neglect his or their duty therein, and also on any person who, being summoned and required to give evidence before the said jury, shall refuse or neglect to appear, or appearing shall refuse to be sworn or to give evidence, so that no such fine be more than ten pounds, nor less than twenty shillings, on any one person for one offence.

Justices of the peace may require sheriffs or bailiffs to return juries.

Jury.

Penalty on jury refusing to appear or to be sworn, and on persons summoned to attend refusing to give evidence.

3. And be it further enacted, that in case any jury shall give in and deliver a verdict for more money as the value of such stones and amount of such damage than what shall have been offered for the purchase thereof by such surveyor or other person or persons as aforesaid, the costs and expenses of summoning and maintaining the jury and witnesses shall be borne and paid out of the rates to be collected within such county respectively; but if such jury shall give in and deliver a verdict for no more or for less money than the money which shall have been so offered by such surveyor or other person or persons as aforesaid, then the costs and expenses of summoning and maintaining the said jury and witnesses shall be borne and paid by the person or persons with whom such controversy or dispute touching the value of such stones and amount of such damage shall arise, and shall be levied by the warrant of one of the said justices, by distress and sale of the goods and chattels of the person or persons made liable to the payment thereof.

Expenses of the jury, how to be defrayed.

4. Provided always, and be it further enacted, that if any person or persons shall or may think himself, herself, or themselves aggrieved by any thing done or to be done in pursuance of this Act, such person or persons may, within the space of three calendar months next after the cause of complaint shall have arisen, appeal to the justices of the peace at any general quarter sessions of the peace to be holden for the limit wherein the cause of complaint shall arise, every such appellant first giving or causing to be given fourteen days' notice at least in writing of his or her intention to bring such appeal, and of the cause or matter thereof, to the person or persons against whom such complaint shall be made, and within three days next after such notice entering into a recognizance before some justice of the peace acting for the county wherein the cause of complaint shall arise, with two sufficient sureties conditioned to try such appeal, and to abide by the order of and pay such costs as shall be awarded by the justices at such session aforesaid; and the said justices at such session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear and finally determine the cause and matter of every such appeal in a summary way, and make such award to the party appealing or appealed against as the said justices shall think proper; and the

Persons aggrieved may appeal to justices assembled in general quarter sessions.

Appellant to enter into recognizance.

Justices to determine the matter of appeal in a summary way.

Secs. 4, 5. determination of such justices so assembled shall be binding and conclusive to all intents and purposes.

Enabling justices to contract for the repair of county bridges, &c.

5. And whereas it is expedient that the powers contained in an Act passed in the [1] forty-third year of his present Majesty, intituled "An Act for remedying certain Defects in the Laws relative to the building and repairing of County Bridges, and other Works maintained at the expense of the inhabitants of counties in England," for authorizing the justices of the peace of any county, city, riding, division, town corporate, or liberty, at their General Quarter Sessions of the Peace, to contract for maintaining and keeping in repair roads over county bridges, and so much of the roads at the ending thereof as by law is to be repaired at the expense of counties, although no presentment shall have been made of the want of repair, as directed by an Act passed in the twelfth year of his late Majesty King George the Second, intituled "An Act for the more easy assessing, collecting, and levying of County Rates," should be extended to the bridges as well as to the roads at the end thereof: be it further enacted, that from and after the day of passing this Act it shall and may be lawful to and for the justices of the peace of any county, city, riding, division, town corporate or liberty, at their general quarter sessions respectively to contract and agree, or to authorize any other person or persons to contract and agree, with any person or persons for the maintaining and keeping in repair any county or hundred bridge, and the road over such county or hundred bridge, and so much of the road at the ends thereof as are by law liable to be repaired at the expense of any such county, hundred, city, riding, division, town corporate or liberty, or any part of the same; and the said justices are hereby empowered to order such sum or sums of money as may be contracted for and agreed to be paid for the repairing, amending, and supporting such bridges, and the roads over the same, or the ends thereof, to be paid (in cases where the county is liable to the repair thereof) by the treasurer of the county out of the county rate, or (in cases where the hundred is liable to the repair of the same) by the bridge master (or other public officer charged with the repair of bridges) of the hundred by which such bridge is liable to be repaired, for any term not exceeding seven years, nor less than one, although no presentment of the insufficiency, decay, or want of repair of the same shall have been made, and although no public notice shall have been given by the said justices, at their respective general or quarter session, of their intention to contract for the repair of such bridges, or the roads at the ends thereof, as respectively directed by the said Act of the twelfth year of his late Majesty King George the Second: Provided nevertheless, that before any such contract shall be made, the said justices shall cause notices to be given in some public paper circulated in such county, city, riding, hundred, division, town corporate or liberty of their intention to contract.

12 Geo. II. c. 29.

THE COUNTY BRIDGES ACT, 1841.

4 & 5 VICT. c. 49 [2].

An Act to provide for Repairing, Improving, and Re-building County Bridges. [21*st June*, 1841.]

Section 1. Whereas the expense of maintaining, altering, widening, repairing, improving, and rebuilding county bridges, and approaches thereto, is in some instances considerable, and it is expedient that the money required for that purpose should, in certain cases, be borrowed on security of the county rate: be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that when it shall appear to the justices assembled at any general or quarter sessions of the peace to be holden at any time after the passing of this Act in any county, riding, or division in England or Wales, that the amount of any estimate approved by the said justices for the upholding, maintaining, supporting, altering, widening, repairing, improving, or re-building of any county bridge or bridges, or the approaches thereto, or the land arches connected therewith, which any county is legally bound to repair or maintain, shall exceed one-fourth of the amount of the ordinary annual assessment for the rate of any county, riding, or division (such ordinary assessment to be taken on an average of such rate for the last seven years preceding), it shall be lawful for the justices in quarter sessions assembled from time to time to borrow and take up on mortgage of such rate, by instrument in the form contained in the schedule to this Act annexed marked (A.), or to the like effect, any sum of money not exceeding the amount of such estimate, in sums not less than

Justices at sessions may borrow money for repairing county bridges on the credit of the county rate.

(1) *Sic.* But the reference really is to 52 Geo. III. c. 110. s. 5, *ante*, p. 1399.
(2) Repealed so far as relates to the county of Middlesex by 8 & 9 Vict. c. 32, s. 1.

fifty pounds each, at interest, as to the said justices shall appear necessary and expedient for the purposes aforesaid, and to secure every such sum of money so borrowed upon the credit of the said rate; and it shall and may be lawful for the justices so assembled, and they are hereby authorised to treat and agree with any person for the loan of any such sums of money, and by their order to confirm every such agreement; and every such agreement, signed by the chairman and two or more other justices present at the time of making such order, shall be and the same is hereby declared to be effectual for securing every sum of money so advanced, with interest thereon, to the person or persons advancing the same, on such terms as in and by such agreement shall be stipulated; and copies or extracts of all such agreements shall be kept by the clerk of the peace; and it shall and may be lawful for every person who shall be entitled to the money thereby secured, and such person is hereby empowered, by endorsing his name on the back of such security, to transfer the same, and his right to the principal money and interest thereby secured, unto any other person; and every such assignee may in like manner transfer the same again, and so *toties quoties;* and the person to whom such security, or any such assignment thereof, shall be made, and his executors, administrators, and assigns shall be creditors upon the said rate in an equal degree one with another, and shall not have any preference with respect to the priority of any moneys so advanced.

Justices may agree with persons for loans.

Copies of agreements to be kept by the clerk of the peace.

2. And be it enacted, that it shall and may be lawful for the said justices, and they are hereby authorised and required to charge the rate to be raised upon such county, riding, or division, not only with the interest of the money so borrowed, but also with the payment of such further sum as shall insure the payment of the whole of the sum borrowed within fourteen years from the time of borrowing the same; and such sums shall be assessed on the county, riding, or division in such manner as county rates are directed to be assessed under the laws in force for that purpose, and shall be paid and applied, under the direction of the justices, in discharge of the interest and of so many of the principal sums on the said securities as such money will extend to discharge in each year, until the whole of the money for which such securities shall be made, and the interest thereof, shall be fully paid and discharged; and the justices shall and they are hereby required to fix one or more day or days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for the regular payment thereof; and such justices shall also and they are hereby required to appoint a proper person to keep an exact and regular account of all the receipts and payments under the authority of this Act, in a book or books, separate and apart from all other accounts, and the same to adjust and settle in such manner that it may easily be seen what interest is growing due, and what principal money has been discharged, and what remains due, and the books or book so adjusted and settled to deliver into court at any general or quarter sessions to be held for such county, riding, or division; and the justices shall also and they are hereby required at every such session carefully to inspect all such accounts, and to make orders for carrying the purposes of this Act into execution, in such manner as to them shall seem meet; and the justices so assembled in sessions as aforesaid shall direct in what order such securities shall be discharged, by drawing lots or otherwise as they shall think fit, taking care to discharge, in the first place, all such securities as shall bear the highest rate of interest.

Justices may charge the county rate with interest on the money borrowed and such further sum as shall insure the repayment thereof in fourteen years.

Books to be kept of receipts and payments.

3. Provided always, and be it enacted, that the justices shall not make any order for the borrowing money upon mortgage of the rate for any of the purposes aforesaid, unless a notice in writing of the intention to make the application, signed by two at least of the justices usually acting in and for the division within which the bridge in question is situated, shall have been given to the clerk of the peace four weeks previous to the holding of the sessions at which such application is intended to be made, and shall also have been published in the newspaper or newspapers in which notice of holding the quarter sessions is usually published, together with such last-mentioned notice.

Notice to be given of borrowing money on mortgage of the county rate

4. And be it enacted, that an Act passed in the sixth year of the reign of His Majesty King George the Fourth, intituled "An Act to enable Justices of the Peace in England, in certain cases, to borrow Money on mortgage of the rate of the County, Riding, or Place for which such Justices shall be then acting," and the several clauses, powers, and provisions in the said recited Act contained relating to the paying off of any debt or debts, and the borrowing of any money for such purpose, shall and may be applied in the paying off any money borrowed under the provisions or for the purposes of this Act, as fully and effectually as if such clauses, powers, and provisions were repeated and re-enacted in this Act.

Powers of 6 Geo. IV. c. 40, applied to this Act.

Schedule.

SCHEDULE.

SCHEDULE to which this Act refers.

(A.)

FORM of MORTGAGE and CHARGE upon the COUNTY RATE for securing MONEY borrowed.

We, *A.B.*, one of Her Majesty's justices of the peace and chairman of the court of quarter sessions of the peace holden at on the day of for the county, &c., of (*as the case may be*), *C.D.* and *E.F.*, esquires, two other of Her Majesty's justices of the peace acting for the said county, &c., and assembled in the said court, in pursuance of the powers to us given by an Act passed in the fourth year of the reign of Her Majesty Queen Victoria, intituled, &c. (*insert the title of this Act*), do hereby in open court mortgage and charge all the rates to be raised within the said county, &c. (*as the case may be*), under the description of county rates, by the laws now in being, with the payment of the sum of which *G. H.* of hath proposed and agreed to lend, and hath now actually advanced and paid, towards defraying the expenses of upholding, maintaining, supporting, altering, widening, repairing, improving, or rebuilding (*as the case may be*) a certain county bridge at or certain county bridges at and (*as the case may be*) in the said county, and the approaches thereto (*as the case may be*) in the said county, &c., and we do hereby assign the same unto the said *G.H.*, his executors, administrators, and assigns, for securing the payment of the sum of and interest for the same after the rate of per centum per annum, and do order the treasurer for the said county, &c., *or other person* (*as the case may be*), to pay the interest of the said sum of half-yearly as the same shall become due, until the principal shall be discharged, pursuant to the directions of the said Act.

COUNTY BRIDGES LOANS EXTENSION ACT, 1880.

43 & 44 VICT. c. 5.

An Act to make Provision for Borrowing in respect of certain County Bridges. [19*th July*, 1880.]

Secs. 2, 3.

Extension of power to borrow under 4 & 5 Vict. c. 49. 41 & 42 Vict. c. 77.

2. Where, under section twenty-two of the Highways and Locomotives (Amendment) Act, 1878 (1), the county authority, as defined by that Act, see fit to make a contribution towards the cost of a bridge erected as therein mentioned, they may borrow on mortgage of the county rate all or any part of the amount of such contribution in the same manner in every respect as if the amount to be borrowed had been the amount of an estimate made and approved in the manner mentioned in the Act of the fourth and fifth years of the reign of Her Majesty, chapter forty-nine (2), hereinafter termed the principal Act; and all the powers, directions, and provisions of the principal Act shall extend and apply to the moneys borrowed under this Act; provided that the sum required for or towards any such contribution as aforesaid may be borrowed in exercise of the power hereby conferred, although the same shall not exceed one-fourth of the amount of the ordinary annual assessment in the principal Act referred to.

Interpretation.

3. This Act and the Highways and Locomotives (Amendment) Act, 1878, shall be construed as one Act.

(1) *Ante*, p. 885. (2) *Ante*, p. 1402.

STATUTES RELATING TO HIGHWAYS AND BRIDGES IN SOUTH WALES.

SOUTH WALES HIGHWAY ACT, 1860.

23 & 24 VICT. c. 68 (1).

An Act for the better Management and Control of the Highways in South Wales.

[6*th August*, 1860.]

Secs. 1—3.

Whereas an Act was passed in the session holden in the fourteenth and fifteenth years of Her Majesty, chapter sixteen, for the better management and control of the highways in South Wales: And whereas in pursuance of the said Act the six counties of South Wales have been divided by the county roads boards of their respective counties into districts for the better repair and maintenance of the highways: And whereas it is expedient that the said Act should be repealed and other provisions be made in lieu thereof: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

14 & 15 Vict. c. 16.

1. The said Act shall be and is hereby repealed: Provided that nothing in this Act, except as hereinafter provided, shall in any way affect or alter the aforesaid highway districts, or the appointments of any officers, but such districts shall remain for the purposes of this Act, and such officers shall respectively hold office on the like tenure as if appointed under this Act.

Recited Act repealed, but repeal not to affect districts or appointments.

2. Provided also, that it shall be lawful for the said county roads boards of the several counties of South Wales respectively, from time to time if they shall see occasion to alter the limits of any such district in their respective county, either by consolidating the whole or any part of it with any other district, or by dividing it into one or more districts; and the order by which such alteration is made shall within one month after the making thereof be published, together with a description or statement of the boundaries of such districts, or of the parishes comprised therein respectively, by advertisement in one or more of the newspapers circulating in the county in which the order is made, and notice thereof shall be given to the clerks of such districts as are affected thereby.

Districts may be altered from time to time.

3. Every county roads board acting in and for each of the said counties respectively shall by writing, upon which no stamp or other duty shall be payable, appoint one surveyor for each district declared as aforesaid, to overlook the management and repairs of the several highway districts in their county, and shall also determine the salaries to be paid to such surveyors respectively; and the board may from time to time remove the said surveyors, and so often as the said offices or any of them shall become vacant shall appoint other fit and proper persons for the same; and the salaries of such surveyors shall be paid out of the highway rate, and shall be, by an order made by the county roads board, apportioned amongst and charged upon the parishes within each respective district, in the same manner and in the same proportions as the

Power to county roads board to appoint and dismiss surveyors.

(1) This Act is repealed—

So far as relates to the district of Llanelly, in the county of Carmarthen, by 28 & 29 Vict. c. 108, s. 2.

So far as relates to the district of Briton Ferry, in the county of Glamorgan, by 29 & 30 Vict. c. 79, s. 1.

So far as relates to the Llanwonno portion of the district of Mountain Ash, in the county of Glamorgan, by 30 & 31 Vict. c. 21, s. 4.

Secs. 3—7.

county rate shall be chargeable at the time the order is made: Provided nevertheless, that such district surveyor shall not expend moneys levied in any one of the parishes within his district, except for the use and benefit of the parish in which it is so levied, unless with the consent of the inhabitants of such parish in vestry assembled, for the purpose of carrying on repairs or beneficial improvements for the common benefit of the parishes aforesaid, and shall keep separate and distinct accounts for each parish within his district, and such accounts shall specify the different sums and the persons to whom and by whom the same shall have been paid.

Transfer of property and powers vested in existing surveyors of highways to highway boards.

4. All land and property vested, or which, if this Act had not been passed, would have been vested, in any surveyor of highways of any parish elected or appointed under the Act of the fifth and sixth years of King William the Fourth, chapter fifty, and all the powers of letting or otherwise disposing of any such land or property vested in, or which, if this Act had not been passed, would have been vested in or exercisable by such surveyor, and all rents, or other income of land or property which such surveyor is, or, if this Act had not been passed, would have been entitled to receive, shall, upon and after the cesser under this Act of the powers of such surveyor, be vested in and exercisable and received by the highway board of the district in which such parish is comprised; and all tools, materials, implements, matters, and things purchased or provided, or thereafter to be purchased or provided, for the use or repair of the highways of any parish or district, and the scrapings of such highways, and all books, papers, writings, and accounts relating to such highways, shall be vested in the highway board of the district in which the same are situate, and all lands, chattels, and property whatsoever hereby transferred to any highway board shall be vested in such board for the benefit of the parish to which the same belongs, or to the repairs of the highways of which the same, or the rents, income, and proceeds thereof, would have been applicable, and credit shall be given to such parish for such rent, income, and proceeds accordingly, and in the case of any such chattels, belonging to or provided for any parish which may be made available for the common use or benefit of the several parishes within the district of such highway board, such highway board shall give such parish credit for what they may consider the value thereof, as for so much money received in respect of such parish.

Duties of district surveyor.

5. The surveyor of highways of each district shall, subject to the control of the highway board for such district, maintain and keep in repair the highways which the several parishes in such district may be liable to repair, and for that purpose shall on behalf of the highway board make all necessary contracts for highway materials and for cartage and other works for the repair of the highways, and shall superintend the execution of all such works, and shall make all such payments as by the highway board may be ordered to be made by him, and keep true and particular accounts of all moneys received by him, and of the application thereof, and shall keep separate and detailed accounts of the expenditure in or on account of each parish, and shall at every ordinary meeting of the highway board produce his accounts for examination and allowance by the board, and report to such board such circumstances in relation to the state of the highways in the district and the other matters aforesaid as may require the order or direction of the board, and as to the progress or completion of all works which may have been ordered by the board, and shall submit to the board an estimate of the expense of any proposed work, and shall twice at the least in every year, or oftener if the board direct, report in writing the state and condition of all highways in the district.

Powers and responsibilities of surveyor.

6. The surveyor of highways of each district shall, except for the purpose of making, assessing, and levying rates, and producing and verifying his accounts at special sessions, and except as herein otherwise provided, have all duties, powers, and responsibilities, as regards the parishes in such district, of a surveyor elected under the said Act of the fifth and sixth years of King William the Fourth, chapter fifty; and all Acts and provisions not hereby repealed, applicable to such last-mentioned surveyor, shall, save as herein otherwise provided, apply in like manner to a surveyor of highways of a district appointed under this Act, and all penalties and forfeitures or parts thereof payable to such surveyor shall be paid by him to the treasurer of the highway board, to the credit of the parish in respect whereof the same are recovered: Provided, nevertheless, that such surveyor shall in the exercise of such duties and powers act under the directions and control of the highway board, and shall be indemnified by such board out of the moneys coming to the hands of their treasurer in respect of all expenses and liabilities properly incurred by him.

Highways to be continued under the care and management of existing local boards.

7. The maintenance and repairs of the several highways situate and being within the several districts which have been or shall be hereafter formed shall, subject to the authority of the said county roads board, be under the care and management of local boards, to be styled highway boards, and which are and shall hereafter be constituted in manner following; that is to say, all persons who are now elected or who shall hereafter be elected guardians of the poor for the parish or parishes contained in such district during the period they are such guardians, and all

Her Majesty's justices residing within or acting at any petty sessions within or holden for the district, shall constitute the highway board for such district, and such justices shall not by reason of being members of such highway board be incapable of acting as justices of the peace in the execution of this Act, or in any matters relating to the highways under the care and management of the said board; and every such board shall be a body corporate, by the style of the highway board for the district of (inserting the name of the highway district), and by that name shall have perpetual succession and a common seal, and sue and be sued, and have power and authority (without licence in mortmain) to hold lands for the purposes of the highways.

Highway boards to hold four ordinary meetings every year.

8. The highway board for every district shall in every year hold not less than four ordinary meetings, and the meetings of such board after their first meeting shall be holden at such convenient place or places, and at such times, as they shall at their first meeting and from time to time thereafter appoint; and one of such meetings shall be appointed for the purpose of auditing the annual accounts of the board as hereinafter provided; and any such board may also hold special meetings, every such special meeting to be called by the clerk to such board, by the direction of the chairman or vice-chairman, or upon the requisition of any three members of such board; provided that no business, matter, or question shall be done, discussed, or entertained at any such special meeting other than the special business or matter for which it shall have been called, and which shall be specified in the notice convening such meeting.

Special meetings may be holden.

Adjournment of meetings.

9. Any meeting of the highway board may be adjourned from time to time to any day and hour and to the same or any other place; and if there be not three members of the board present within one hour after the time appointed for holding any meeting then it shall be lawful for the members or member present, or, if no member be present, for the clerk to such board, to adjourn such meeting in manner aforesaid.

Notice of special meetings and of meetings by adjournment.

10. Notice in writing of every special meeting of any highway board, and of every meeting of any such board holden by adjournment (whether by adjournment from an ordinary or a special meeting), shall be given by the clerk to such board to every member thereof, and every such notice shall be given or sent by the post or otherwise by the clerk to every such member, or left at his place of abode, seven days, or, in the case of a meeting holden by adjournment, three days at least before the day appointed for the meeting to which it relates.

Chairman and vice-chairman to be elected.

11. The highway board for each district shall elect two members of such board to be the chairman and vice-chairman thereof for the space of one year, and such election shall take place at their first meeting, or at some adjournment thereof, in every year; and the chairman and vice-chairman of each highway board at the commencement of this Act shall continue in office until their successors shall be appointed at the first meeting of the board as aforesaid; and the chairman, or, in case of his absence at the commencement of any meeting, the vice-chairman, shall preside at all meetings of such board, and shall have a casting vote in addition to his vote as a member; and in case at the commencement of any meeting both chairman and vice-chairman be absent, then such other member as may be chosen by the major part of the members present shall preside as chairman of such meeting; and whenever the chairman or vice-chairman shall die or become disqualified, refuse, or become incapable to act, such board shall at their ordinary meeting to be holden next after such death, disqualification, refusal, or incapacity, elect some other member of such board in his stead.

Quorum.

Authentication of orders.

12. All acts, orders, matters, and things by this Act authorised to be made or done by any highway board may be made or done by the major part of the members of any such board present at any meeting to be holden by virtue of this Act, the whole number present together at such meeting not being less than three; and all orders made by such board shall be in writing, and signed by the chairman presiding at the meeting at which the same are made, and countersigned by the clerk, and sealed with the seal of the board.

Defect of election, &c., of members not to vitiate proceedings.

13. No defect in the qualification or election of any person acting as a member of a highway board at any meeting thereof, the majority of the persons assembled at which shall be entitled to act as members of such board, shall be deemed to vitiate or make void any proceedings of such board in which he may have taken part.

Power to highway boards to appoint clerks.

14. Any highway board shall have power by writing, upon which no stamp or other duty shall be payable, to appoint a fit and competent person to be clerk to such board, and shall also determine the amount of salary to be paid to the clerk; and the clerk, in person or by such deputy as shall be elected by such board, shall attend all meetings of such board, and shall conduct the correspondence thereof, and enter and keep, in books to be provided for the purpose, notes, minutes, or copies, as the case may require, of the meetings, acts, orders, resolutions, proceedings, and correspondence of such board, and shall keep all books, papers, and documents committed to his charge, and shall perform all such other duties as the board may direct.

Appointment of treasurer.

15. Any highway board shall, at their next general annual meeting after the passing of this Act, by writing, upon which no stamp or other duty shall be payable, appoint a fit and compe-

Secs. 15–21.

tent person to be treasurer of such board, and the said board shall have power to fix, and from time to time to alter as they see fit, the salary, if any, to be paid to such treasurer; and the highway board shall, before the aforesaid treasurer shall enter upon his office, take sufficient security for the due performance by him of the duties of the office; and the treasurer of each highway board shall receive and hold to the account of such board all moneys paid to or for the use of such board, and shall make payments thereout under orders of such board, and shall once in every three months, or on such days as the board may direct, or oftener if required by the board, make up an account of all moneys received and paid by him, and deliver the same to the clerk of the board; and he shall keep separate and distinct accounts for each parish within his district, and such accounts shall specify the different sums, and the persons to whom and by whom the same shall have been paid.

Salaries of clerk and treasurer, how to be paid.

16. The salaries to be paid to the clerk and treasurer of each district shall, by an order to be made by the highway board of such district, be paid out of the moneys levied for the repair and maintenance of the highways, and shall be apportioned and charged upon the parishes within each respective district in the same manner and in the same proportion as the county rate shall be chargeable at the time such order is made.

Power to dismiss clerk, &c.

17. The highway board may at any time dismiss any clerk or treasurer so appointed, and as often as the said offices shall become vacant by such dismissal, or by death, resignation, or otherwise, the said highway board shall at their next regular meeting, or as soon after as conveniently may be, appoint some other fit and proper person to fill the same.

Two offices not to be held by the same person.

18. The offices of treasurer, clerk, and surveyor of any highway board, or any two of such offices, shall not be held by the same person, or by persons in partnership with each other, or by persons in the relation of employer and clerk, agent, or servant, one of the other, or of the partner of either of them; and if any person shall accept or hold either the office of treasurer, clerk, or surveyor contrary to this provision he shall forfeit and pay the sum of one hundred pounds to any person who shall sue for the same, to be recovered, with full costs of suit, in any court of competent jurisdiction.

Highway boards to have the management of the highways.

19. The highway board for each district shall, subject to the provisions and exceptions in this Act, have the management of the several highways lying within their district, and of the repairing and maintaining of the same, and shall direct the execution of any works which may from time to time be necessary for such purposes; but it shall not be lawful for any person, being a member of any highway board, to hold any place, office, or appointment of emolument, or to be a contractor directly or indirectly, or to be concerned or engaged in any contract for making or repairing, or in any way relating to the road or roads in the district for which such person shall act.

Highway board may contract to repair highways within districts of local boards, &c.

20. The highway board of any district may contract with all or any of the following bodies; (that is to say,) any local board of health constituted under "The Public Health Act, 1848," any local board constituted under "The Local Government Act, 1858," any commissioners or other body acting under any local Act of Parliament, the county roads board, the court of quarter sessions of the county in which the district is situate, and the council of any borough, for the repair and maintenance by such highway board of all or any of the highways or turnpike roads under the care of such local board of health, local board, county roads board, commissioners, or other body (as the case may be), or of the highways over and at the ends of bridges which are maintainable at the expense of the county or of any borough, or any other highways which are maintainable at the expense of the borough; and such highway board may contract as aforesaid upon such terms as to the payments to be from time to time made to such board in respect of their undertaking such repairs and maintenance, and as to the duration and determination of the contract, as may be agreed upon between the parties; and any such local board of health, local board, commissioners, county roads board, or other body, court of quarter sessions, and council may contract as aforesaid with such highway board; and while any contract made under this provision is in force the highway board and their surveyor shall, in respect of the repairs and maintenance of the highways and roads to which such contract relates, have and perform the same powers and duties and be subject to the same responsibilities as with regard to highways within the district of such board, and the other contracting party shall be divested of all powers, duties, and responsibilities in respect of such repairs and maintenance, and all money payable under such a contract shall be paid out of the moneys which would have been applicable to defray the expenses of the repair and maintenance of such highways or turnpike roads if such contract had not been made.

Expenses of highway board, how to be defrayed.

21. Every highway board, for defraying the repairs, expenses, and apportioned part of expenses chargeable as aforesaid on each parish within their district, shall from time to time, by order under their seal, require the overseers of such parish to levy, and to pay over to the treasurer of such board, or into any bank in such order mentioned, and within the time or times thereby limited, the sum which, after giving due credit to such parish for all penalties and other moneys

received in respect thereof, such board may require for the purpose aforesaid (and any snch order may be made wholly or in part in respect of expenses incurred at any time within six months before the making of the order, or of expenses to be thereafter incurred); and where any parish within the meaning of this Act is part only of any parish for which overseers are appointed, the highway board shall specify in their order the part of such last-mentioned parish on which any sum required by such board is to be levied.

Overseers to levy rates for raising the money required by highway board.

22. The overseers of the poor of the parishes to whom such orders as aforesaid are issued shall levy the amounts mentioned therein according to the exigency thereof, and shall for that purpose make separate equal pound rates upon their parishes, or the parts thereof respectively upon which the sums specified in such orders are required to be levied, in respect of the sums thereby ordered to be levied, and shall make such rates of such amonnt in the ponnd on the annual value of the property rateable as will in their judgment, having regard to all circumstances, be sufficient to raise the sums specified in such orders; and such rates shall be levied on the persons and in respect of the property by law rateable to the relief of the poor in the respective parishes, and shall be assessed upon the net annual value of such property, ascertained by the rate for the time being for the relief of the poor, provided that the rate shall also extend to such woods, mines, and quarries of stone, or other hereditaments, as were before the said Act of the fifth and sixth years of King William the Fourth usually rated to the highways; and the said overseers shall, for the purpose of levying snch rates, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor, and all such rates shall be allowed in the same manner, and be subject to all the same provisions in relation to appeal and to excusing persons from payment on account of poverty, and otherwise, as the rate for the relief of the poor in the same parish; and such overseers shall pay to the treasurer of the highway board, or otherwise as in such orders directed, the sums mentioned in the orders within the time or respective times specified for that purpose, and the excess, if any, which may have been levied beyond such sums shall be placed to the credit of the parish or part in which the same has been levied; and the said overseers shall, at the time of making any such payment, deliver with the money a note in writing signed by them specifying the amount so paid, which note shall be kept as a voucher for the receipt of that particular amount; and the receipt of the treasurer of the board, or of any proper officer or person of or belonging to any bank into which such money is so paid, specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amonn'.

Power to highway board to direct paid collectors of poor rate to collect highway rate.

23. In every parish in which a paid collector of poor rates shall have been or may hereafter be duly and legally appointed, every snch collector shall, if the highway board so direct and authorise him, collect the highway rate for every such parish, and the highway board shall determine the salary or additional salary to be paid to every such collector, and every snch collector shall have all the same powers, remedies, and privileges for the levying and enforcing the payment of snch rates as the overseers of the poor have under this Act; and it shall be lawful for every highway board, and they are hereby required, to take security from every collector authorised to collect the highway rate under this Act, which security shall be to the full amount of the sum likely to be in the hands of the said collector at any one time.

Restriction in amount of rates.

24. Provided always, that the rate or rates to be levied for defraying any expenses under this Act shall not exceed in any one year the amount in the pound of the rateable value of the property rateable thereto nnder this Act now by law limited in respect of the highway rate.

Overseers on non-payment of the rate shall be distrained upon.

25. In case the amount ordered by any such order as aforesaid to be paid by the overseers of any parish be not paid in manner directed by such order and within the time or times therein specified for that purpose, it shall be lawful for any two justices of the peace, upon the complaint by the board or by any person authorised by them for this purpose, to issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers, and in case the goods of all the overseers be not snfficient to pay the same the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act, and shall be collected by the like methods.

Special persons may be appointed to levy rates on default of overseers.

26. Any highway board may, in case of any default or neglect of any overseers to pay the amount required by any such order as aforesaid, within the time or times and in the manner directed by such order, appoint persons to levy any money reqnired by snch board for the purposes of this Act in any parish, and snch persons shall proceed in the same manner, and have the same powers, remedies, and privileges, and be snbject to the same regulations and penalties with reference to the levying of such money, as any overseers would have had or been subject to with reference to levying any such money in pnrsnance of an order of the highway board.

Accounts to be made up to 25th March, and

27. The accounts of every highway board shall be made np and balanced on the twenty-fifth day of March in every year, and shall be audited by such board, and signed by the chairman;

Secs. 27–33.

and such board shall cause a statement to be printed and published in one or more newspapers circulated in their county within thirty days after the said twenty-fifth day of March, showing the receipt and expenditure in respect of each parish, and the apportioned part of expenditure chargeable thereto in respect of the district fund, and such other particulars, and in such form, as the Secretary of State may direct, as hereinafter mentioned.

Statement to be published.

Statement to be sent to Secretary of State.

Penalty for neglect.

28. The clerk to every highway board shall, within such thirty days, transmit such statement to one of Her Majesty's principal Secretaries of State; and any such clerk who shall not within the time aforesaid transmit the said statement to the said Secretary of State shall for every such offence, upon a summary conviction for the same before two justices of the peace, be liable to a penalty of ten pounds.

Abstract of statements to be laid before Parliament.

29. The Secretary of State shall cause the statements so transmitted to be abstracted, and the abstracts thereof to be laid before both Houses of Parliament, with the other statements in relation to highways required to be abstracted and laid before Parliament by the Act of the session holden in the twelfth and thirteenth years of Her Majesty, chapter thirty-five.

Secretary of State may cause form of statement to be prepared, and alter forms prescribed by 12 & 13 Vict. c. 35.

30. It shall be lawful for one of Her Majesty's principal Secretaries of State to cause to be prepared such forms for such statement as he may from time to time deem suitable, and also from time to time to alter the forms for the annual statement prescribed by the said Act of the twelfth and thirteenth years of Her Majesty, but no statement shall be transmitted under that Act concerning parishes wholly within a highway district under this Act.

Councils of boroughs having commissions of the peace may by resolution assume the powers of highway boards.

31. The council of every borough having a separate commission of the peace may, by a resolution of such council at a meeting held for the purpose, in any year after the expiration of the time limited by law for the election of surveyors of highways for that year, or forty days at the least before the commencement of the time limited for such election, assume the powers of a highway board under this Act; but no such resolution shall be valid unless a month's previous notice of the meeting and of the purpose thereof has been given in the manner in which notices of meetings of the council are by law required to be given, and two-thirds of the members present at the meeting concur in such resolution; and the chairman of any such meeting may, with the consent of a majority of the members present, adjourn the same from day to day; and notice of such resolution shall be certified under the seal of the corporation of such borough to the clerk of the peace of the county, or (if such borough be situate in more than one county) of each county in which the borough is wholly or in part situate.

Where resolution passed, council to have powers of highway board.

32. Any such council which may have assumed the powers of a highway board, by resolution passed and certified as aforesaid, shall, with respect to parishes and parts of parishes within such borough, have and be subject to the powers and obligations vested in or imposed on a highway board constituted under this Act with respect to parishes forming the district of such board, save that such powers shall not extend to authorise the appointment of a separate clerk or treasurer for the purposes of this Act; and the provisions of this Act applicable in the case of highway districts formed thereunder, to the highway board thereof, and their clerk, treasurer, and surveyor, shall, in the case of such borough, be respectively applicable to the council and to the town clerk and treasurer thereof, and to the surveyor of highways to be appointed by such council, as if such borough were a highway district constituted under this Act, and such council were the highway board thereof; and all Acts to be done by such council by virtue of the powers conferred by this Act shall be done in like manner as if done by virtue of the said Act "for the regulation of municipal corporations in England and Wales;" and any such council may, if they think fit, appoint a committee for the purposes of this Act, in like manner as for any of the purposes of such last-mentioned Act, the Acts of such committee to be submitted as therein provided to the council, for their approval; provided nevertheless that the expenses incurred in the execution of this Act by the council of any borough or any committee of such council shall be defrayed in manner provided with respect to expenses of highway boards: provided always, that the powers of the council of a borough under this enactment shall not extend, nor shall its district as a highway board be deemed to include any parish or district under any board mentioned in the first section of this Act.

5 & 6 Will. IV. c. 76.

No parochial surveyor to be appointed after the passing of this Act.

33. From and after the passing of this Act no parochial surveyor shall be elected or appointed in South Wales under the said Act of the fifth and sixth years of King William the Fourth, chapter fifty, for any parish comprised in such district: [Provided always, that any surveyor whose powers are so to cease as aforesaid shall recover any highway rate made by him before the cesser of his powers, and remaining unpaid, in the same manner as if his power in other respects had not ceased, and the money so recovered shall be paid by him to the treasurer of the highway board of the district in which such parish is comprised under this Act; and in case such surveyor die or become incapable to act before all arrears of any such rate are recovered, the same may be recovered by the overseers of the poor, who shall have the like power for that

purpose as such surveyor would have had, and shall pay the same to such treasurer as aforesaid [1].]

34. [Accounts of existing surveyors to be passed according to present law, and money and effects to be paid and delivered to their successors appointed under this Act [1]].

Surveyor of highway board exempted from turnpike tolls.

35. No toll shall be demanded by virtue of any Act of Parliament on any turnpike road in any highway district constituted under this Act from the surveyor of the highway board of such district when executing or proceeding to execute his duties as such surveyor, and all provisions applicable to the exemptions in the Act of the third year of King George the Fourth, chapter one hundred and twenty-six, shall apply to and in the case of the exemptions conferred by this enactment.

Power to highway board to order their surveyor to repair certain roads, and charge the parties liable for the same.

36. Where any highway which any body politic or corporate or person is liable to repair by reason of tenure of any land, or otherwise howsoever, is out of repair, the highway board of the district in which such highway is situate may, if they see fit, direct their surveyor to repair the same, and the expenses to be incurred in such repair shall be paid by the party liable to repair as aforesaid; and it shall be lawful for any justice, upon the application of any person authorised in this behalf by the highway board, to summon the party liable to pay such expenses to appear before two justices at a time and place to be named in such summons, and upon the appearance of the parties, or in the absence of either of them, it shall be lawful for such justices to hear and determine the matter, and make such order, as well as to costs or otherwise, as to them may seem just.

Power to justices to order certain highways to be made highways to be repaired, &c., by the parishes.

37. Where any person or corporation is liable, by reason of tenure of lands or otherwise, to repair any highway situate in a highway district, the person or corporation so liable, or the surveyor of highways of the district, may apply to any justice of the peace for the purpose of making such highway a highway to be repaired and maintained by the parish in which the same is situate; and such justice shall thereupon issue his summons requiring such surveyor or the party so liable to repair such highway as aforesaid, to appear before two or more justices in petty sessions assembled, and the justices at such petty sessions shall proceed to examine and determine the matter, and shall, if they think fit, make an order under their hands that such highway shall thereafter be a highway to be thereafter repaired and maintained by the parish, and shall in such order fix the proportion of the expenses of repairing and maintaining such highway to be annually paid by such person or corporation to the treasurer of the highway board of the district in which such highway is situate, and such order shall be binding upon all persons and parties whatsoever: Provided nevertheless, that such justices, instead of fixing the proportion of the expenses of repairing such highway to be annually paid as aforesaid, may, by an order under their hands, fix a certain sum to be paid by such person or corporation to the treasurer of such board, in full discharge of all claims thereafter in respect of the repair and maintenance of such highway; and in default of payment of such last mentioned sum, or of such annual sum as aforesaid, the clerk of such board may proceed for the recovery thereof in the same manner as any penalties or forfeitures are recoverable under the said Act of the fifth and sixth years of King William the Fourth, chapter fifty: Provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair and maintenance of such highway exceeds one hundred pounds, the same, when received, shall be invested in the name of the highway board of the district in some public government securities, and the interest and dividends arising therefrom shall be applied by such board towards the repair and maintenance of the highways within the parish in which such highway is situate; but when such sum does not exceed one hundred pounds, the same, or any part thereof, at the discretion of such highway board, shall from time to time be applied by such board towards the repair and maintenance of the highways within such parish; and from and after the making of such order such highway shall be repaired in like manner and at the like expense as other highways which such parish is liable to repair.

Provisions for discontinuance of maintenance of unnecessary highways.

38. When any highway board consider any highway within their district unnecessary for public use, they may direct their surveyor to apply to two justices to view the same, and shall authorise him to pay all expenses attending such view (which expenses and other the expenses of the surveyor consequent upon such application shall be expenses chargeable under this Act on the parish in which the highway in question is situate), and thereupon the like proceedings shall be had as in the case where application is made under the said Act of the fifth and sixth years of King William the Fourth, chapter fifty, to procure the stopping up of any highway, save only that the order to be made thereupon, instead of directing the highway to be stopped up, shall direct that the same shall cease to be a highway which the parish is liable to repair, and the

[1] The portion of s. 32 between brackets, and the whole of s. 34, are repealed by the Statute Law Revision Act, 1875.

Secs. 38–40.

liability of the parish shall cease accordingly; and for the purpose of such proceedings under this enactment, such variation shall be made in any notice, certificate, or other matter preliminary to the making of such order as the nature of the case may require: Provided always, that if at any time thereafter, upon application of any person interested in the maintenance of such highway, after one month's previous notice in writing thereof to the clerk of the highway board for the district in which such highway is situated, it appear to any court of general or quarter sessions of the peace that from any change of circumstances since the time of the making of any such order as aforesaid under which the liability of the parish to repair such highway has ceased, the same has become of public use, and ought to be kept in repair by the parish, they may direct that the liability of the parish to repair the same shall revive from and after such day as they may name in their order, and such liability shall revive accordingly, as if the first-mentioned order had not been made; and the said court may by their order direct the expenses of and incident to such application to be paid as they may see fit.

Regulations as to the adoption of new roads to be maintained as public roads under this Act.

39. And with respect to the adoption of new roads to be maintained as public roads under this Act, be it enacted, that no road or occupation way made or hereafter to be made by or at the expense of any individual or private person, body politic or corporate, shall be deemed or taken to be a public road, to be repaired and maintained according to the provisions of this Act, unless the person, body politic or corporate, proposing to dedicate such road to the use of the public, shall give three calendar months previous notice in writing to the district surveyor of the district of his intention to dedicate such road to the use of the public, describing its situation and extent; and the said district surveyor, upon receiving such notice, shall view the same, and shall report to the highways board of the district whether such road is well and properly laid out and made, and whether the same is of sufficient public utility to justify its being kept in repair and maintained as one of the highways of such district; and if the said board shall be satisfied, upon such report or otherwise, that the said road ought to be so kept in repair and maintained, they shall certify in writing accordingly; and such certificate, signed by the chairman of the highway board for the time being, shall be transmitted by him to the county roads board of such county; and thereupon, after the said road shall have been used by the public, and duly repaired and kept in repair by the said person, body politic or corporate, for the space of twelve calendar months, the same shall thenceforth become one of the highways of such county, and shall thereafter be repaired and maintained according to the provisions of this Act.

Proceedings in case highways are not kept in repair.

40. From and after the passing of this Act, if any highway is out of repair, or is not well and sufficiently repaired and amended, an (*sic*, and ?) information thereof on the oath of one credible witness is given to any justice of the peace, it shall and may be lawful for such justice and he is hereby authorised and required to issue a summons requiring the surveyor of the district in which such highway is situated, or other person or body politic or corporate chargeable with such repairs, to appear before the justices at some petty sessions in the said summons mentioned to be held within the division in which the said highway may be situate, and the said justices shall either appoint some competent person to view the same, and report thereon to the justices in petty sessions assembled on a certain day and place then and there to be fixed, at which the said district surveyor or other party as aforesaid shall be directed to attend, or the said justices shall fix a day whereon they or any two of them shall attend to view the said highway; and if to the justices at such petty sessions, on the day and at the place so fixed as aforesaid, it shall appear, either on the report of the person so appointed by them to view, or on the view of the said justices, that the said highway is not in a state of thorough and effectual repair, they the said justices at such last-mentioned petty sessions shall make an order requiring the said district surveyor to repair the said highway within a time limited therein, and shall make an order requiring the overseers of the poor, or other party or body politic or corporate liable to the repair of the said highway, to pay to the treasurer, at such time or times as they shall direct, either in one sum or by instalments, a sum of money to be therein stated, which shall be equal in amount to the sum which the said justices shall on the evidence produced before them judge requisite for the repairing such highway; and in default of such money being paid within the time so limited, it shall be lawful for any two justices of the peace to issue their warrant for levying the amount of money, or so much thereof as may not be paid within the time limited, by distress and sale of the goods of the said overseers of the poor, and such money, when recovered, shall be applied to the repair of such highway; and in case more parties than one are bound to repair any such highway, the said justices shall direct in their order what proportion shall be paid by each of the said parties: Provided nevertheless, that the said justices shall not have power to make such orders as aforesaid in any case where the duty or obligation of repairing the said highway comes in question [1].

Power to justices to order highways to be repaired at the expense of the parties liable.

If money not paid the same to be levied by distress.

[1] In such case the justices may direct an indictment under 5 & 6 Will. 4, c. 50, s. 95, *ante*, p. 818. *R.* v. *James*, 3 B. & S. 901, 32 L. J. M. C. 211, 9 Jur. N. S. 1126.

Secs. 41–45.

41. All roads hereafter ceasing to be turnpike roads shall on their so ceasing be repaired and maintained by the surveyor or board, or other body liable to maintain the same, to the same width as they are or were required to be while turnpike roads; and all roads heretofore turnpike roads, which have already ceased to be so, shall be repaired and maintained by such surveyor, board or other body, to the present width of such roads, and after the passing of this Act, as regards any road which has ceased or which may cease to be a turnpike road, the erection or making of any building, hedge, ditch, or other fence, or the doing of any other act which would have been deemed an encroachment on any such road if the same had continued to be a turnpike road, shall be deemed an encroachment on a highway, within section sixty-nine of the said Act of the fifth and sixth years of King William the Fonrth, althongh the same may be beyond the distance from the centre of the carriageway mentioned in the said section.

Width of roads to be maintained when they cease to be turnpike roads.

42. It shall not be requisite for the jnstices of the peace to hold Special Sessions for executing the purposes of the said Act of the fifth and sixth of King William the Fourth, chapter fifty; but all acts and matters which might have been done at such special sessions under the said Act or this Act, or under any other Act of Parliament, may be done by two or more justices at any petty sessions.

Acts required to be done at special sessions for highways may be done at petty sessions.

43. Except as herein otherwise provided, all the provisions of the said Act of the fifth and sixth years of King William the Fourth, chapter fifty, shall remain in force and be applicable as well to the highways to be managed under this Act as to the highways which may continue to be managed under that Act, and the said Act and this Act shall be construed together as one Act.

Provisions of 5 & 6 Will. IV. c. 50, to remain in force, except as otherwise provided.

44. This Act shall extend only to South Wales, and in the construction of this Act, "South Wales" shall include and comprise the six counties following, and no others, viz., the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan.

Act to extend only to South Wales.

45. In the construction of this Act, unless there be something in the subject or context repugnant to such construction, the word "parish" shall mean any parish, place, or district maintaining its own highways, or which, if this Act and the said Act of the fourteenth and fifteenth years of Her Majesty, had not been passed, would have maintained its own highways, and where part only of any such parish, place, or district is comprised in a highway district constituted under this Act shall mean such part; the word "borough" shall mean a borough according to the meaning of the Act of the session holden in the fifth and sixth years of King William the Fourth, "for the Regulation of Municipal Corporations in England and Wales," or any corporate place which since the passing of that Act has become subject to the provisions thereof; and the word "county" shall mean any county, riding, division, or liberty having a separate Court of Quarter Sessions of the Peace.

Interpretation of terms

SOUTH WALES HIGHWAY ACT AMENDMENT ACT, 1878.

41 & 42 VICT. c. 34.

An Act to amend the Law relating to Highways in South Wales. [22*nd July*, 1878.]

Secs. 1, 2.

Whereas it is expedient to amend an Act passed in the twenty-third and twenty-fourth years of the reign of Her present Majesty, intituled "An Act for the better management and control of the highways in South Wales," which Act is in this Act called "the South Wales Highway Act" (1):

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act shall be cited as the South Wales Highway Act Amendment Act, 1878, and, so far as is consistent with the tenor thereof, shall be construed as one with the Sonth Wales Highway Act.

Act to be one with 23 & 24 Vict. c. 68.

2. The highway board for each district may make such improvements as are herein mentioned in the highways within their jurisdiction, and may, with the approval of the county roads board of the county in which they are situate, borrow money for the purpose of defraying the expenses of such improvements.

Highway boards may make improvements and borrow money for the purpose.

(1) *Ante*, p. 1405.

Secs. 3—9.

Estimate of expense to be made, and notice to be given

3. Previously to applying for the approval of the said county roads board, the highway board shall cause an estimate of the expense of the improvements to be made, and one month at the least before making their application shall give notice of their intention to do so.

Such notice shall state the following particulars:

1st. The nature of the work, the estimated amount of expense thereof, and the sum proposed to be borrowed:

2nd. The parish or parishes within the highway district by which the sum borrowed and interest thereon is to be paid, and in case of more than one being made liable to pay the principal and interest, the annual amounts to be contributed by each parish towards the payment thereof:

3rd. The number of years within which the principal moneys borrowed are to be paid off, not exceeding twenty years, and the amount to be set apart in each year in paying off the same:

4th. The date of the meeting of the county roads board at which the application for such approval as aforesaid is to be made.

How notice to be given.

4. Such notice shall be given as follows:

1. By transmitting a copy to the clerk of such county roads board:

2. By placing a copy of such notice for two successive Sundays on the door of every church and chapel of the parish or parishes on behalf of which such works are to be done, or in the case of a parish not having a church or chapel, on some conspicuous position in such parish.

Upon the hearing of the application, any person or persons may oppose the approval of the county roads board being given, and it shall be lawful for the county roads board to give or withhold their approval, with or without modification, as they think just.

Moneys borrowed under Act to be a first charge on highway rates of parishes liable to contribute.

5. All moneys borrowed in pursuance of this Act, together with the interest thereon, shall be a first charge on the highway rates of each parish liable to contribute to the payment thereof, in the same manner, as far as the creditor is concerned, as if the money had been borrowed on account of each parish alone, and the sums necessary to repay the said borrowed moneys, with interest, shall in each said parish be recoverable in the same manner as if they were expenses incurred by the board in keeping in repair the highways of that parish.

But it shall be the duty of the highway board in case of any one parish paying more than its share of such borrowed money, or of the interest thereof, to make good to the parish the excess so paid out of the rates of the other parishes liable to contribute thereto.

County roads board may make orders as to application for consent.

6. The county roads board may from time to time make general orders relative to the mode in which applications are to be made to them for their consent under this Act to the borrowing of any moneys.

Limitation as to amount to be levied not to apply to money borrowed under this Act.

7. The limitation as to the amount in the pound of the rateable value of the property to be levied in any one year imposed by section twenty-four of the South Wales Highway Act shall not apply to the amount of principal and interest of money borrowed under this Act and liable to be repaid in any year.

What works are to be deemed improvements of highways.

8. The following works shall be deemed to be improvements of highways:

1st. The conversion of any road that has not been stoned into a stoned road:

2nd. The widening of any road, the cutting the corners off on any road, the levelling roads, the making of a new road, the building or enlarging of bridges, and the purchase of land for any of the purposes aforesaid:

3rd. The doing any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair.

County roads board may order roads to be repaired out of highway rate.

9. It shall be lawful for any county roads board at any one of their regular meetings to make an order declaring that any highway within the county for which they act, being a main thoroughfare through any one or more highway districts to any town or towns or to any railway station or stations, shall be a district road, and from and after a day to be named in the order the cost of maintaining such district road shall be a common charge upon the highway district or districts within which such road is locally situate, and shall be borne by the several parishes within such district or districts in manner following; (that is to say,)

(1.) Where the district road is wholly situate in one highway district, the cost of repairing the same shall be paid out of the moneys levied for the repair and maintenance of the highways, and shall be apportioned amongst and charged upon the several parishes within the district in the same manner as the salaries of the clerk and treasurer of the district; and

(2.) Where the district road is situate in more than one highway district, the cost of repairing the part within any such district shall in like manner be paid and be apportioned amongst and charged upon the several parishes constituting the district within which such part is situate.

Secs. 9—12.

Provided always, that such county roads board shall, previous to making an order that any highway shall be repaired as aforesaid, give notice of their intention to proceed to make an order to that effect at a meeting of the board to be named in such notice, and shall advertise such notice in one or more of the newspapers circulating in the county, and shall cause copies of such notice to be affixed to the door of each parish church in the said highway district or districts, and shall cause to be served a copy of such notice on the clerk of such highway district or districts in which such highway or highways are situate, at least one month before the day of the meeting so named in such notice, and shall at such meeting, previous to coming to any determination, hear any person or persons who shall desire to make any objections to the proposed order being made, and shall, after such objections, if any, have been heard, proceed to make, modify, or reject such proposed order as to them shall seem just and reasonable.

Incorporation of certain clauses of 10 & 11 Vict. c. 16.

10. The clauses of the Commissioners Clauses Act, 1847, with respect to mortgages to be created by the commissioners, shall form part of and be incorporated with this Act, and any mortgagee or assignee may enforce payment of his principal and interest by appointment of a receiver.

In the construction of the said clauses "the commissioners" shall mean "the highway board."

Mortgages and transfers of mortgages shall be valid if made in the forms prescribed by the last mentioned Act, or as near thereto as circumstances admit.

Highway boards may purchase lands by agreement. 8 & 9 Vict. c. 18.

11. A highway board, for the purpose of improving the highways within their district, may purchase such lands or easements relating to lands as they may require; and the Lands Clauses Consolidation Act, 1845, and any Act amending the same, except the clauses in the said Acts respectively relating to the purchase of lands otherwise than by agreement, shall be incorporated with this Act; and for the purposes of those Acts this Act shall be deemed the special Act, and any such highway board as aforesaid exercising the powers of this Act shall be deemed the promoters of the undertaking.

Definition of "parish."

12. "Parish" in this Act means every parish or place for which a separate rate is made for the maintenance of the highways.

SOUTH WALES BRIDGES ACT, 1881.

44 VICT. c. 14.

An Act to enable County Authorities in South Wales to take over and contribute towards certain Bridges, and to remove doubts as to the liability to repair the Highways over and adjoining certain Bridges which have been rebuilt. [*3rd June*, 1881.]

Secs. 1—3.

Whereas Part I. of the Highways and Locomotives (Amendment) Act, 1878 (1), does not, except as to the twenty-seventh section thereof, apply to any county to which the Act passed in a session of Parliament holden in the twenty-third ard twenty-fourth years of the reign of Her present Majesty, intituled, "An Act for the better management and control of the highways in South Wales," extends (2):

41 & 42 Vict. c. 77.
23 & 24 Vict. c. 68.

And whereas it is expedient that powers similar to those contained in sections twenty-one and twenty-two of the first-mentioned Act, and also in section two of the County Bridges Loans Extension Act, 1880, for taking over and contributing towards certain bridges, and for borrowing money for the latter purpose, should be conferred upon the county authorities in South Wales:

43 & 44 Vict. c. 5.

Be it therefore enacted, &c.

Title and extent of Act.

1. This Act may be cited as the South Wales Bridges Act, 1881, and shall extend only to the several counties in South Wales; that is to say, the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke, and Cardigan.

Certain existing bridges may be accepted by county authority. 43 Geo. III. c. 59.

2. Any bridge erected before the passing of this Act in any county without such superintendence as is provided in section five of the statute of the forty-third year of King George the Third, chapter fifty-nine (3), and which is certified by the county surveyor or other person appointed in that behalf by the county authority to be in good repair and condition, shall, if the county authority see fit so to order, become and be deemed to be a bridge which the inhabitants of the county shall be liable to maintain and repair.

Contribution out of county rates towards

3. The county authority may make such contribution as it sees fit out of the county rates towards the cost of any bridge to be hereafter erected, after the same has been certified, in

(1) *Ante*, p. 879. (2) *Ante*, p. 1405. (3) *Ante*, p. 1396.

Secs. 3—6.

erecting bridges.

accordance with the provisions of section five of the statute of the forty-third year of King George the Third, chapter fifty-nine [1], as a proper bridge to be maintained by the inhabitants of the county; so always that such contribution shall not exceed one half of the cost of erecting such bridge.

Extension of power to borrow under 4 & 5 Vict. c. 49.

4. Where the county authority see fit to make a contribution towards the cost of a bridge erected as in this Act mentioned, they may borrow on mortgage of the county rate all or any part of the amount of such contribution, in the same manner in every respect as if the amount to be borrowed had been the amount of an estimate made and approved in the manner mentioned in the Act passed in a session of Parliament holden in the fourth and fifth years of the reign of Her present Majesty [2], intituled "An Act to provide for repairing, improving, and rebuilding county bridges," and all the powers, directions, and provisions of that Act shall extend and apply to the moneys borrowed under this Act; provided that the sum required for or towards any such contribution as aforesaid may be borrowed in exercise of the power hereby conferred, although the same shall not exceed one fourth of the amount of the ordinary annual assessment referred to in the said Act of the fourth and fifth years of the reign of Her present Majesty.

4 & 5 Vict. c. 49.

Repair of roads over and adjoining bridges rebuilt.

5. Where a bridge has been or shall be built by the county authority, or, with their consent, in substitution for another bridge which the county authority were liable to repair, the liability to repair the highway leading to, passing over, and next adjoining the bridge so substituted shall attach to the county authority, highway authority, person or persons who were liable to repair the highway leading to, passing over, and next adjoining the bridge previously existing, whether the substituted bridge is built on the same site or not.

Interpretation.

6. In this Act—

"County" means any county, division, or liberty having a separate court of quarter sessions of the peace;

"County authority" means the justices of a county in general or quarter sessions assembled:

"Highway authority" includes a county roads board, highway board, and any other body of persons liable to repair the highways.

(1) *Ante*, p. 1396. (2) *Ante*, p. 1402.

PROVISIONAL ORDERS RELATING TO OXFORD, &c.[1]

LOCAL GOVERNMENT SUPPLEMENTAL ACT, 1865, (No. 5.)

28 & 29 VICT. c. 108.

An Act to confirm certain Provisional Orders under "The Local Government Act, 1858," relating to the Districts of Nottingham, Rusholme, Plymouth, Redcar, Cardiff, Kingston-upon-Hull, Guildford, Ramsgate, Ryde, Workington, and Oxford, and for other purposes relative to certain Districts under the said Act. [*5th July*, 1865.]

Secs. 1—6.

1. The Provisional Orders contained in the schedule hereunto annexed shall, from and after the passing of this Act, be absolute, and be as binding and of like force and effect as if the provisions of the same had been expressly enacted in this Act.

Provisional Orders in schedule confirmed.

2. The Act passed in the twenty-third and twenty-fourth years of the reign of Her present Majesty (23 & 24 Vict. c. 68) [2], intituled "The South Wales Highway Act," shall be repealed so far as it relates to the district of Llanelly in the county of Carmarthen, within which district the Local Government Act, 1858, is now in force. And whereas doubts have arisen as to the effect of the Provisional Order repealing the said Act within the district of Aberavon in the county of Glamorgan: it is hereby declared, that the said Act shall be deemed and taken to be repealed within the said district as if the repeal thereof had been provided by express enactment in the Act confirming the said Order.

South Wales Highway Act (23 & 24 Vict. c. 68) as to district of Llanelly repealed.

3. The Act passed in the fifty-third year of the reign of King George the Third, intituled "An Act for amending the Roads and Highways in the Isle of Wight," shall be repealed so far as it relates to the district of Ventnor, within which the Local Government Act, 1858, is now in force. And whereas doubts have arisen as to the effect of the Provisional Orders repealing the said Isle of Wight Highway Act within the districts of East Cowes, Sandown, and Shanklin: it is hereby declared, that the said Act shall be deemed and taken to be repealed within the said districts as if the repeal thereof had been provided by express enactment in the Acts confirming the said Orders.

Isle of Wight Roads, &c., Act (53 Geo. III. c. 92) repealed as to district of Ventnor, East Cowes, Sandown, and Shanklin.

4. The yearly election of the members of the local board for the district of Oxford under section eighty-two of the "Local Government Act, 1858," shall take place on such day between the ninth and twenty-fourth days of November in every year, not being Sunday, as the local board from time to time at their ordinary meeting in the month of October in the respective year determine; and the members of the local board already and from time to time hereafter elected shall continue in office until the commencement of the meeting of the local board next after the day of the then next yearly election of members thereof, and thereupon the members then elected shall come into office: Provided that if and whenever the local board do not so fix any other day for the yearly election, then it shall take place on the tenth day of November, or, if that day be Sunday, on the then next day.

The Oxford Local board to be elected between the 9th and 24th of November annually.

5. The members of the Oxford local board to be elected by the ratepayers of the parishes within the district shall be elected one for every parish by the ratepayers of the respective parish, and, except as is by this Act otherwise provided, shall be so elected by the ratepayers in vestry assembled.

Ratepayers of each parish in Oxford district to elect one member in vestry.

6. It shall not be obligatory on any of the fifteen members of the local board from time to

Members of the University not

[1] As to Oxford, see the Public Health Act, 1875, sections 6, 67, 205, 228 and 342, *ante*, pp. 49, 79, 156, 169, and 223.

[2] *Ante*, p. 1405.

Secs. 7—13.

time elected by the University of Oxford to make any declaration of qualification for the office of member of the local board.

required to make declaration.

The Local Board shall appoint chairman.

7. The Oxford local board shall yearly, at their first meeting in November, appoint one of their number to be chairman for one year at all meetings at which he is present; and in case the chairman so appointed be absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat; and in case the chairman appointed for the year die, resign, or become incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to remain in office, and no longer; and the chairman at any meeting shall have a second or casting vote in case of an equality of votes.

All public buildings (except churches) shall be assessable to the general district rates.

8. All public buildings of the university and city of Oxford, and any lands, tenements, and hereditaments within the Oxford district not now assessed or assessable to rates for the relief of the poor, except all such as belong to or are held by the county, and except churches and other public places of religious worship, shall be assessable on a fair valuation thereof by an equal pound rate to the general district rates, to be from time to time made and levied by the local board.

Provisions in case of the addition to the district of a part of Cowley parish.

9. If and when any part of the parish of Cowley is added to the Oxford district, then and thenceforth the number of members of the local board for the Oxford district shall be increased by one:

(*a.*) The Cowley member shall from time to time be elected by the owners and ratepayers within that part of the parish of Cowley:

(*b.*) The first election of the Cowley member shall take place within forty-two days after the passing of this Act, on a day which shall, within fourteen days after the passing of this Act, be appointed by the chairman of the local board:

(*c.*) The Cowley member so first elected shall continue in office until the commencement of the meeting of the local board next after the day of the yearly election of members of the local board in the year one thousand eight hundred and sixty-six.

(*d.*) The yearly election of the Cowley member shall take place in the year one thousand eight hundred and sixty-six, and in every subsequent year on the day for the yearly election of other members of the local board:

(*e.*) The chairman of the local board shall be the summoning officer for the purposes of every election of the Cowley member:

(*f.*) In all other respects the provisions of every Act of Parliament from time to time in force with respect to the members of the local board, and their election and continuance in office and retirement from office, shall, so far as the same are applicable, extend and apply to the Cowley member.

The parish of Binsey how to be represented.

10. The member of the Oxford local board now elected for the parish of Saint Thomas shall henceforth be elected for that parish and for the adjoining parish of Binsey as if they were one parish, and for the purposes of the election the two parishes shall be deemed to be one parish:

(*a.*) For the election the ratepayers of the parish of Binsey shall form part of the vestry of the parish of Saint Thomas:

(*b.*) Notices of the vestry meetings of the parish of Saint Thomas for the election shall be given by the summoning officers of that parish to the ratepayers of the parish of Binsey as if they were ratepayers of the parish of Saint Thomas.

Provisions in case of the addition to the Oxford district of a part of North Hincksey parish.

11. If and when any part of the parish of North Hincksey is added to the Oxford district, then the member of the local board now elected for the adjoining parish of Saint Aldate shall thenceforth be elected for that parish and for that part of the parish of North Hincksey as if they were one parish; and for the purposes of the election the parish of Saint Aldate and that part of the parish of North Hincksey shall be deemed to be one parish; for the election the ratepayers of that part of the parish of North Hincksey shall form part of the vestry of the parish of Saint Aldate.

Overseers of Cowley and Binsey and North Hincksey to produce rate books.

Penalty in default.

12. For the purposes of this section, and with respect to each of the parishes of Cowley and Binsey and North Hincksey respectively, the overseers of the respective parish shall, when the Oxford local board by notice in writing to them so require, produce to such persons as the local board specify in the notice, and permit them to inspect and transcribe, the rate books for the then current and then last rates for the relief of the poor of the respective parish, and shall afford to those persons all proper and sufficient facilities in that behalf; and if whenever (*sic*) any overseer of any of those parishes in any way offends against this provision, then every person so offending shall for every such offence forfeit and pay to the Oxford local board any sum not exceeding five pounds.

Provisional Order made applicable to

13. The Provisional Order relating to the Oxford district set forth in the schedule to this Act annexed shall, in accordance with the provisions of this section, apply to the Oxford district and

ie local board for the Oxford district as that district and that local board respectively are from me to time constituted.

the Oxford district, &c.

14. The Oxford local board, within fourteen days after their yearly election, shall appoint for ie current year a committee of their own number to be the assessment committee, and shall etermine their number, quorum, and procedure, and shall, when requisite, supply vacancies in eir number:

Assessment Committee to be appointed by the local board.

(a.) All objections to the general district rate shall be heard and considered by the assessment committee:

(b.) And if and when the assessment to the rate for the relief of the poor of all or any part of the property assessable to the general district rate to be made and levied by the local board is in the judgment of the local board an unfit criterion for making a general district rate, or there is no such assessment, the net annual value of the property shall be ascertained by the assessment committee.

The Mayor and Recorder of the City and the Vice-Chancellor of the University of Oxford, to be a Court of Appeal for objections to assessments.

15. The mayor and recorder of the city of Oxford, and the vice-chancellor of the university Oxford, instead of the court of quarter sessions, shall be the court of appeal for all purposes appeals from assessments and rates of the local board:

(a.) Provided that during the absence of the recorder the deputy recorder, and during the absence of the vice-chancellor one of the pro vice-chancellors, to be appointed by the vice-chancellor by writing under his hand delivered to the clerk to the local board, and during the absence of the mayor the deputy mayor of the city, shall act in the place of and shall accordingly represent the recorder, or, as the case shall be, the vice-chancellor or the mayor.

Persons dissatisfied with assessment to local board, who shall refer the same to Assessment Committee.

16. When any person liable to be rated to the general district rate levied by the Oxford cal board is dissatisfied with the amount at which he or any other person is assessed, may give to the local board notice in that behalf, and the matter shall be referred by e board to the assessment committee, and shall be heard and considered by them, and the jector and his agent, if any, shall be entitled to appear and be heard before the assessment mmittee:

Appeal against the assessment committee's decision.

(a.) If within twenty-one days next after the delivery of the notice to the local board the assessment committee do not alter the assessment so as to remove the objector's ground of complaint, he may give to the local board and also to the court of appeal notice of his intention to appeal against the decision of the assessment committee:

(b.) At a time and place appointed by the court of appeal, which, if not the time for holding the quarter sessions for the city, shall be not less than fourteen days after the delivery of that notice, the court shall meet and hear the appeal, giving to the local board and the appellant at least seven clear days notice of the time and place of meeting:

Notices how to be given.

(c.) The notices shall be in writing, and the first notice to the local board shall state the objections and the grounds thereof, and the second notice to the local board, and the notice to the court of appeal, shall state such of the objections as are not removed and the grounds thereof, and shall not state any objection or ground of objection which was not stated in the first notice:

Notices how to be served.

(d.) The notices shall be served on the local board and the court of appeal respectively by being delivered for them respectively to the clerk to the local board, and the notices to the appellant shall be served on him personally, or by leaving the same at his place of abode or business.

Proceedings of Court of Appeal.

17. The court of appeal may and shall hear and consider the appeal, and, as they think fit, ay either confirm or quash or alter the decision of the assessment committee, and may determine the costs of the appeal, and by whom the same shall be paid, and may make such orders in e premises as they think fit; and every order so made by them shall be binding on all parties erested, and, where requisite, the assessment shall be altered accordingly.

As to the time of holding the Court of Appeal and conducting proceedings.

18. The court of appeal shall meet at the times for holding the quarter sessions for the city Oxford, or at such other times, and at such places, and on such notice, and shall conduct their oceedings in such manner, as they think best adapted for carrying into effect these provisions, d shall have full jurisdiction, power, and authority for the purposes of their appointment as if ey were a court of quarter sessions.

Expenses of Assessment Committee and of Court of Appeal.

19. The expenses of the assessment committee and of the court of appeal shall be paid the Oxford local board, and the clerk to the said local board shall be the clerk to the court appeal.

Who to be rated to the general district rates of the Oxford local board.

20. With respect to the general district rate from time to time made and levied by the Oxford al board:

(a.) All rateable property belonging to the chancellor, masters, and scholars of the university shall be rated in the name of the vice-chancellor of the university:

Secs. 20–24.

(*b.*) All rateable property belonging to the mayor, aldermen, and citizens of Oxford shall be rated in the name of the mayor of the city:

(*c.*) All rateable property belonging to the dean and chapter of Christ Church and to the other colleges and the halls in the university shall respectively be rated in the names of the treasurer of Christ Church, and of the senior bursar or treasurer of the several other colleges, and of the principals of the several halls respectively:

(*d.*) All rateable property belonging to feoffees or trustees of charities or public buildings shall respectively be rated in the names of the feoffees and trustees respectively.

Rates on the University and Colleges and Halls of Oxford to be collected and paid by the Vice-Chancellor.

Power to determine that arrangement.

21. The general district rate from time to time made by the Oxford local board, and payable by the university and Christ Church and the other colleges and the halls respectively, shall be collected and paid to the local board by the vice-chancellor; provided that this arrangement may at any time be determined by notice in writing in that behalf given by the vice-chancellor to the local board, or by the local board to the vice-chancellor, and if notice be so given, and be not withdrawn within twelve months after the service thereof, then from and after the expiration of that period the general district rate payable by the university and Christ Church, and the several other colleges and the halls respectively, shall be collected by the local board.

The Public Library in the City of Oxford vested in the local board.

22. From and after the expiration of three months next after the passing of this Act the custody, care, and management of the public library in the city of Oxford shall be vested in the local board, in accordance with the provisions in that behalf of the Acts from time to time in force with respect to public libraries managed by local boards for the purpose of their districts; and all the expenses of and incident to the custody, care, and management thereof, and the adding to and maintaining of the same, shall from time to time be paid by the local board out of moneys raised by the general district rate as if "The Public Libraries Act, 1855," had been duly adopted for the whole of the Oxford district as from time to time constituted, and the public library had been established thereunder; and if after discharging all debts and liabilities, if any, relating thereto, there be any balance of the moneys, before the expiration of the three months, assessed for the purposes thereof, the balance shall be paid to the local board, and be carried to their general district fund; provided that the amount expended by the local board in any one year for the purposes of the public library shall not exceed the amount which might be raised by them by a rate for the purpose made under that Act.

Limit of the amount to be raised for the public library.

Act incorporated with 21 & 22 Vict. c. 98.

23. This Act shall be deemed to be incorporated with the Local Government Act, 1858 [1], and shall be as if this Act and the said Local Government Act were one Act.

Short title.

24. In citing this Act in any other Act of Parliament, or in any proceeding, instrument, or document whatever, it shall be sufficient to use the words and figures "The Local Government Supplemental Act, 1865 (No. 5)."

SCHEDULE.

SCHEDULE of Provisional Orders referred to in the preceding Act.

OXFORD.

Provisional Order repealing and altering parts of local Acts in force within the district of the Oxford local board.

Schedule.

Whereas the Local Government Act, 1858, has been duly adopted within the university and city of Oxford, the suburbs thereof, and the adjoining parish of St. Clement, by the Oxford commissioners mentioned and referred to in the eighty-second section of the Local Government Act aforesaid; and the local board for the Oxford district have, in pursuance of the provisions of section seventy-seven of the Local Government Act, 1858, presented a petition to me, as one of Her Majesty's principal Secretaries of State, praying that the provisions of the Public Health Act, 1848, and the Local Government Act, 1858, respectively, with respect to the paving, pitching, repairing, lighting, and cleansing of the several public streets, lanes, ways, passages, and places within the district, should come into operation therein, and that the powers of the commissioners with respect to Magdalen Bridge and the Mileways, and with respect to gasworks and gas supply, should be transferred to and vested in the said petitioners; that further provision should be made with respect to the election of members of the local board; and that provision should be made for rendering the property in the university and the colleges and halls thereof liable to the general district rates of such local board.

And whereas for such purposes the said petitioners prayed that such of the provisions of the Oxford local Acts of 1771 and 1781 and 1812 and 1815 and 1848 respectively as do not relate to the markets and to the gasworks and the gas supply respectively (which provisions do not confer powers or privileges upon corporations, companies, undertakers, or individuals for their own pecuniary benefit) should be in part repealed and in part amended, and other provisions enacted

[1] Now repealed by the Public Health Act, 1875, section 343, *ante*, p. 224.

Schedule.

and an order for the purpose under section seventy-seven of the Local Government Act should accordingly be made.

And whereas, in pursuance of the said Local Government Act, inquiry has been directed in the said district in respect of the several matters mentioned in the said petition, and Mr. Robert Rawlinson, the inspector appointed for the purpose, has reported to me thereon.

And whereas it appears expedient to issue a Provisional Order in relation to the said matters, but no such Order can be valid without confirmation by Parliament.

Now, therefore, in pursuance of the powers vested in me by the said Local Government Act, I, as one of Her Majesty's principal Secretaries of State, do, by this Provisional Order under my hand, direct that from and after the passing of any Act of Parliament confirming this Order,—

1. The following provisions shall have effect on and after the third Wednesday next after the day of the passing of the Act confirming this Order.
2. The provisions of the Local Government Act, 1858, relating to the several purposes included in the five several local Acts of the eleventh year of George the Third, chapter nineteen, and the twenty-first year of George the Third, chapter forty-seven, and the fifty-second year of George the Third, chapter seventy-two, and the session of the fifth and sixth years of William the Fourth, chapter sixty-nine, and the session of the eleventh and twelfth years of Her present Majesty, chapter thirty-seven, which are respectively in force in the Oxford district (in this Order called the five local Acts), with relation to any of the purposes of the Public Health Act, 1848, or the Local Government Act, 1858, which have not already come into operation within the district, shall (except only as in this Order is otherwise provided) come into and be in operation in all places within the district.
3. Provided that this Order shall be subject to the several powers and provisions of the five local Acts respectively, so far as the same relate to the tolls to be demanded and taken in respect of Magdalen Bridge and the Mileways, and to the mortgages of the tolls and the rights and remedies of the mortgagees thereof, and to the markets respectively.
4. The five local Acts respectively are by this Order repealed, save only the sections and provisions thereof following, so far as the same respectively are now in force, that is to say, the sections and provisions of the five local Acts respectively relating to Magdalen Bridge and the Mileways, and the tolls to be demanded and taken in respect of the same, and the mortgages of the tolls, and the rights and remedies of the mortgagees thereof, and relating to the markets, and relating to gasworks and the supply of gas, and relating to all matters incidental to those matters respectively.
5. The sections and provisions of the five local Acts respectively which are so saved (except the sections and provisions thereof relating to the markets) shall, so far as the same respectively are now in force, apply not to the commissioners but to the local board instead of the commissioners, and shall be read and have effect as if wherever in those sections respectively the commissioners are named or referred to the local board instead of the commissioners were named or referred to.
6. All sewers, drains, and other works respectively made by and vested in the commissioners, and all lands and interests in lands respectively acquired by and vested in the commissioners for the widening Magdalen Bridge and its approaches and the streets, and all rights incidental to the same respectively, and the benefit and burden of all contracts entered into by or with the commissioners with respect to the lighting of streets and other public places, and the supplying of paving stone and materials for paving and repairing streets and other public places, and the cartage thereof, and all rates duly assessed under the provisions of the said five local Acts or any of them, and not collected at the time that this Order shall begin to have effect as first hereinbefore mentioned, and all other property and effects, rights, and liabilities whatsoever of the commissioners under the five local Acts respectively with respect to any of the purposes thereof other than the purposes thereof relating to the markets, are by this Order transferred to and vested in the local board.
7. All the deeds, records, minutes, accounts, account books, minute books, and other documents, papers, and writings of the commissioners with respect to any of the purposes of the five local Acts respectively, other than the purposes thereof with respect to the markets, shall be the property of the local board, and shall forthwith be delivered to them by the commissioners accordingly, the local board giving to the commissioners, if so required by them, a schedule of and a receipt in writing for the same; but the same shall at all seasonable times be open to the inspection and transcription of the commissioners and their agents in that behalf, and, if and when requisite for enforcing any claim or demand by or resisting any claim or demand against the commissioners, shall, at their request and expense, be produced in any court of law or equity or elsewhere.
8. Wherever in the Act of the fifty-eighth year of George the Third, chapter sixty-four, intituled "An Act for lighting with gas the University and City of Oxford and the suburbs of the same city," the commissioners are named or referred to, the local board instead of the commissioners shall be deemed to be named or referred to, and that Act shall be read and have effect accordingly.
9. For the purposes of all Acts, from time to time in force with respect to the removal or prevention of nuisances, and also with respect to the well ordering of common lodging houses, the local board instead of the commissioners shall be the local authority with respect to the execution of those Acts within the district.
10. Notwithstanding the repeal of parts of the five local Acts respectively, and the transfer by this Order to the local board of parts of the property, powers, rights, and liabilities of

Schedule.

the commissioners, and except only as is by this Order otherwise expressly provided, everything before the coming into effect of this Order done, suffered, and confirmed respectively under or by the five local Acts respectively shall be as valid as if the repeal and transfer had not happened, and the repeal and transfer and the operation of this Order shall accordingly be subject and without prejudice to everthing so done, suffered, and confirmed respectively, and to all rights, liabilities, claims, and demands, both present and future, which, if the repeal and transfer had not happened, would be incident to or consequent on everything so done, suffered, and confirmed respectively; and with respect to everything so done, suffered, and confirmed respectively, and to all those rights, liabilities, claims, and demands, the local board shall to all intents represent the commissioners.

11. The accounts of the commissioners with respect to the several purposes of the five local Acts respectively, other than the purposes thereof with respect to the markets, shall forthwith be made up and stated and audited; and if the accounts show a balance in the hands of the commissioners, then the amount of the balance shall thereupon be paid by them to the local board, or if the accounts show that the debts and liabilities of the commissioners are not fully paid or discharged, then the lawful debts and liabilities of the commissioners remaining unpaid or undischarged shall be paid or discharged by the local board.

12. Provided that this Order shall not give to the mortgagees of the tolls to be demanded and taken in respect of Magdalen Bridge and the Mileways any security, right, or remedy in excess of the securities, rights, and remedies which they would have if this Order were not confirmed, and shall not relieve the parishes of Cowley, Iffley, and Saint Clement, or either of them, nor any person or persons, body or bodies politic or corporate, from any liability with respect to the repair of the Mileways or Magdalen Bridge, and shall not impose on the local board any liability with respect to the repair of Magdalen Bridge and the Mileways to which the commissioners would not be subject if this Order were not confirmed.

13. If any rates duly assessed under the provisions of the said five local Acts shall not have been collected at the time that this Order shall begin and have effect, as first hereinbefore mentioned, the local board shall have all the powers for the recovery of the said uncollected rates which were heretofore possessed by the said commissioners, and the moneys which shall be collected or recovered shall be applied by the local board for their general purposes as if they had been part of a general district rate.

14. The accounts of the commissioners to be made up, stated, and audited, as by this Order provided, and the accounts of the local board shall be audited by the auditor of the accounts of the guardians of the poor within the city of Oxford, under the Oxford Poor Rate Act, 1854, and there shall be paid to him by the commissioners, and from time to time by the local board respectively, the like remuneration for his services in so auditing their respective accounts as is from time to time paid to him for his services in auditing the accounts of the guardians.

15. The local board from time to time, if and when they think fit, may, within the district, cleanse any parts of the rivers Cherwell and Thames or Isis respectively, and of the streams running into those rivers respectively, and may prevent or remove any encroachments on any of those rivers and streams respectively, and may convert any parts of any of those streams into which any sewer or drain is from time to time emptied into a covered sewer, and may do and execute all works and things which the local board shall think requisite for or incidental to any of those purposes.

16. Where the local board shall so convert any part of any of those streams into a covered sewer, the arch or other covering over the same, and all works executed by them for the purpose of covering over the same and incidental thereto, shall be by this Order vested in the local board.

17. Except as regards any sewer or drain which now is lawfully emptied into any of those rivers and streams before mentioned, the local board may prevent the emptying of any sewer or drain into any of those rivers and streams, and may do and execute all works and things which they shall think requisite in such case.

18. Where any present or future sewer of the local board is within one hundred feet from any sewer or drain which now is lawfully emptied into any of those rivers and streams respectively, the local board may divert the sewer or drain so that it shall thenceforth be emptied into the sewer instead of into such river or stream, and may do and execute all works and things which they think requisite in such case; but the local board shall not so divert any sewer or drain without providing for it a proper and sufficient outfall into their own sewer.

19. All properties whatsoever within the district which are or hereafter may be assessable to any rate for the relief of the poor shall be assessable to the general district rates to be made and levied by the local board, in the same manner in all respects as is provided by section fifty-five of the "Local Government Act, 1858," and all exemptions from rates heretofore allowed under any or either of the five local Acts shall henceforth cease.

20. The several powers by this Order conferred on the local board shall be in addition to and not in any respect restrictive of their other powers.

21. Except only as is by this Order expressly provided, nothing in this Order shall take away lessen, prejudice, alter, or affect any privilege or right whatsoever of the university, or of any of the magistrates, officers, ministers, or servants thereunto belonging, or any privilege or right whatsoever of the city, or of any of the magistrates or servants thereunto belonging, or any exercise of any such respective privilege or right.

Given under my hand this thirty first day of May, one thousand eight hundred and sixty-five. (Signed) G. GREY.

Schedule.

HINCKSEY (OXFORD DISTRICT).

Provisional Order for altering the Boundaries of the District of Oxford, under the Local Government Act, 1858.

Whereas the Local Government Act, 1858, has been duly adopted within the nniversity and city of Oxford, the suburbs thereof, and the adjoining parish of Saint Clement, by the Oxford commissioners mentioned in the eighty-second section of the said Local Government Act, and acting as local board under its provisions: And whereas a petition has been duly presented to me, as one of Her Majesty's principal Secretaries of State, under the provisions of the seventy-seventh section of such Act, from the said commissioners acting as such board, praying that their district might be extended by including therein a certain detached portion of the parish of North Hincksey in the connty of Berks as described in their petition.

And whereas, in pursuance of the said Local Government Act, inquiry has been directed and duly held in respect of the several matters mentioned in the said petition, and report has been made to me thereon by Robert Rawlinson, Esquire, the inspector appointed for the purpose.

And whereas it appears expedient to issue a Provisional Order in relation to the said matters, but no such Order can be valid without confirmation by Parliament.

Now, therefore, in pursuance of the powers vested in me by the said Local Government Act, I, as one of Her Majesty's principal Secretaries of State, do, by this Provisional Order under my hand, direct,—

That from and after the passing of any Act of Parliament confirming this Order,—

1. The district of Oxford aforesaid shall be extended by including within its boundaries all that detached portion of the parish of North Hincksey, in the county of Berks, which adjoins the liberty of Grandpont, in the parish of Saint Aldate in the said county, and is bounded by the Shirelake ditch, and including the same on the north, Grandpont, in the parish of Saint Aldate, on the east, the northern side of the towing-path adjoining the river Isis on the south (excluding such towing-path), and the river Isis on the south-west and west, including the said river, and which said portion of the parish of North Hincksey is shown on the map accompanying such petition, and is coloured yellow thereon.
2. The local board for the time being for the district of Oxford shall be the local board for the district as altered by this Order and the Act of Parliament confirming the same.

Given nnder my hand this twentieth day of May, in the year one thousand eight hundred and sixty-five.

(Signed) G. GREY.

COWLEY (OXFORD DISTRICT).

Provisional Order for altering the Boundaries of the District of Oxford, under the Local Government Act, 1858.

Whereas the Local Government Act, 1858, has been duly adopted within the university and city of Oxford, the suburbs thereof, and the adjoining parish of Saint Clement, by the Oxford commissioners mentioned in the eighty-second section of the said Local Government Act, and acting as local board under its provisions: And whereas a petition has been duly presented to me, as one of Her Majesty's principal Secretaries of State, under the provisions of the seventy-seventh section of the Local Government Act, 1858, from owners and ratepayers of the parish of Cowley, comprising the townships of Church Cowley and Temple Cowley, partly in the city and borough of Oxford and partly in the county of Oxford, praying that the district of the said Oxford local board might be extended by including therein certain pieces or parcels of land in the said parish of Cowley as described in the said petition, and delineated on the map accompanying the same, the boundary thereof being coloured brown thereon.

And whereas, in pursuance of the said Local Government Act, inquiry has been directed and duly held in respect of the several matters mentioned in the said petition, and report has been made to me thereon by Robert Rawlinson, Esquire, the inspector appointed for the purpose.

And whereas it appears expedient to issue a Provisional Order in relation to the said matters, but no such Order can be valid without confirmation by Parliament.

Now, therefore, in pursuance of the powers vested in me by the said Local Government Act, I, as one of Her Majesty's principal Secretaries of State, do, by this Provisional Order under my hand, direct,—

That from and after the passing of any Act of Parliament confirming this Order,—

1. The district of Oxford aforesaid shall be extended by including within its boundaries the two meadows numbered 1 and 2 on the map annexed to the award dated the twenty-eighth day of June, one thousand eight hundred and fifty-three of the valuer acting in the inclosnre of the open fields of Cowley, the Marsh, Bullingdon Green, and Elder Stubbs, situate in the parishes of Cowley, Iffley, and Saint Clement, in the county of Oxford, and which lie on the west side of Magdalen Bridge and between the branches of the river Cherwell there; and also all and so much of the said parish of Cowley, including Church Cowley and Temple Cowley, as lies between and is bonnded on the north, north-west, and west by the river Cherwell and the stream leading out of the same to the private road bounding the allotment numbered 3 on the said award, and bounded on the south by the said private road and on the east by the Henley Mileway; and also so much of the parish of Cowley as lies between and is bounded by the Henley Mileway on

Schedule.

the west, the Cowley Mileway on the east and north-east, and the road called Magdalen Road on the south or south-east; also the allotment numbered 40 on the said award, lying on the south side of the said Magdalen Road; also so much of the parish of Cowley as lies north or north-west of the Divinity Footway, and east or north-east of the Cowley Mileway; also that part of the said Henley Mileway which extends from the Saint Clement's Turnpike to the first part of the same Mileway marked as belonging to Iffley, and tinted yellow on the map annexed to the said award; also the whole of the Magdalen Road and so much of the Cowley Mileway as extends from the Divinity Footway to Saint Clement's Turnpike, and is not in the parish of Saint Clement; and also all other such parts, if any, of the parish of Cowley as are not hereinbefore described and are in the borough of Oxford.

2. The local board for the time being for the district of Oxford shall be the local board for the district as altered by this Order and the Act of Parliament confirming the same.

Given under my hand this twentieth day of May, in the year one thousand eight hundred and sixty-five.

(Signed) G. Grey.

MISCELLANEOUS STATUTES.

1 VICT. c. 83.

An Act to compel Clerks of the Peace for Counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament (1). [17*th July*, 1837.]

Secs. 1—3.

[Recites that the Houses of Parliament are in the habit of requiring certain maps, &c., to be deposited with certain officials, and proceeds :—] . . . . . .

Clerks of the peace, &c., to receive the documents herein mentioned, and retain them for the purposes directed by the Standing Orders of the Houses of Parliament.

1. Whenever either of the Houses of Parliament shall by its Standing Orders, already made or hereafter to be made, require that any such maps, plans, sections, books, or writings, or extracts or copies of the same, or any of them, shall be deposited as aforesaid, such maps, plans, sections, books, writings, copies, and extracts shall be received by and shall remain with the clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, postmasters, and other persons with whom the same shall be directed by such Standing Orders to be deposited, and they are hereby respectively directed to receive and to retain the custody of all such documents and writings so directed to be deposited with them respectively, in the manner, and for the purposes, and under the rules and regulations concerning the same respectively directed by such Standing Orders, and shall make such memorials and endorsements on and give such acknowledgments and receipts in respect of the same respectively as shall be thereby directed.

Clerks of the peace, &c., to permit such documents to be inspected or copied by persons interested.

2. All persons interested shall have liberty to, and the said clerks of the peace, sheriff clerks, parish clerks, schoolmasters, town clerks, and postmasters, and every of them, are and is hereby required, at all reasonable hours of the day, to permit all persons interested to inspect during a reasonable time and make extracts from or copies of the said maps, plans, sections, books, writings, extracts and copies of or from the same, so deposited with them respectively, on payment by each person to the clerk of the peace, sheriff clerk, clerk of the parish, schoolmaster, town clerk, or postmaster having the custody of any such map, plan, section, book, writing, extract, or copy, one shilling for every such inspection, and the further sum of one shilling for every hour during which such inspection shall continue after the first hour, and after the rate of sixpence for every one hundred words copied therefrom.

Clerks of the peace, &c., for every omission to comply with the provisions of this Act, liable to the penalty of £5 to be recovered in a summary way.

3. In case any clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall in any matter or thing refuse or neglect to comply with any of the provisions hereinbefore contained, every clerk of the peace, sheriff clerk, parish clerk, schoolmaster, town clerk, postmaster, or other person shall for every such offence forfeit and pay any sum not exceeding the sum of five pounds; and every such penalty shall, upon proof of the offence before any justice of the peace for the county within which such offence shall be committed, or by the confession of the party offending, or by the oath of any credible witness, be levied and recovered, together with the costs of the proceedings for the recovery thereof, by distress and sale of the goods and effects of the party offending, by warrant under the hand of such justice, which warrant such justice is hereby empowered to grant, and shall be paid to the person or persons making such complaint; and it shall be lawful for any such justice of the peace to whom any complaint shall be made of any offence committed against this Act to summon the party complained of before him, and on such summons to hear and determine the matter of such complaint in a summary way, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing or in print shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good, valid, and effectual to all intents and purposes as if an information in writing had been exhibited.

(1) The Standing Orders of the Houses of Parliament will be found, *post*.

QUARANTINE ACT, 1825.

6 GEO. IV, c. 78 (1).

An Act to repeal the several Laws relating to the Performance of Quarantine, and to make other Provisions in lieu thereof. [27*th June*, 1825.]

Secs. 1, 2.

Whereas it is expedient to repeal the several laws relating to the performance of quarantine, and to make other provisions in lieu thereof (2).

What vessels shall be liable to quarantine.

2. And be it enacted, that from and after the first day of June one thousand eight hundred and twenty-five, all vessels, as well His Majesty's ships of war as others, coming from or having touched at any place from whence His Majesty, his heirs or successors, by and with the advice of his or their Privy Council, shall have adjudged and declared it probable that the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects may be brought, and all vessels and boats receiving any person, goods, wares, and merchandise, packets, packages, baggage, wearing apparel, books, letters, or any other article whatsoever, from or out of any vessel so coming from or having touched at such infected place as aforesaid, whether such persons, goods, wares, and merchandise, packets, packages, baggage, wearing apparel, books, letters, or other articles, shall have come or been brought in such vessels, or such persons shall have gone, or articles have been put on board the same, either before or after the arrival of such vessels at any port or place in the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, and whether such vessels were or were not bound to any port or place in the United Kingdom, or the islands aforesaid, and all persons, goods, wares, and merchandise, packets, packages, baggage, wearing apparel, books, letters, or any other article whatsoever on board of any vessels so coming from or having touched at such infected place as aforesaid, or on board of any such receiving vessels or boats as aforesaid, shall be and be considered to be liable to quarantine within the meaning of this Act, and of any order or orders which shall be made by His Majesty, his heirs and successors, by and with the advice of his or their Privy Council, concerning quarantine and the prevention of infection, from the time of the departure of such vessels from such infected place as aforesaid, or from the time when such persons, goods, wares, merchandise, packets, packages, baggage, wearing apparel, books, letters, or other articles shall have been received on board respectively: and all such vessels and boats as aforesaid, and all persons (as well pilots as others), goods, wares, and merchandise, and all other articles as aforesaid, whether coming or brought in such vessels or boats from such infected place as aforesaid, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, and all persons, goods, wares and merchandise, and other articles as aforesaid, on board such receiving vessel or boat as aforesaid, shall, upon their arrival at any such port or place, be obliged to perform quarantine in such place or places, for such time, and in such manner as shall from time to time be directed by His Majesty, his heirs or successors, by his or their order or orders in council, notified by proclamation, or published in the *London Gazette;* and that until such vessels and boats, persons, goods, wares, and merchandise, and other articles as aforesaid, shall have respectively performed, and shall be duly discharged from quarantine, no such person, goods, wares, or merchandise, or other articles as aforesaid, or any of them, shall, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, come or be brought on shore, or go and be put on board any other vessel or boat, in order to come or be brought on shore in any such port or place, although such vessels so coming from such infected place as aforesaid may not be bound to any port or place in the United Kingdom, or the islands aforesaid, unless in such manner and in such cases, and by such licence as shall be directed or permitted by such order or orders made by His Majesty, his heirs or successors, in council, as aforesaid; and all such vessels and boats, whether coming from such infected place as aforesaid, or being otherwise liable to quarantine as aforesaid, and all persons (as well pilots as others), goods, wares, and merchandise, and other articles as aforesaid, whether coming or brought in such vessels or boats, or going or being put on board the same, either before or after the arrival of such vessels or boats at any port or place in the United Kingdom, or the islands aforesaid, and although such vessels or boats shall not be bound to any port or place in the United Kingdom, or the islands aforesaid; and all commanders, masters, or other persons, having the charge or command of any such vessels or boats, whether coming from any infected place, or being otherwise liable to quar-

(1) See 29 & 30 Vict. c. 90. s. 52, re-enacted, *ante*, p. 257.
(2) Section 1, repealed by Statute Law Revision Act, 1873.

antine as aforesaid, shall be subject to all provisions, rules, regulations, and restrictions contained in this Act, or in any order or orders which shall be made by His Majesty, his heirs and successors, in council, as aforesaid, concerning quarantine and the prevention of infection, and to all the pains, penalties, forfeitures, and punishments contained in this Act, for any breach or disobedience thereof, or of any order or orders of His Majesty in council made under the authority thereof.

Power for Privy Council to order vessels coming from America or the West Indies, when the yellow fever, &c., prevails there, to go to certain places without being liable to quarantine.

3. And be it further enacted, that it shall and may be lawful for His Majesty, his heirs and successors, by his or their order in council, or for the lords or others of his or their Privy Council, or any two or more of them, by their order from time to time, as often as they may see reason to apprehend that the yellow fever or other highly infectious distemper prevails on the continent of America, or in the West Indies, to require that every vessel coming from or having touched at any port or place on the continent of America or in the West Indies, shall come to an anchor at certain places to be appointed from time to time by the commissioners of His Majesty's customs (who are hereby authorised to make such appointment), for the purpose of having the state of health of the crew of such vessel ascertained before such vessel shall be permitted to enter the port whereto she shall be bound, or any other port of the United Kingdom; but that such vessel shall not be deemed liable to quarantine unless it shall be afterwards specially ordered under that restraint.

Goods and vessels specified in any Order of Council subject to quarantine, as also all vessels arriving from any port under suspicious circumstances as to infection.

5. And whereas certain sorts of goods and merchandise are more especially liable to retain infection, and may be brought from places infected into other countries, and from thence imported into the United Kingdom, or the islands aforesaid: Be it enacted, that all such goods and merchandise as shall be particularly specified for that purpose in any order or orders made by His Majesty, his heirs or successors, in council, concerning quarantine and the prevention of infection as aforesaid, which shall be brought or imported into any port or place in the United Kingdom, or the islands aforesaid, from any foreign country or place, in any vessel whatever, and the vessels in which the same shall be brought, and also all vessels which shall arrive from any port or place whatever, under any alarming or suspicious circumstances as to infection, shall be subject and liable to such regulations and restrictions as shall be made by such order or orders of His Majesty, his heirs or successors, in council as aforesaid, respecting the same.

The Privy Council may make such order as they shall think necessary upon emergencies.

6. And be it further enacted, that it shall and may be lawful for the lords and others of His Majesty's Privy Council, or any two or more of them, to make such order as they shall see necessary and expedient upon any unforeseen emergency, or in any particular case or cases, with respect to any vessel arriving and having any infectious disease or distemper on board, or on board of which any infectious disease or distemper may have appeared in the course of the voyage, or arriving under any other alarming or suspicious circumstances as to infection, although such vessels shall not have come from any place from which His Majesty, his heirs or successors, by and with the advice of his Privy Council, may have adjudged and declared it probable that the plague or any such infectious disease or distemper may be brought, and also with respect to the persons, goods, wares, and merchandise, and other articles as aforesaid on board the same; and in case of any infectious disease or distemper appearing or breaking out in the United Kingdom, or the islands aforesaid, to make such orders and give such direction, in order to cut off all communication between any persons infected with any such disease or distemper, and the rest of His Majesty's subjects, as shall appear to the said lords or others of His Majesty's Privy Council, or any two or more of them, to be necessary and expedient for that purpose, and likewise to make such orders as they shall see fit, for shortening the time of quarantine to be performed by particular vessels or particular persons, goods, wares, merchandise, or any other articles, or for absolutely or conditionally releasing them or any of them from quarantine; and all such orders so made by the lords or others of the Privy Council, or any two or more of them as aforesaid, shall be as good, valid, and effectual, to all intents and purposes, as well with respect to the commander, master, or other person having the charge of any vessel, and all other persons on board the same, as with respect to any other persons having any intercourse or communication with them, and to the penalties, forfeitures, and punishments to which they may respectively become liable, as any order or orders made by His Majesty, his heirs or successors, by and with the advice of his or their Privy Council, concerning quarantine, notified by proclamation or published in the *London Gazette*.

Regulations for vessels in which infection shall appear within or without the Streights of Gibraltar.

7. And be it further enacted, that if the plague, or such other infectious disease or distemper as aforesaid, shall appear on board any vessel within or without the Streights of Gibraltar, then the commander, master, or other person having the charge or command thereof, shall immediately proceed to such place as His Majesty, his heirs or successors, by and with the advice of his or their Privy Council, shall from time to time direct and appoint; where being arrived, he shall make known his case to some officer of the customs there, who shall with all possible speed send

Secs. 7—9.

intelligence thereof to the commissioners of the customs in the port of London [1], to the end that such precautions may be used to prevent the spreading of the infection, as the case shall require; and the said vessel shall there remain until directions shall be given thereto by the lords or others of His Majesty's Privy Council, or any two or more of them; nor shall any of the crew or passengers on board thereof go on shore: and such master and every other person on board such vessel shall obey such directions as he shall receive from the lords and others of His Majesty's Privy Council, or any two or more of them as aforesaid; and the said commander, master, or any other person on board such vessel as aforesaid, who shall not act conformably to the provisions and regulations herein directed, or shall act in disobedience to such directions as shall be received on board such vessel from the lords or others of the Privy Council, or any two or more of them as aforesaid, shall forfeit the sum of one hundred pounds [2].

Masters of vessels liable to quarantine to make signals on meeting other vessels at sea, or being within two leagues of the United Kingdom, or Guernsey, &c., on penalty of £100.

8. And be it further enacted, that every commander, master, or other person having the charge of any vessel liable to the performance of quarantine, shall be and is hereby required, at all times, when such vessel shall meet with any other vessel at sea, or shall be within two leagues of the coast of the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, to hoist a signal to denote that his vessel is liable to the performance of quarantine, which signal shall in the day-time, if the said vessel shall have a clean bill of health, a large yellow flag, of six breadths of bunting, at the maintop mast-head, and if such vessel shall not have a clean bill of health, then a like yellow flag, with a circular mark or ball, entirely black in the middle thereof, whose diameter shall be equal to two breadths of bunting; and in the night-time the signal shall in both cases be a large signal lanthorn with a light therein (such as is commonly used on board His Majesty's ships of war), at the same mast-head; and such commander, master, or other person shall keep such signals respectively, as the case shall be, hoisted during such time as the said vessel shall continue within sight of such other vessel, or within two leagues of the said coasts or islands, and while so in sight, or within such distance, until such vessel so liable to quarantine as aforesaid shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure whereof such commander, master, or other person having charge of such ship or vessel so liable to the performance of quarantine shall forfeit and pay for every such offence the sum of one hundred pounds [2].

Masters of vessels to hoist certain signals when plague or infectious disease on board, on penalty of £100.

9. And be it further enacted, that every commander, master, or other person having the charge of any vessel on board whereof the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects shall actually be, shall be and is hereby required at all times when such vessel shall meet with any other vessel at sea, or shall be within two leagues of the coast of the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, to hoist a signal to denote that his vessel has the plague or other infectious disease or distemper highly dangerous to the health of His Majesty's subjects actually on board thereof, which signal shall be in the day-time a flag of yellow and black, borne quarterly, of eight breadths of bunting, at the maintop mast-head; and in the night-time, the signal shall be two large signal lanthorns, such as are commonly used on board of His Majesty's ships of war, one over the other, at the same mast-head; and such commander, master, or other person shall keep such signal hoisted during such time as the said vessel so having the plague or such other infectious disease or distemper as aforesaid on board thereof, shall continue within sight of such other vessel, or within two leagues of the coasts or islands aforesaid, while so in sight or within

(1) See the Public Health Act, 1875, s. 291, *ante*, p. 203.

(2) By the Customs Laws Consolidation Act, 1876, 39 & 40 Vict. c. 36, s. 234, it is provided that "it shall be lawful for Her Majesty in Council, or any two of the lords of Her Majesty's Privy Council, from time to time, by her or their order, to require that no person on board any ship coming to any port in the United Kingdom, &c., from or having touched at any place out of the United Kingdom abroad where they have reason to apprehend that yellow fever or other highly infectious distemper prevails, shall quit such vessel before the state of the persons on board shall have been ascertained on examination by the proper officer of customs at such place, &c., as may from time to time be appointed by the Commissioners of Customs for such purpose, and before permission to land shall have been given by such officer, whether or not it shall on or after such examination be found expedient to order such vessel under the restraint of quarantine, and any person so quitting such vessel shall forfeit a sum not exceeding one hundred pounds; and if the master, pilot, or person in charge of such ship shall not, on arrival at such place, hoist and continue such signal as shall be directed by such order until the proper officer shall have given permission to haul down the same, he shall forfeit a like penalty; and such penalties, &c., and any penalty incurred under 6 Geo. IV. c. 78, shall be subject to reduction to any sum not exceeding one hundred pounds, and may be recovered by information and summons before a stipendiary magistrate or two justices, who are hereby authorised to reduce the same accordingly and to commit the offender to prison in default of payment of any penalty so imposed for any period not exceeding six months." See also s. 32, *post*, and note thereto.

such distance, until such vessel so having the plague or such other infectious disease or distemper as aforesaid on board thereof, shall have arrived at the port or place where it is to perform quarantine, and until it shall have been legally discharged from the performance thereof; on failure thereof such commander, master, or other person having charge of such vessel shall forfeit and pay for every such offence the sum of one hundred pounds (1).

Penalty on persons hoisting signals when not liable, £50.

10. And be it further enacted, that if any commander, master, or other person having the charge or command of any vessel, and knowing that the same is not liable to the performance of quarantine, shall hoist such signal as aforesaid, or either of them, by day or night respectively, such commander or other person as aforesaid shall forfeit and pay the sum of fifty pounds (1).

Masters of vessels, on their arrival from foreign parts, to give to the pilots an account of the places at which they shall have loaded and touched, on penalty of £100.

11. And be it further enacted, that from and after the first day of July one thousand eight hundred and twenty-five, as to all vessels arriving from any places beyond the Cape of Good Hope, or Cape Horn in South America, and after the first day of August one thousand eight hundred and twenty-five, as to all vessels arriving from any parts of Africa or America not beyond those Capes, and from the West Indies and Mediterranean, and from and after the first day of June one thousand eight hundred and twenty-five, as to all vessels arriving from any other places, every commander, master, or other person having the charge of any vessel coming from foreign parts, shall give to the pilot who shall go on board such vessel a written paper, containing a true account of the names of the place and country at which such vessel shall have loaded, and also of all the places at which any such vessel shall have touched on the homeward voyage, on pain of forfeiting the sum of one hundred pounds for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of His Majesty in council, made after the departure of any vessel from the United Kingdom and the said islands, and then in force, vessels coming from any places mentioned in any such paper shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person aforesaid, of such vessel, on pain of forfeiting the sum of one hundred pounds for any neglect therein; and such commander or other person shall thereupon hoist a proper signal, according to the provisions of this Act, and under the penalties in this Act contained for any neglect or refusal in respect of hoisting such signals.

Pilots to give notice of any proclamation or Order in Council requiring the performance of quarantine, on penalty of £100.

Pilot to give notice if any articles be on board liable to quarantine on penalty of £100.

12. And be it further enacted, that every commander, master, or other person having the charge of any vessel coming from foreign parts, which shall not be liable to quarantine in respect of the place from whence such vessel comes, shall give to the pilot who shall go on board of such vessel a written paper, containing a true account of the different articles composing the cargo of such vessel, on pain of forfeiting the sum of fifty pounds for any neglect or refusal to give such paper, or for any false representation or wilful omission therein; and if by any proclamation or order of His Majesty in Council then in force, vessels having on board any of the articles mentioned in such paper shall be liable to the performance of quarantine, such pilot shall immediately give notice thereof to the commander or other person having the charge of such vessel, on pain of forfeiting one hundred pounds for any neglect therein, and such commander or other person shall thereupon hoist a signal, according to the provisions and under the respective penalties in this Act contained, for any neglect or refusal in respect of hoisting such signals; and in case any pilot shall bring or cause to be brought or conducted any vessel liable to the performance of quarantine, into any place which is not or shall not be specially appointed for the reception of vessels so liable, after receiving such paper as aforesaid, whereby it shall have been made appear that such vessel was liable to the performance of quarantine, or without requiring and receiving such paper as aforesaid, unless compelled thereto by stress of weather, adverse winds, or accidents of the sea, such pilot shall for every such offence forfeit and pay the sum of two hundred pounds (2).

Penalty on pilots conducting vessels to any other place than that appointed for their reception, £200.

Pilot to bring to at request of officer of customs, on penalty of £100

13. And be it further enacted, that if any pilot being on board, or any commander, master, or other person having the charge of any vessel coming from foreign parts, whether such vessel shall be liable to quarantine or not, shall be required by any officer of the customs, authorised to act in the service of quarantine, to bring to such vessel, to the end that the commander, master, or other person having the charge thereof may be interrogated, according to the provision of this Act, and shall neglect or refuse to bring to such vessel, as soon as it can be done with safety, in obedience to such requisition, every such pilot, commander, master, or other person having the charge of any such vessel shall for every such offence forfeit and pay the sum of one hundred pounds (1).

For better ascertaining whether

14. And to the end that it may be better known whether any vessel be actually infected with the plague or other infectious disease or distemper as aforesaid, or whether such vessel, or the

(1) See previous note.
(2) See the latter portion of 39 & 40 Vict. c. 36, s. 234, note (2), *ante*, p. 1428.

Secs. 14–17.

mariners or passengers coming, or the cargo imported in the same, are liable to any orders touching quarantine, be it further enacted, that when any country or place shall be known or suspected to be infected with the plague or other infectious disease or distemper as aforesaid, or when any order or orders shall be made by His Majesty in council concerning quarantine and the prevention of infection as aforesaid, then and in such case, as often as any vessel shall attempt to enter into any port or place in the United Kingdom, or of the isles of Guernsey, Jersey, Alderney Sark, or Man, whether such port shall have been appointed for the performance of quarantine or not, the superintendent or assistant at such port or place, or if not, the principal officer of His Majesty's customs at such port or place, or such officer of the customs as shall be authorised to act in that behalf shall go off to such vessel, and shall, at a convenient distance from such vessel, demand of the commander, master, or other person having charge of such vessel, and such commander, master, or other person shall, upon such demand, give a true answer in writing or otherwise, and upon oath or not upon oath, according as he shall by such superintendent or his assistant, or other officer of the customs authorised as aforesaid, be required, to all such questions or interrogatories as shall be put to him by virtue and in pursuance of such regulations and directions as His Majesty by order in council shall be pleased to prescribe; and in case such commander or master or other person having charge of such vessel shall, upon such demand made as aforesaid, refuse to make a true discovery in any of the particulars concerning which he shall be interrogated in manner aforesaid, or in case he shall not be required to answer such questions or interrogatories upon oath, shall give a false answer to any such question or interrogatory as aforesaid, such commander, master, or other person having charge of such vessel for every such offence shall forfeit and pay the sum of two hundred pounds (1).

vessels be actually infected, or the persons on board liable to orders touching quarantine.

Masters of vessels refusing to answer interrogatories, &c., to forfeit £200.

15. And be it further enacted, that in case it shall appear upon such examination or otherwise, that such vessel is under such circumstances as shall render it liable to perform quarantine, and that the port or place where it so arrived, or at which it attempts to enter as aforesaid, is not the port or place where it ought to perform quarantine, in which case it shall and may be lawful to and for the officers of any of His Majesty's ships of war, or of any of His Majesty's forts or garrisons, and all other His Majesty's officers, upon notice thereof given to them, or any of them respectively, and to and for any other person or persons whom they shall call to their aid and assistance, and such officers and other persons are hereby required to oblige such vessel to go and repair to such place as hath been or shall be appointed for performance of quarantine, and to use all necessary means for that purpose, either by firing of guns upon such vessel, or by any other kind of necessary force whatsoever; and in case any such vessel shall come from, or shall have touched at any place infected by the plague or such other infectious disease or distemper as aforesaid, or shall have any person on board actually infected with the plague or other such infectious disease or distemper as aforesaid, and the commander, master, or other person having charge of such vessel, knowing that the place from whence he came, or at which he had touched as aforesaid, was infected with the plague or such other infectious disease or distemper, or knowing some person on board to be actually infected with the plague or such other infectious disease or distemper as aforesaid, shall refuse or omit to disclose the same upon such examination as aforesaid, or shall wilfully omit to hoist the signal hereinbefore directed, to denote that his vessel is liable to the performance of quarantine, at the times and on the occasions herein directed with respect to the same, such commander, master, or other person having charge of such vessel shall forfeit the sum of three hundred pounds (1).

Vessels subject to quarantine arriving at any port than that at which it ought to be performed, may be forced to repair to the appointed place.

Masters of vessels that have touched at infected places, &c., omitting to disclose the same, or omitting to hoist the prescribed signal, to forfeit £300.

16. And be it further enacted, that every commander, master, or other person having charge of any vessel which shall be ordered to perform quarantine as aforesaid, shall forthwith, after his arrival at the place appointed for the performance of quarantine, deliver on demand to the superintendent of quarantine or his assistant, or other officer of the customs, authorised to act in that behalf, and which superintendent, assistant, or other officer as aforesaid is hereby required to make such demand, his bill of health and manifest together with his log book and journal, under pain of forfeiting the sum of one hundred pounds if he shall wilfully refuse or neglect so to do.

Commanders to deliver up bills of health, manifests, and log book, to the superintendent of quarantine, on penalty of £100.

17. And be it further enacted, that if any commander, master, or other person having charge of any vessel liable to perform quarantine, and on board of which the plague or other infectious disease or distemper shall not then have appeared, shall himself quit, or shall knowingly permit or suffer any seaman or passenger coming in such vessel to quit such vessel by going on shore, or by going on board any other vessel or boat, before such quarantine shall be fully performed, unless by such licence as shall be granted by virtue of any order in council to be made concerning quarantine as aforesaid, or in case any commander or other person having charge of such

Penalty on masters, &c., quitting vessels, or permitting persons to quit them, or not conveying same to the appointed places, £400.

(1) See note (2), *ante*, p. 1428.

vessel shall not, within a convenient time after due notice given for that purpose, cause such vessel and the lading thereof to be conveyed into the place or places appointed for such vessel and lading to perform quarantine; then and in every such case every such commander, master, or other person as aforesaid, for every such offence shall forfeit and pay the sum of four hundred pounds; and if any such person coming in any such vessel liable to quarantine (or any pilot or other person going on board the same, either before or after the arrival of such vessel at any port or place in the United Kingdom, or the islands aforesaid), shall, either before or after such arrival, quit such vessel, unless by such licence as aforesaid, by going on shore in any port or place in the United Kingdom, or the islands aforesaid, or by going on board any other vessel or boat, with intent to go on shore as aforesaid, before such vessel so liable to quarantine as aforesaid shall be regularly discharged from the performance thereof, it shall and may be lawful for any person whatsoever, by any kind of necessary force, to compel such pilot or other person so quitting such vessel so liable to quarantine to return on board the same; and every such pilot or other person so quitting such vessel so liable to quarantine shall for every such offence suffer imprisonment for the space of six months, and shall forfeit and pay the sum of three hundred pounds (1).

Penalty on persons coming in such vessels, or going on board, and quitting them before discharged from quarantine, to suffer imprisonment for six months, and forfeit £300.

18. And whereas disobedience or refractory behaviour in persons under quarantine or liable to the performance of quarantine, or in other persons who may have had any intercourse or communication with them, may be attended with very great danger to His Majesty's subjects: Be it further enacted, that all persons liable to perform quarantine, and all persons having had any intercourse or communication with them, whether in vessels or in a lazaret or elsewhere, shall be subject, during the said quarantine, or during the time they shall be liable to quarantine, to such orders as they shall receive from the superintendent of quarantine, or his assistant, or from the principal officer of the customs at any port or place where there is no such superintendent or assistant, or from any other officer of the customs authorised to act in that behalf, and the said officers are hereby empowered and required to enforce all necessary obedience to the said orders, and in case of necessity to call in others to their assistance, and all persons so called in are hereby required to assist accordingly; and such officers shall and they are hereby empowered and required to compel all persons liable to perform quarantine as aforesaid, and persons having had any intercourse or communication with them, to repair to such lazaret, vessel, or place, and to cause all goods, wares, and merchandise, and other articles comprised within any such orders to be made as last aforesaid, to be conveyed to such lazaret, vessel, or place duly appointed in that behalf, in such manner and according to such directions as shall be made by order of His Majesty in council as aforesaid, or of the lords or others of the Privy Council, or of any two or more of them; and if any person or persons liable to perform quarantine as aforesaid, or any person or persons having had any intercourse or communication with him, her, or them, shall wilfully refuse or neglect to repair forthwith, when required and directed so to do by such officers as aforesaid to the said lazaret, vessel, or place duly appointed in that behalf, or having been placed in the said lazaret, vessel, or place, shall escape or attempt to escape out of the same before quarantine duly performed, it shall and may be lawful to and for the said quarantine officers, and also the watchmen and other persons appointed to see quarantine performed, and each of them, and they are hereby respectively required, by such necessary force as the case shall require, to compel every such person so refusing or neglecting as aforesaid, and every such person so escaping or attempting to escape as aforesaid, to repair or return to such lazaret, vessel, or place so appointed as aforesaid; and every person so refusing or neglecting to repair forthwith as aforesaid to the said lazaret, vessel, or place, and also every person actually escaping as aforesaid, shall forfeit the penalty of two hundred pounds (1).

For punishing disobedience or refractory behaviour in persons under or liable to quarantine, or persons having intercourse with them.

Persons refusing to repair to the lazaret or vessel to forfeit £200.

19. And be it further enacted, that it shall be lawful for any constable, headborough, tithingman, or other peace officer, or any other person, to seize and apprehend any person that shall, contrary to the provisions of this Act, have quitted or come on shore from any vessel liable to perform quarantine, or who shall have escaped from or quitted any vessel under quarantine, or from any lazaret, vessel, or place appointed in that behalf, for the purpose of carrying such person before any justice of the peace or magistrate; and it shall be lawful for any such justice of the peace or magistrate to grant his warrant for the apprehending and conveying of any such person to the vessel from which he or she shall have come on shore, or to any vessel performing quarantine, or lazaret, from which he or she shall have escaped, or for the confining of any such person in any such place of safe custody (not being a public gaol), and under such restrictions as to having any communication with any other persons, as may in the discretion of any justice of the peace or magistrate (calling to his aid, if he shall see fit, any medical person) appear to be proper, until such person can be safely and securely conveyed to some place appointed for the

Persons quitting vessels liable to perform quarantine, &c., may be seized.

(1) See note (2), *ante*, p. 1428.

Secs. 19–23.

performance of quarantine, or until directions can be obtained from the Privy Council as to the disposal of any such person, and to make any further order, or grant any further warrant that may be necessary in that behalf.

Intercourse with stations allotted for quarantine of vessels, may be prohibited by Order in Council.

20. And whereas it may be necessary for the public security to prevent all communication whatever with vessels performing quarantine: Be it therefore further enacted, that it shall and may be lawful to and for His Majesty, his heirs or successors, by his or their order or orders in council, notified by proclamation or published in the *London Gazette*, to prohibit all persons, vessels, and boats whatsoever, from going, under any pretence whatsoever, within the limits of any station which by any order or orders in council as aforesaid has been or may be assigned for the performance of quarantine; and if any person whatsoever, after such notification or publication of any such order or orders in council, shall presume, under any pretence whatsoever, to go with any vessel or boat within the limits of any such station, he or she shall for every such offence forfeit and pay the sum of two hundred pounds (1).

Penalty on persons embezzling goods performing quarantine, neglecting or deserting their duty, or permitting persons, vessels, &c., to depart without authority, or giving false certificates or damaging goods.

21. And be it further enacted, that if any officer of His Majesty's customs, or any other officer or person whatsoever, to whom it doth or shall appertain to execute any order or orders made or to be made concerning quarantine, or the prevention of infection, and notified as aforesaid, or to see the same put in execution, shall knowingly and wilfully embezzle any goods or articles performing quarantine, or be guilty of any other breach or neglect of his duty in respect of the vessels, persons, goods, or articles performing quarantine, every such officer or person so offending shall forfeit such office or employment as he may be possessed of, and shall become from thence incapable to hold or enjoy the same, or to take a new grant thereof; and every such officer and person shall forfeit and pay the sum of two hundred pounds; and if any such officer or person shall desert from his duty when employed as aforesaid, or shall knowingly and willingly permit any person, vessel, goods, or merchandise to depart or be conveyed out of the said lazaret, vessel, or other place as aforesaid, unless by permission under an order of His Majesty, by and with the advice of his Privy Council, or under an order of two or more of the lords or others of his Privy Council; or if any person hereby authorised and directed to give a certificate of a vessel having duly performed quarantine or airing, shall knowingly give a false certificate thereof, every such person so offending shall be guilty of felony; and if any such officer or person shall knowingly or wilfully damage any goods performing quarantine under his direction, he shall be liable to pay one hundred pounds damages and full costs of suit to the owner of the same.

Vessels from the Mediterranean, Turkey, or Africa, having undergone examination and released from quarantine, to be admitted to entry upon producing a certificate of such examination.

22. And be it further enacted, that if any vessel arriving from the Mediterranean, or from any port in Turkey or Africa, shall have undergone examination by the proper officer of quarantine, and upon a report of such examination being made to the lords or others of His Majesty's Privy Council, their lordships shall think proper to direct the release of such vessel from the performance of quarantine, it shall be lawful for such officer and he is hereby required to grant to the master or person having the charge or command of such vessel, a certificate in writing of such examination and release, and upon the production of such certificate to the collector or principal officer of His Majesty's customs, at any port in the United Kingdom, such vessel shall be admitted to entry without being liable to any further restraint.

After proof of performance of quarantine, and proper certificate to that effect, vessels or persons shall not be liable to further detention.

23. And be it further enacted, that after quarantine shall have been duly performed by any vessel, person or persons, obliged to perform quarantine as aforesaid, according to this Act, and to such order or orders made as aforesaid, and upon proof to be made by the oaths of the master or other person having charge of such vessel, and of three or more of the persons belonging thereto, or upon proof to be made by the oaths of two or more credible witnesses, before the collector or principal officer of the customs at the port where such quarantine shall be performed, or at the port nearest thereto, or before the superintendent of quarantine, or his assistant at the quarantine station, or before any justice of the peace living near to the port or place, or when such quarantine shall have been performed within any of the said isles of Guernsey, Jersey, Alderney, Sark, or Man, before any two jurats or magistrates of any of the said isles respectively, that such vessel, and all and every such person and persons respectively, have duly performed quarantine as aforesaid, and that the vessel and all and every person and persons are free from infection, and after producing a certificate to that purpose, signed by the chief officer who superintended the quarantine of the said vessel, or person acting for him, then and in the said respective cases such collector or principal officer of the customs, or the superintendent of quarantine, or his assistant, or such justice of the peace, or such jurats or magistrates as aforesaid, respectively, are hereby required to give a certificate thereof, and thereupon such vessel, and all and every such person or persons so having performed quarantine, shall be liable to no further restraint or detention upon the same account, for which such vessel, person or persons, shall have performed quarantine as aforesaid.

(1) See note (2), *ante*, p. 1428.

24. And be it further enacted, that all goods, wares, and merchandise, and other articles liable to quarantine as aforesaid, shall be opened and aired in such place or places, and for such time and in such manner as shall be directed by His Majesty, his heirs and successors, by such order or orders to be made as aforesaid, and after such orders shall have been duly complied with, proof thereof shall be made by the oaths of the master of the lazaret or vessel in which the goods, wares, and merchandise and all other articles shall have been opened and aired, and of one of the guardians, or if there be no guardians, then one of the officers authorised by the commissioners of customs to act in the service of quarantine in such lazaret or vessel, or if there be no such officer, then by the oaths of two or more credible witnesses serving in the said lazaret or vessel, before the superintendent of quarantine or his assistant, in case such opening and airing shall be had at a port or place where such superintendent or assistant shall be established, or otherwise before the principal officer of the customs authorised to act in the service of quarantine at such port or place, which oath such superintendent, assistant, or principal officer is hereby authorised to administer; and such superintendent, assistant, or principal officer, as the case may be, shall grant a certificate of such proof having been made, and upon production of such certificate to the proper officer of the customs, such goods, wares, and merchandise, and other articles, shall be liable to no further restraint or detention, either at the port or place where such quarantine shall have been performed, or at any other place whereto they be afterwards conveyed.

Goods liable to perform quarantine shall be opened and aired, as directed by Order in Council, and proof thereof to be made, &c.

25. And be it further enacted, that if any person shall knowingly or wilfully forge or counterfeit, interline, erase, or alter, or procure to be forged or counterfeited, interlined, erased, or altered, any certificate directed or required to be granted by any order of His Majesty, his heirs or successors in council, now in force or hereafter to be made touching quarantine, or shall publish any such forged or counterfeited, interlined, erased, or altered certificate, knowing the same to be forged or counterfeited, interlined, erased, or altered, or shall knowingly and wilfully utter and publish any such certificate with intent to obtain the effect of a true certificate to be given thereto, knowing the contents of such certificate to be false, he or she shall be guilty of felony.

Persons forging or uttering false certificates required by Order in Council, guilty of felony.

26. And be it further enacted, that if any person shall land or unship, or shall move in order to the landing or unshipping thereof, any goods, wares, or merchandise, packets, packages, baggage, wearing apparel, books, letters, or other articles from on board any vessel liable to perform quarantine as aforesaid, or shall knowingly receive the same after they have been so landed or unshipped, every such person shall forfeit and pay the sum of five hundred pounds; and if any person or persons shall clandestinely convey or secrete, or conceal for the purpose of conveying any letters, goods, wares, or merchandise or other articles as aforesaid, from any vessel actually performing quarantine, or from the lazaret or other place where such goods, wares, merchandise, or other articles as aforesaid shall be performing quarantine, every such person so offending as last aforesaid shall forfeit the sum of one hundred pounds (1).

Penalty on persons landing goods, &c., from vessels liable to perform quarantine, or receiving them, or secreting them from vessels performing quarantine, £100.

27. And be it further enacted, that in case it shall at any time happen that any part of the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, or France, Spain, or Portugal, or the Low Countries, shall be infected with the plague, or any other infectious disease or distemper as aforesaid, it shall and may be lawful to and for His Majesty, his heirs and successors, by his or their proclamation, to prohibit or restrain all vessels and boats under the burthen of one hundred tons from sailing or passing out of any port or place of the United Kingdom, or the isles of Guernsey, Jersey, Alderney, Sark, or Man, or any of them, until security be first given by the master of every such vessel or boat respectively, to the satisfaction of the principal officers of the customs, or the chief magistrate of the port or place from whence such vessel or boat shall sail, by bond taken by such officer or magistrate, to the King, his heirs or successors, with sufficient sureties in the penalty of two hundred pounds, with condition, that if such vessel or boat shall not go to or touch at any country, port, or place to be mentioned for that purpose in such proclamation, and if neither the master or other person having charge of such vessel or boat, nor any mariner or passenger in such vessel or boat, shall, during the time aforesaid, go on board any other vessel at sea, and such master or other person having charge of such vessel or boat shall not permit or suffer any person or persons to come on board such vessel or boat at sea from any other vessel, and shall not during the time aforesaid receive any goods or merchandise whatsoever out of any other vessel, then such bond shall be void; for the making of which bond no fee or reward whatsoever shall be taken; and in case any vessel or boat for which such security shall be required by such proclamation shall set sail or pass out of any port or place of the United Kingdom, or the islands of Guernsey, Jersey, Alderney, Sark, or Man, or any of them respectively, before security be given as aforesaid, every such vessel or boat so sailing or passing out of any port or place contrary to the true intent and meaning of this Act,

His Majesty in certain cases may prohibit vessels under 100 tons from sailing until bond be given by the master with certain conditions.

Penalty for sailing without giving such security, forfeiture of vessel, &c.

(1) See note (2), *ante*, p. 1428.

Secs. 27–34.

together with her tackle, apparel, and furniture, shall be forfeited to His Majesty, his heirs and successors, and the master of and every mariner sailing in such vessel or boat shall severally forfeit and pay the sum of two hundred pounds [1].

Power to consuls, &c., to administer oaths.

28. And be it further enacted, that the consuls and vice-consuls of His Majesty, his heirs and successors, shall and are hereby empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside.

Persons authorised to take examinations may administer oaths, and persons swearing falsely or procuring others so to do shall be deemed guilty of perjury.

29. And be it further enacted, that in all cases wherein by virtue of this Act, or any other Act hereafter to be made touching quarantine, any examination or answer shall be taken or made upon oath, the person who shall be authorised and required to take such examinations and answers shall and may be deemed to have full power and authority to administer such oaths; and if any person who shall be interrogated or examined shall wilfully swear falsely to any matter concerning which such person shall depose or make oath on such examination, or in such answer, or if any person shall procure any other person so to do, he or she so swearing falsely, or procuring any other person so to do, shall be deemed to have been guilty of and shall be liable to be prosecuted for perjury or subornation of perjury, as the case may be, and shall suffer the pains, penalties, and punishments of the law in such case respectively made and provided.

Superintendents at ports to be appointed.

Principal officer of the customs to act as superintendent of quarantine in case of absence, &c.

30. And be it further enacted, that all superintendents of quarantine at the several ports, and their assistants, shall and may be appointed by any instrument signed by the Commissioners of Customs for the time being; and everything required to be done and performed by the superintendent of quarantine, or his assistant, may, in case of the absence or sickness of such superintendent or assistant, be done and performed by such principal officer of the customs as shall be authorised to act in that behalf.

Publication in the *London Gazette* of Orders of Council, &c., sufficient notice.

31. And be it further enacted, that the publication in the *London Gazette* of any order in council, or of any order by any two or more of the lords or others of His Majesty's Privy Council, made in pursuance of this Act, or His Majesty's royal proclamation made in pursuance of the same, shall be deemed and taken to be sufficient notice to all persons concerned of all matters therein respectively contained.

Recovery and application of penalties.

32. And be it further enacted, that all forfeitures and penalties that shall be incurred by reason of any offence committed against this Act shall and may be recovered by suit in any of His Majesty's Courts of Record in England or Ireland, in which no essoign or wager of law, or more than one imparlance, shall be granted, or in Scotland by summary action in the Court of Session, or by prosecution before the Court of Justiciary there, or by suit in any of His Majesty's Courts in the islands of Guernsey, Jersey, Alderney, Sark, or Man; and every such forfeiture and penalty shall belong and be given, two thirds to the person who shall inform and sue for the same, and the remainder to His Majesty, his heirs and successors [2].

In whose name actions for penalties in England, Ireland, or Scotland must be prosecuted.

33. Provided always, and be it further enacted, that it shall not be lawful for any person or persons whatsoever to commence, prosecute, enter, or file, or cause or procure to be commenced, prosecuted, entered, or filed, any action, bill, plaint, information, or prosecution, or actions, bills, plaints, informations, or prosecutions, in any of His Majesty's Courts in England, Ireland, or Scotland, or any proceeding or proceedings before any justice of the peace of any county, riding, division, city, town, stewartry, or place for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this Act, or against any order or orders made by His Majesty, his heirs or successors, in Council, by two or more of the lords or others of Her Majesty's Privy Council as aforesaid, unless the same be commenced, prosecuted, entered, or filed in the names of His Majesty's Attorney-General in England or Ireland, or Advocate in Scotland respectively, or under the direction of the Commissioners of the Customs, and in the name or names of some officer or officers of the Customs in England, Ireland, or Scotland respectively; and if any action, bill, plaint, information, or prosecution, actions, bills, plaints, informations, or prosecutions, or any proceeding or proceedings before any justice as aforesaid, shall be commenced, prosecuted, entered, and filed in the name or names of any other person or persons than is in that behalf before mentioned, the same shall be and are hereby declared to be null and void.

In prosecutions by officers of the customs the Attorney-General in England or Ireland, or Advocate in

34. Provided also, and be it further enacted, that in case any prosecution, suit, complaint, or other proceeding as aforesaid, shall be commenced or depending by any officer or officers of the customs, for the recovery of any fine, penalty, or forfeiture, fines, penalties, or forfeitures, incurred by reason of any offence committed against this Act, or against any order or orders made by His Majesty, his heirs or successors, in council, or by any two or more of the lords or others of His Majesty's Privy Council as aforesaid, it shall and may be lawful for His Majesty's

(1) See note (2), *ante*, p. 1428.

(2) See *Todd* v. *Robinson*, L. R. 12 Q. B. D. 530, 53 L. J. Q. B. 251, 50 L. T. N. S. 298, 32 W. R. 858.

Attorney-General in England or Ireland, or Advocate in Scotland, respectively, to stop all further proceedings therein, as well with respect to the share of such fine, penalty, or forfeiture, fines, penalties, or forfeitures, to which any such officer or officers shall or may claim to be entitled, as to the share thereof belonging to His Majesty, if upon consideration of the circumstances under which any such fine, penalty, or forfeiture, fines, penalties, or forfeitures may be incurred, it shall appear to them respectively to be fit and proper so to do.

Scotland, may stop proceedings.

35. And be it further enacted, that all offences committed against any of the provisions of this Act, for which no specific penalty, forfeiture, or punishment is provided by this Act, shall and may be tried, heard, and determined before any three justices of the peace of the county, riding, division, city, or place where such offence or disobedience shall happen; and if any person shall be convicted of any such offence or disobedience, he or she shall be liable to such forfeiture and penalty not exceeding the sum of five hundred pounds for any offence, or to such imprisonment, not exceeding twelve months for any one offence, as shall in the discretion of the three justices who shall have heard and determined the same be judged proper; and such forfeiture and penalty shall be paid, two-thirds to the person suing for the same and the remainder to His Majesty, to be applied as the proceeds of other forfeitures and penalties are hereinbefore directed to be applied.

Offences not being felony, and offences for which no specific penalty is provided, may be determined before three justices, who may fine or imprison.

Application of penalties.

36. And be it further enacted, that in any prosecution, suit, or other proceedings against any person or persons whatsoever, for any offence against this Act, or any Act which may hereafter be passed concerning quarantine, or for any breach or disobedience of any order or orders which shall be made by His Majesty, his heirs or successors, with the advice of his Privy Council, concerning quarantine and the prevention of infection, and notified or published as aforesaid, or of any order or orders made by two or more of the lords or others of the Privy Council aforesaid, the answer or answers of the commander, master, or other person having charge of any vessel, to any question or interrogatories put to him by virtue and in pursuance of this Act, or of any Act which may hereafter be passed concerning quarantine, or of any such order or orders as aforesaid, may and shall be given and received as evidence, so far as the same relates or relate to the place from which such vessel shall come, or to the place or places at which such vessel touched in the course of the voyage, and where any vessel shall have been directed to perform quarantine by the superintendent of quarantine or his assistant, or where there is no such superintendent or assistant, by the principal officer of the customs at any port or place, or other officer of the customs authorised to act in that behalf, they having been so directed to perform quarantine, may and shall be given and received as evidence that such vessel was liable to quarantine, unless satisfactory proof shall be produced by the defendant in any such prosecution, suit, or other proceeding to show that the vessel did not come from or touch at any such place or places as is or are stated in the said answer or answers, or that such vessel, although directed to perform quarantine, was not liable to the performance thereof; and where any such vessel shall have in fact been put under quarantine at any port or place by the superintendent of quarantine or his assistant, or other officer of the customs authorised as aforesaid to act in that behalf and shall actually be performing the same, such vessel shall in any prosecution, suit, or other proceeding against any person or persons whatever, for any offence against this Act or any other Act which may hereafter be passed concerning quarantine and the prevention of infection, or any order or orders which shall be made by His Majesty in council, or any two or more of the lords or others of His Privy Council as aforesaid, be deemed and taken to be liable to quarantine, without proving in what manner or from what circumstance such vessel became liable to the performance thereof.

Answers of persons having the charge of vessels shall be received as evidence so far as relates to the places from which vessels came, or at which they touched, and the having been directed to perform quarantine shall be received as evidence that vessels were liable, unless proof be made to the contrary, and the performing quarantine shall be proof of vessels being liable to perform it.

37. And be it further enacted, that if any action or suit shall be commenced against any person or persons for anything done in pursuance or execution of this present Act, or of any order of council made by virtue thereof, the defendant or defendants in such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and in execution of the said Act; and if it shall appear so to have been done, then the jury shall find for the defendant or defendants; and if the plaintiff shall be non-suited or discontinue his action after the defendant or defendants shall have appeared, or if judgment shall have been given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same as the defendant or defendants hath or have in other cases by law; and that no such action or suit shall be brought against any person for any matter or thing done in pursuance or execution of this Act, but within the space of six months after such matter or thing shall have been done.

General issue.

Treble costs.

Limitation of actions.

TELEGRAPH ACT, 1863.

26 & 27 VICT. c. 112 (1).

Secs. 3—8.

Interpretation of terms.

3. In this Act—

The term "telegraph" means a wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube, or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication:

The term "post" means a post, pole, standard, stay, strut, or other above-ground contrivance for carrying, suspending, or supporting a telegraph:

The term "work" includes telegraphs and posts:

The term "street" (2) means a public way situate within a city, town, or village, or between lands continuously built upon on either side, and repaired at the public expense, or at the expense of any turnpike or other public trust, or *ratione tenuræ*, including the footpaths of such way, and any bridge forming part thereof:

The term "public road" (2) means a public highway for carriages being repaired at the public expense, or at the expense of any turnpike or other public trust, or *ratione tenuræ*, and not being a street, including the footpaths of such public highway, and any bridge forming part thereof, and also any land by the side and forming part of such a public highway, but not including a railway or canal:

The term "the Board of Trade" means the Lords of the Committee of Her Majesty's Privy Council for the time being appointed for the consideration of matters relating to trade and foreign plantations:

The term "justice" means justice of the peace acting for the place where the matter requiring the cognisance of any such justice arises:

The term "two justices" means two or more justices met and acting together, or any one police magistrate or justice having by law authority to act alone for any purpose with the powers of two justices.

Recovery of damages, costs, expenses, and penalties.

4. The provisions of the Railways Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall, so far as the same are applicable, and save so far as the same are inconsistent with any express provision of this Act, be incorporated with this Act; and terms used in those provisions shall be interpreted as the same terms are directed to be interpreted in this Act.

Provisions as to notices and consents.

5. The following provisions shall apply to notices and consents under this Act:

(1.) Every notice or consent shall be in writing or print, or partly in writing and partly in print:

(2.) Any notice to or by the company or a body having the control of a street or public road, or of the sewerage or drainage thereunder, may be given to or by the secretary, clerk, or surveyor, or other like officer (if any) of the company or of such body, as the case may be:

(3.) Any consent may be given on such pecuniary or other terms or conditions (being in themselves lawful), or subject to such stipulations as to the time or mode of execution of any work, or as to the removal or alteration in any event of any work or as to any other thing connected with or relative to any work, as the person or body giving consent thinks fit.

Provision as to gas and water pipes.

8. In the exercise of the aforesaid powers, the company shall also be subject to the following restrictions:

(1.) They shall cause as little detriment or inconvenience as circumstances admit to the body or person to or by whom any pipe for the supply of water or gas belongs or is used:

(2.) Before they alter the position of any such pipe they shall give to the body to whom the same belongs notice of their intention to do so, specifying the time at which they will begin to do so, such notice to be given twenty-four hours at least before the commencement of the work for effecting such alteration:

(3.) The company shall not execute such work except under the superintendence of the body to whom such pipe belongs, unless such body refuses or neglects to give such superintendence at the time specified in the notice for the commencement of the work or

(1) Now by the Telegraph Acts, 1868, 1869, 31 & 32 Vict. c. 110, and 32 & 33 Vict. c. 73, the undertakings of the various telegraph companies have been vested in the Postmaster-General by purchase, and the powers of the companies are exercised by him.

(2) See the definitions in the Telegraph Act, 1878, *post*, p. 1440.

discontinues the same during the work; and the company shall execute such work to the reasonable satisfaction of such body:

(4.) The company shall pay all reasonable expenses to which such body may be put on account of such superintendence:

And the body to whom any such pipe belongs may, when and as occasion requires, alter the position of any work of the company already constructed, or to be hereafter constructed, under, in, or upon a street or public road, on the same conditions as are by the last foregoing and present sections imposed on the company in relation to such a body, *mutatis mutandis.*

Restrictions as to Telegraphs under Streets and public Roads.

Not to place telegraphs under streets in metropolis and large towns without consent of bodies having control of the streets.

9. The company shall not place a telegraph under any street within the limits of the district over which the authority of the Metropolitan Board of Works extends, or of any city, or municipal borough, or town corporate, or of any town having a population of thirty thousand inhabitants or upwards (according to the latest census), except with the consent of the bodies having the control of the streets within such respective limits [1].

Depth, course, &c. of underground works to be agreed on between street or road authority and company, or else to be determined by justices or sheriff.

10. Where the company has obtained consent to the placing, or by virtue of the powers of the company under this Act intends to proceed with the placing of a telegraph under a street or public road, the depth, course, and position at and in which the same is to be placed shall be settled between the company and the following bodies:

The body having the control of the street or public road:

The body having the control of the sewerage or drainage thereunder:

But if such settlement is not come to with any such body, the following provisions shall take effect:—

(1.) The company may give to such body a notice specifying the depth, course, and position which the company desires:

(2.) If the body to whom such notice is given does not, within twenty-eight days after the giving of such notice, give to the company a counter-notice objecting to the proposal of the company, and specifying the depth, course, and position which such body desires, they shall be deemed to have agreed to the proposal of the company:

(3.) In the event of ultimate difference between the company and such body, the depth, course, and position shall be determined in England or Ireland by two justices, and in Scotland by two justices or the sheriff.

Underground tubes to have distinguishing mark.

11. Every underground tube or pipe of the company shall be so marked as to distinguish it from tubes or pipes of every other company.

Company not to place a telegraph along a street or road without consent of body having control of street, &c.

As to where a public road passes through parks, pleasure grounds, &c.

12. The company shall not place a telegraph over, along or across a street or public road, or a post in or upon a street or public road except with the consent of the body having the control of such street or public road; and where a public road passes through or by the side of any park or pleasure grounds, and where a public road crosses, by means of a bridge or viaduct, or abuts on any ornamental water belonging to any park or pleasure grounds, and where a public road crosses or abuts on a private drive through any park or pleasure grounds, or to any mansion, the company shall not, without, or otherwise than in accordance with, the consent of the owner, lessee, and occupier of such park, pleasure grounds, or mansion, place any work above ground on such public road.

Where landowner, &c., is liable to repair of street, &c., company not to place works in such street, &c., without consent.

Proviso.

13. Where any landowner or other person is liable for the repair of any street or public road (notwithstanding that the same is dedicated to the public), the company shall not place any work under, in, upon, over, along, or across such street or public road, except with the consent of such landowner or other person, in addition to the consent of the body having the control of such street or public road, where under this Act such last-mentioned consent is required: Provided, that where the company places a telegraph across or over any street or public road they shall not place it so low as to stop, hinder, or interfere with the passage for any purpose whatsoever along the street or public road.

Removal of Works affecting Streets and public Roads.

In case of abandonment of works, &c., street or road authority or owner of land may remove them.

14. In the following cases—

(1.) If any part of the company's works is abandoned, or suffered to fall into decay;

(2.) If the company is dissolved, or ceases for six months to carry on business,

the body having the control of any street or public road, or the owner of any land or building affected (in the former case) by such part of the company's works as aforesaid, or (in the latter case) by any of the company's works, may give notice to the company, or leave a notice at the last known office or place of business of the company, to the effect that if such works as are

[1] See now the Telegraph Act, 1878, 41 & 42 Vict. c. 76, *post*, and see note [1], *ante*, p. 1436.

Secs. 14–17.

specified in the notice are not removed within one month after the notice given or left, the same will be removed by the body having such control, or by such owner; and in every such case, unless such works are removed accordingly, the body having such control or such owner may, without prejudice to any remedy against the company, remove such works, or any part thereof, and sell the materials thereof or of any part thereof, and, out of the proceeds of such sale, reimburse themselves their expenses relative to such notice, removal, and sale, and consequent thereon (rendering the overplus, if any, to the company), and may recover any unpaid residue of such expenses from the company. The present section shall apply to an existing company, in respect of any work already constructed or to be hereafter constructed, as well as to a future company.

In event of alteration of street or road, company to remove and replace the works under or over the same.

15. In case the body having the control of any street or public road at any time hereafter resolves to alter the line or level of any portion of such street or road under, in, upon, over, along, or across which any work of the company constructed either before or after the passing of this Act is placed, the company shall from time to time be bound, on receiving one month's notice of such intended alteration, and at their own expense, to remove such work, and to replace the same in such position and manner in all respects as may be required by such body, or, in the event of difference between such body and the company, in such position and manner in all respects as may be determined in England or Ireland by two justices, and in Scotland by two justices or the sheriff.

Removal of dangerous posts placed before passing of this Act.

16. Where the company has, before the passing of this Act, placed posts in or upon a street or public road, and the body having the control of the street or road considers the position of any such posts to be dangerous or inconvenient, the following provisions shall take effect:

(1.) Such body may give to the company a notice requiring them to remove or alter the position of such post, and specifying the grounds of such requisition:

(2.) The company either shall, within fourteen days after receipt of such notice, remove or alter the position of the post in accordance with the notice; or else, if they do not intend to remove or alter the position of the post in accordance with the notice, shall, within one week after receipt of the notice, deliver to such body a counter-notice, specifying their objection to such removal or alteration:

(3.) Such body may send copies of the notice and counter-notice to the Board of Trade:

(4.) As soon as may be after receipt of such copies, the Board of Trade shall (unless the difference between the body giving the notice and the company is arranged) make inquiry and examination, and hear and determine the matter of the notice and counter-notice:

(5.) On hearing any such matter, the Board of Trade may direct that the company shall comply with the notice, wholly or in part, or subject to any such modifications as the Board of Trade prescribes, or on condition that the body giving the notice shall afford to the company all reasonable and proper facilities in their power for substituting some other work for that to which the notice relates, or on any such other condition as to the Board of Trade seems, according to the circumstances of the case, just and expedient, and the expenses incurred in or about such removal or alteration shall be borne and paid by the company or by the body giving the notice, or partly by one and partly by the other, as to the Board of Trade seems, according to the circumstances of the case, just and expedient, the amount of such expenses to be determined in case of difference by the Board of Trade.

Restrictions as to the opening of Streets and public Roads.

Streets and public roads to be opened only after notice and under superintendence.

17. Subject to any special stipulations made with a company by the body having the control of a street or public road, and to any determinations, orders, or directions of the justices, or sheriff as aforesaid, where the company proceeds to open or break up a street or public road, the following provisions shall take effect:—

(1.) The company shall give to the bodies between whom respectively and the company the depth, course, and position of a telegraph under such street or public road are hereinbefore required to be settled or determined, notice of their intention to open or break up such street or public road, specifying the time at which they will begin to do so,—such notice to be given, in the case of an underground work ten days at least, and in the case of an aboveground work five days at least, before the commencement of the work; except in case of emergency, in which case notice of the work proposed shall be given as soon as may be after the commencement thereof:

(2.) The company shall not (save in case of emergency) open or break up any street or public road, except under the superintendence of the bodies to whom respectively notice is by the present section required to be given, unless such bodies respectively

refuse or neglect to give such superintendence at the time specified in the notice for the commencement of the work, or discontinue the same during the work:

(3.) The company shall pay all reasonable expenses to which such bodies respectively may be put on account of such superintendence.

Streets and public roads to be restored and kept in repair for six months.

18. Subject to any such special stipulations as aforesaid, after the company has opened or broken up a street or public road they shall be under the following further obligations:—

(1.) They shall, with all convenient speed, complete the work on account of which they opened or broke up the same, and fill in the ground, and make good the surface, and generally restore the street or public road to as good a condition as that in which it was before being opened or broken up, and carry away all rubbish occasioned thereby:

(2.) They shall in the meantime cause the place where the street or public road is open or broken up to be fenced and watched, and to be properly lighted at night:

(3.) They shall pay all reasonable expenses of keeping the street or public road in good repair for six months after the same is restored, so far as such expenses may be increased by such opening or breaking up:

Penalty.

If the company fails to comply in any respect with the provisions of the present section, they shall for every such offence (without prejudice to the right of any person to enforce specific performance of the requirements of this Act, or to any other remedy against them), be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding five pounds, for each day during which any such failure continues after the first day when such penalty was adjudged; and any such penalty shall (notwithstanding anything herein-before, or in any Act relating to municipal corporations, or to the metropolitan police force, or in any other Act, contained) go and belong to the body having the control of the street or public road, and shall form part of the funds applicable by them to the maintenance of the street or public road.

Power to street or road authorities to execute works and charge the expenses to the company.

19. Whenever the permanent surface or soil of any street or public road is broken up or opened by the company, it shall be lawful for the body having the control of the street or road, in case they think it expedient so to do, to fill in the ground, and to make good the pavement or surface or soil so broken up or opened, and to carry away the rubbish occasioned thereby, instead of permitting such work to be done by the company; and the costs and expenses of filling in such ground, and of making good the pavement or soil so broken up or opened, shall be repaid on demand to the body having the control of the street or road by the company, and in default thereof may be recovered by the body having the control of the street or road from the company as a penalty is or may be recoverable from the company.

Restrictions on impediments to traffic.

20. The company shall not stop or impede traffic in any street or public road, or into or out of any street or public road, further than is necessary for the proper execution of their works. They shall not close against traffic more than one third in width of any street or public road, or of any way opening into any street or public road, at one time; and in case two-thirds of such street or road are not wide enough to allow two carriages to pass each other, they shall not occupy with their works at one time more than fifty yards in length of the one-third thereof, except with the special consent of the body having the control thereof.

Appointment of Arbitrator by Board of Trade.

Board of Trade may in any case appoint arbitrator.

34. If in any case where any matter is herein-before authorised or directed to be determined by the Board of Trade it appears to the Board of Trade to be expedient, for convenience of local investigation or for any other reason, that the matter should be determined by an arbitrator, the Board of Trade may, notwithstanding anything herein-before contained, and whether the Board of Trade has entered on the investigation or not, refer the matter to some competent and impartial person as arbitrator; and with respect to the matter so referred any such arbitrator shall have the like authority and jurisdiction as the Board of Trade has under this Act, and his determination shall have the same effect as a determination of the Board of Trade under this Act. The reasonable expenses and remuneration of the arbitrator (to be settled in case of difference by the Board of Trade) shall be paid by the company.

TELEGRAPH ACT, 1878.

41 & 42 VICT. c. 76.

An Act to make further provision respecting the Post Office Telegraphs.

[16*th August*, 1878.]

Secs. 2—5.

Definitions.

2. In the construction of this Act, unless there is something inconsistent in the context, words and expressions shall have the same meanings as in the Telegraph Act, 1863, and in addition thereto—

The expressions "street" and "public road" shall respectively include any highway (1).

Amendment of 26 & 27 Vict. c. 112 as to consents.

3. Where any body or person (within the meaning of the Telegraph Act, 1863), having power under the said Act to give or withhold their consent to the Postmaster-General (2) placing telegraphs and posts (within the meaning of the said Act) in, under, upon, along, over, or across a street or public road, or any estuary or branch of the sea, or the shore or bed of any tidal water, or where any proprietors, lessees, directors, or persons having the control of any railway or canal (within the meaning of the said Act), and having power under the said Act to give or withhold a consent to the Postmaster-General placing telegraphs and posts under, in, upon, along, or across such railway or canal, fail within twenty-one days after being required to do so by the Postmaster-General to give their consent, or attach to their consent any terms, conditions, or stipulations to which the Postmaster-General objects, or withdraw a consent, a difference shall be deemed to have arisen between the Postmaster-General and such body or person, proprietors, lessees, directors, or persons (as the case may be), and that difference shall be determined in manner hereinafter provided, and the authority by whom the difference is to be determined may, if after hearing all parties concerned they think it just, give their consent either unconditionally or subject to such pecuniary or other terms, conditions, and stipulations as they may think just; and that consent shall for all purposes be of the same effect as if it were a consent given under the Telegraph Act, 1863, to the Postmaster-General by such body or person, proprietors, lessees, directors, or persons.

Differences relating to a street or public road to be determined by stipendiary magistrate, county court judge, or sheriff.

4. Where any difference arises under this Act or the Telegraph Act, 1863, between the Postmaster-General and any body or person having any power, jurisdiction, or control over or relating to a street or public road, or having power under the last-mentioned Act to give or withhold a consent to the placing of telegraphs and posts in, under, upon, along, or across a street or public road, such difference shall in England or Wales and Ireland be referred to the police or stipendiary magistrate having jurisdiction within the district in which the difference has arisen, or if there be no such magistrate, then to the judge of the county court having jurisdiction within such district, and in Scotland to the sheriff, and such magistrate, judge, and sheriff are respectively empowered and required to hear and determine such difference, and sections thirty to thirty-three, both inclusive, of the Regulation of Railways Act, 1868, shall apply to every difference so referred to such magistrate, judge, or sheriff (as the case may be), in like manner as if he were an arbitrator appointed pursuant to those sections, and as if the Postmaster-General, body, or person between whom the difference has arisen were companies within the meaning of those sections.

31 & 32 Vict. c. 119.

Provided always, that in case either the Postmaster-General or the body or person between whom the difference has arisen shall be dissatisfied with the award or decision of such magistrate, judge, or sheriff, the party so dissatisfied may within twenty-one days after such award or decision require, by a notice in writing given to the other party, that the difference shall be referred to the Railway Commissioners.

General provisions as to arbitration.

5. The differences so required to be referred by the last preceding section to the Railway Commissioners and all other differences under this Act, except a difference between the Postmaster-General and any body or person having any right, power, jurisdiction, or control in, over, or relating to any estuary or branch of the sea or the shore or bed of any tidal water, shall be referred to and shall be determined by the Railway Commissioners for the time being; and every difference referred to them under this Act shall be conducted by the Railway Commissioners in the same manner as any other proceeding is conducted by them under the Acts relating to those Commissioners; and it shall be the duty of the Railway Commissioners, and they are hereby empowered, to undertake and determine any difference referred to them under

(1) See the definitions in the Telegraph Act, 1863, *ante*, p. 1436.
(2) See note (1), *ante*, p. 1436.

Section 5.

this Act; and any difference between the Postmaster-General and any body or person having any right of property or other right, or any power, jurisdiction, or authority in, over, or relating to any estuary, branch of the sea, or the shore or bed of any tidal water shall be referred to and determined by the Board of Trade.

In the event of the Railway Commissioners ceasing to hold office, all differences directed under this Act to be determined by them shall be determined by the Board of Trade, and sections thirty to thirty-three, both inclusive, of the Regulation of Railways Act, 1868, shall apply to every difference to be determined under this Act by the Board of Trade, in like manner as if the Postmaster-General, undertakers, body, or person between whom that difference has arisen were companies within the meaning of those sections. 31 & 32 Vict. c. 119.

COMPANIES CLAUSES CONSOLIDATION ACT, 1845.

8 VICT. c. 16.

An Act for consolidating in one Act certain Provisions usually inserted in Acts with respect to the Constitution of Companies incorporated for carrying on Undertakings of a public Nature.

[*8th May*, 1845.]

Secs. 1—3.

Act to apply to all companies incorporated by Acts hereafter to be passed.

1. This Act shall apply to every joint stock company which shall by any Act which shall hereafter be passed be incorporated for the purpose of carrying on any undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the company which shall be incorporated by such Act, and to the undertaking for carrying on which such company shall be incorporated, so far as the same shall be applicable thereto respectively; and such clauses and provisions, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, shall, save as aforesaid, form part of such Act, and be construed together therewith as forming one Act.

Interpretations in this Act:

2. And with respect to the construction of this Act, and of other Acts to be incorporated therewith, be it enacted as follows:

"the special Act:"

The expression "the special Act" used in this Act shall be construed to mean any Act which shall be hereafter passed incorporating a joint stock company for the purpose of carrying on any undertaking, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed" used in this Act, in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act; and the sentence in which such word shall occur shall be construed as if instead of the word "prescribed" the expression "prescribed for that purpose in the special Act" had been used; and the expression "the undertaking" shall mean the undertaking or works, of whatever nature which shall by the special Act be authorised to be executed.

"prescribed:"

"the undertaking:"

Interpretations in this and the special Act:

3. The following words and expressions both in this and the special Act shall have the several meanings hereby assigned to them, unless there be something in the subject or the context repugnant to such construction; (that is to say,)

Number:

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number:

Gender:

Words importing the masculine gender only shall include females:

"Lands:"

The word "lands" shall extend to messuages, lands, tenements, and hereditaments of any tenure:

"Lease:"

The word "lease" shall include an agreement for a lease:

"Month:"

The word "month" shall mean calendar month:

"Superior Courts:"

The expression "superior courts" shall mean Her Majesty's superior courts of record at Westminster or Dublin, as the case may require:

"Oath:"

The word "oath" shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath:

"County:"

The word "county" shall include any riding or other like division of a county, and shall also include county of a city or county of a town:

"Justice:"

The word "justice" shall mean justice of the peace acting for the county, city, borough, liberty, cinque port, or other place where the matter requiring the cognisance of any such justice shall arise, and who shall not be interested in the matter; and where any matter shall be authorised or required to be done by two justices the expression "two

"Two justices:"

Secs. 3—45.

justices" shall be understood to mean two justices assembled and acting together in petty sessions:

"the company:" The expression "the company" shall mean the company constituted by the special Act:

"Directors:" The expression "the directors" shall mean the directors of the company, and shall include all persons having the direction of the undertaking, whether under the name of directors, managers, committee of management, or under any other name:

"Shareholder:" The word "shareholder" shall mean shareholder, proprietor, or member of the company; and in referring to any such shareholder, expressions properly applicable to a person shall be held to apply to a corporation: and

"Secretary." The expression "the secretary" shall mean the secretary of the company, and shall include the word "clerk."

And with respect to the borrowing of money by the company on mortgage or bond, be it enacted as follows:

Power to borrow money.

38. If the company be authorised by the special Act to borrow money on mortgage or bond, it shall be lawful for them, subject to the restrictions contained in the special Act, to borrow on mortgage or bond such sums of money as shall from time to time, by an order of a general meeting of the company, be authorised to be borrowed, not exceeding in the whole the sum prescribed by the special Act, and for securing the repayment of the money so borrowed, with interest, to mortgage the undertaking, and the future calls on the shareholders, or to give bonds in manner hereinafter mentioned ([1]).

Power to re-borrow.

39. If, after having borrowed any part of the money so authorised to be borrowed on mortgage or bond, the company pay off the same, it shall be lawful for them again to borrow the amount so paid off, and so from time to time; but such power of re-borrowing shall not be exercised without the authority of a general meeting of the company, unless the money be so re-borrowed in order to pay off any existing mortgage or bond.

Evidence of authority for borrowing.

40. Where by the special Act the company shall be restricted from borrowing any money on mortgage or bond until a definite portion of their capital shall be subscribed or paid up, or where by this or the special Act the authority of a general meeting is required for such borrowing, the certificate of a justice that such definite portion of the capital has been subscribed or paid up, and a copy of the order of a general meeting of the company authorising the borrowing of any money, certified by one of the directors or by the secretary to be a true copy, shall be sufficient evidence of the fact of the capital required to be subscribed or paid up having been so subscribed or paid up, and of the order for borrowing money having been made; and upon production to any justice of the books of the company, and of such other evidence as he shall think sufficient, such justice shall grant the certificate aforesaid.

Mortgages and bonds to be stamped.

41. Every mortgage and bond for securing money borrowed by the company shall be by deed under the common seal of the company, duly stamped, and wherein the consideration shall be truly stated; and every such mortgage deed or bond may be according to the form in the Schedule (C.) or (D.) to this Act annexed, or to the like effect.

Rights of mortgagees.

42. The respective mortgagees shall be entitled one with another to their respective proportions of the tolls, sums, and premises comprised in such mortgages, and of the future calls payable by the shareholders, if comprised therein, according to the respective sums in such mortgages mentioned to be advanced by such mortgagees respectively, and to be repaid the sums so advanced, with interest, without any preference one above another, by reason of priority of the date of any such mortgage, or of the meeting at which the same was authorised.

Application of calls, notwithstanding mortgage.

43. No such mortgage (although it should comprise future calls on the shareholders) shall, unless expressly so provided, preclude the company from receiving and applying to the purposes of the company any calls to be made by the company.

Rights of obligees.

44. The respective obligees in such bonds shall, proportionally according to the amount of the moneys secured thereby, be entitled to be paid, out of the tolls or other property or effects of the company, the respective sums in such bonds mentioned, and thereby intended to be secured, without any preference one above another by reason of priority of date of any such bond, or of the meeting at which the same was authorised, or otherwise howsoever.

Register of mortgages and bonds.

45. A register of mortgages and bonds shall be kept by the secretary, and within fourteen days after the date of any such mortgage or bond an entry or memorial, specifying the number and date of such mortgage or bond, and the sums secured thereby, and the names of the parties

([1]) As to the necessity of strictly pursuing borrowing powers in order to the validity of the securities, see *Athenæum Life Insurance Co.* v. *Pooley*, 28 L. J. Ch. 119, 32 L. T. 247, 7 W. R. 167, 5 Jur. N. S. 129; and as to the liability of the company where they have had the benefit of the money borrowed, see *Hill* v. *Manchester, &c., Waterworks Co.*, 2 B. & Ad. 544; and generally as to contracts of local authorities, see notes to pp. 137, *et seq.*

thereto, with their proper additions, shall be made in such register; and such register may be perused at all reasonable times by any of the shareholders, or by any mortgagee or bond creditor of the company, or by any person interested in any such mortgage or bond, without fee or reward.

Transfers of mortgages and bonds to be stamped.

46. Any party entitled to any such mortgage or bond may from time to time transfer his right and interest therein to any other person; and every such transfer shall be by deed duly stamped, wherein the consideration shall be truly stated; and every such transfer may be according to the form in the Schedule (E.) to this Act annexed, or to the like effect.

Transfers of mortgages and bonds to be registered.

47. Within thirty days after the date of every such transfer, if executed within the United Kingdom, or otherwise within thirty days after the arrival thereof in the United Kingdom, it shall be produced to the secretary, and thereupon the secretary shall cause an entry or memorial thereof to be made in the same manner as in the case of the original mortgage; and after such entry every such transfer shall entitle the transferee to the full benefit of the original mortgage or bond in all respects; and no party, having made such transfer, shall have power to make void, release, or discharge the mortgage or bond so transferred, or any money thereby secured; and for such entry the company may demand a sum not exceeding the prescribed sum, or, where no sum shall be prescribed, the sum of two shillings and sixpence; and until such entry the company shall not be in any manner responsible to the transferee in respect of such mortgage.

Payment of interest on moneys borrowed.

48. The interest of the money borrowed upon any such mortgage or bond shall be paid at the periods appointed in such mortgage or bond, and if no period be appointed, half-yearly, to the several parties entitled thereto, and in preference to any dividends payable to the shareholders of the company.

Transfers of interest to be stamped.

49. The interest on any such mortgage or bond shall not be transferable, except by deed duly stamped.

Repayment of money borrowed at time fixed.

50. The company may, if they think proper, fix a period for the repayment of the principal money so borrowed, with the interest thereof, and in such case the company shall cause such period to be inserted in the mortgage deed or bond; and upon the expiration of such period the principal sum, together with the arrears of interest thereon, shall, on demand, be paid to the party entitled to such mortgage or bond; and if no other place of payment be inserted in such mortgage deed or bond, such principal and interest shall be payable at the principal office or place of business of the company.

Repayment of money borrowed where no time fixed.

51. If no time be fixed in the mortgage deed or bond for the repayment of the money so borrowed, the party entitled to the mortgage or bond may, at the expiration or at any time after the expiration of twelve months from the date of such mortgage or bond, demand payment of the principal money thereby secured, with all arrears of interest, upon giving six months previous notice for that purpose; and in the like case the company may at any time pay off the money borrowed, on giving the like notice; and every such notice shall be in writing or print, or both, and if given by a mortgagee or bond creditor, shall be delivered to the secretary or left at the principal office of the company, and if given by the company shall be given either personally to such mortgagee or bond creditor or left at his residence, or if such mortgagee or bond creditor be unknown to the directors, or cannot be found after diligent inquiry, such notice shall be given by advertisement in the *London* or *Dublin Gazette*, according as the principal office of the company shall be in England or Ireland, and in some newspaper as after mentioned.

Interest to cease on expiration of notice to pay off mortgage or bond.

52. If the company shall have given notice of their intention to pay off any such mortgage or bond at a time when the same may lawfully be paid off by them, then at the expiration of such notice all further interest shall cease to be payable on such mortgage or bond, unless, on demand of payment made pursuant to such notice, or at any time thereafter, the company shall fail to pay the principal and interest due at the expiration of such notice on such mortgage or bond.

Arrears of interest, when to be enforced by appointment of a receiver.

53. Where by the special Act the mortgagees of the company shall be empowered to enforce the payment of the arrears of interest, or the arrears of principal and interest, due on such mortgages, by the appointment of a receiver, then, if within thirty days after the interest accruing upon any such mortgage has become payable, and, after demand thereof in writing, the same be not paid, the mortgagee may, without prejudice to his right to sue for the interest so in arrear in any of the superior courts of law or equity, require the appointment of a receiver, by an application to be made as hereinafter provided; and if within six months after the principal money owing upon any such mortgage has become payable, and after demand thereof in writing, the same be not paid, the mortgagee, without prejudice to his right to sue for such principal money, together with all arrears of interest, in any of the superior courts of law or equity, may, if his debt amount to the prescribed sum, alone, or if his debt does not amount to the prescribed sum he may, in conjunction with other mortgagees whose debts, being so in arrear, after demand as aforesaid, shall, together with his, amount to the prescribed sum, require the appointment of a receiver, by an application to be made as hereinafter provided.

Arrears of principal and interest.

Secs. 54—113.

Appointment of receiver.

54. Every application for a receiver in the cases aforesaid shall be made to two justices, and on any such application it shall be lawful for such justices, by order in writing, after hearing the parties, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid; and upon such appointment being made all such tolls and sums of money as aforesaid shall be paid to and received by the person so to be appointed; and the money so to be received shall be so much money received by or to the use of the party to whom such interest, or such principal and interest, as the case may be, shall be then due, and on whose behalf such receiver shall have been appointed; and after such interest, and costs, or such principal, interest, and costs, have been so received, the power of such receiver shall cease.

Access to account books by mortgagees.

55. At all seasonable times the books of account of the company shall be open to the inspection of the respective mortgagees and bond creditors thereof, with liberty to take extracts therefrom without fee or reward.

And with respect to the accountability of the officers of the company, be it enacted as follows:

Security to be taken from officers intrusted with money.

109. Before any person intrusted with the custody or control of moneys, whether treasurer, collector, or other officer of the company, shall enter upon his office, the directors shall take sufficient security from him for the faithful execution of his office.

Officers to account, on demand.

110. Every officer employed by the company shall from time to time, when required by the directors, make out and deliver to them, or to any person appointed by them for that purpose, a true and perfect account in writing under his hand of all moneys received by him on behalf of the company; and such account shall state how, and to whom, and for what purpose such moneys shall have been disposed of; and, together with such account, such officer shall deliver the vouchers and receipts for such payments; and every such officer shall pay to the directors, or to any person appointed by them to receive the same, all moneys which shall appear to be owing from him upon the balance of such accounts.

Summary remedy against parties failing to account.

111. If any such officer fail to render such account, or to produce and deliver up all the vouchers and receipts relating to the same in his possession or power, or to pay the balance thereof, when thereunto required, or if for three days after being thereunto required he fail to deliver up to the directors, or to any person appointed by them to receive the same, all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this or the special Act, or any Act incorporated therewith, or belonging to the company, then, on complaint thereof being made to a justice, such justice shall summon such officer to appear before two or more justices at a time and place to be set forth in such summons, to answer such charge; and upon the appearance of such officer, or in his absence upon proof that such summons was personally served upon him, or left at his last known place of abode, such justices may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such officer; and if it appear, either upon confession of such officer, or upon evidence, or upon inspection of the account, that any moneys of the company are in the hands of such officer, or owing by him to the company, such justices may order such officer to pay the same; and if he fail to pay the amount it shall be lawful for such justices to grant a warrant to levy the same by distress, or, in default thereof, to commit the offender to gaol, there to remain without bail for a period not exceeding three months, unless the same be sooner paid.

Officers refusing to deliver up documents, &c. to be imprisoned.

112. If any such officer refuse to make out such account in writing, or to produce and deliver to the justices the several vouchers and receipts relating thereto, or to deliver up any books, papers, or writings, property, effects, matters, or things, in his possession or power, belonging to the company, such justices may lawfully commit such offender to gaol, there to remain until he shall have delivered up all the vouchers and receipts, if any, in his possession or power, relating to such accounts, and have delivered up all books, papers, writings, property, effects, matters, and things, if any, in his possession or power, belonging to the company.

Where officer about to abscond a warrant may be issued in the first instance.

113. Provided always, that if any director or other person acting on behalf of the company shall make oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any such officer as aforesaid to abscond, it shall be lawful for the justice before whom the complaint is made, instead of issuing his summons, to issue his warrant for the bringing such officer before such two justices as aforesaid; but no person executing such warrant shall keep such officer in custody longer than twenty-four hours, without bringing him before some justice; and it shall be lawful for the justice before whom such officer may be brought either to discharge such officer, if he think there is no sufficient ground for his detention, or to order such officer to be detained in custody, so as to be brought before two justices, at a time and place to be named in such order, unless such officer give bail to the satis-

faction of such justice for his appearance before such justices to answer the complaint of the company.

Secs. 113—145.

114. No such proceeding against or dealing with any such officer as aforesaid shall deprive the company of any remedy which they might otherwise have against such officer, or any surety of such officer.

Sureties not to be discharged.

And with respect to the making of bye laws, be it enacted as follows:

124. It shall be lawful for the company from time to time to make such bye laws as they think fit, for the purpose of regulating the conduct of the officers and servants of the company, and for providing for the due management of the affairs of the company in all respects whatsoever, and from time to time to alter or repeal any such bye laws, and make others, provided such bye laws be not repugnant to the laws of that part of the United Kingdom where the same are to have effect, or to the provisions of this or the special Act; and such bye laws shall be reduced into writing, and shall have affixed thereto the common seal of the company; and a copy of such bye laws shall be given to every officer and servant of the company affected thereby.

Power to make bye laws for the officers of the company.

125. It shall be lawful for the company, by such bye laws, to impose such reasonable penalties upon all persons, being officers or servants of the company, offending against such bye laws, as the company think fit, not exceeding five pounds for any one offence.

Fines for breach of such bye laws.

126. All the bye-laws to be made by the company shall be so framed as to allow the justice before whom any penalty imposed thereby may be sought to be recovered to order a part only of such penalty to be paid if such justice shall think fit.

Bye laws to be so framed as that penalties may be mitigated.

127. The production of a written or printed copy of the bye laws of the company, having the common seal of the company affixed thereto, shall be sufficient evidence of such bye laws in all cases of prosecution under the same.

Evidence of bye laws.

And with respect to the recovery of damages not specially provided for, and penalties, be it enacted as follows:

142. In all cases where any damages, costs, or expenses are by this or the special Act, or any Act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, on application, shall issue their or his warrant accordingly.

Provision for damages not otherwise provided for.

143. If sufficient goods of the company cannot be found whereon to levy any such damages, costs, or expenses payable by the company, the same may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the company; and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer, or left at his residence; and if such treasurer pay any money under such distress as aforesaid, he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any money belonging to the company coming into his custody or control, or he may sue the company for the same.

Distress against the treasurer.

144. Where in this or the special Act, or any Act incorporated therewith, any question of compensation, expenses, charges, or damages is referred to the determination of any one justice, or more, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before one justice, or before two justices, as the case may require, at a time and place to be named in such summons; and upon the appearance of such parties, or in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such one justice, or such two justices, as the case may be, to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, on oath; and the costs of every such inquiry shall be in the discretion of such justices, and they shall determine the amount thereof.

Method of proceeding before justices in questions of damages, &c.

145. The company shall publish the short particulars of the several offences for which any penalty is imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law of the company affecting other persons than the shareholders, officers, or servants of the company, and of the amount of every such penalty, and shall cause such particulars to be painted on a board, or printed upon paper and pasted thereon, and shall cause such board to be hung up or affixed on some conspicuous part of the principal place of business of the company, and where any such penalties are of local application shall cause such boards to be affixed in some conspicuous place in the immediate neighbourhood to which such penalties are applicable or have reference; and such particulars shall be renewed as often as the same or any part thereof is

Publication of penalties.

Secs. 145—158.

obliterated or destroyed; and no such penalty shall be recoverable unless it shall have been published and kept published in the manner hereinbefore required.

Penalty for defacing boards used for such publication.

146. If any person pull down or injure any board put up or affixed as required by this or the special Act, or any Act incorporated therewith, for the purpose of publishing any bye-law or penalty, or shall obliterate any of the letters or figures thereon, he shall forfeit for every such offence a sum not exceeding five pounds, and shall defray the expenses attending the restoration of such board.

Penalties to be summarily recovered before two justices.

147. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices (1).

Distress how to levied.

150. Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty or otherwise, is directed to be levied by distress such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same, and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money, and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress not unlawful for want of form.

151. No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Application of penalties.

152. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, for the benefit of the poor of such parish; or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied for the benefit of the poor of such extra-parochial place, or of any adjoining parish or district and shall order the same to be paid over to the proper officer for that purpose.

Damage to be made good in addition to penalty.

154. If, through any act, neglect, or default on account whereof any person shall have incurred any penalty imposed by this or the special Act, or any Act incorporated therewith, any damage to the property of the company shall have been committed by such person, he shall be liable to make good such damage, as well as to pay such penalty; and the amount of such damages shall, in case of dispute, be determined by the justices by whom the party incurring such penalty shall have been convicted and on non-payment of such damages, on demand, the same shall be levied by distress, and such justices, or one of them, shall issue their or his warrant accordingly.

Penalty on witnesses making default.

155. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction, under the provisions of this or the special Act, or any Act incorporated therewith, at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (2).

Transient offenders.

156. It shall be lawful for any officer or agent of the company, and all persons called by him to his assistance, to seize and detain any person who shall have committed any offence against the provisions of this or the special Act, or any Act incorporated therewith, and whose name and residence shall be unknown to such officer or agent, and convey him, with all convenient despatch, before some justice, without any warrant or other authority than this or the special Act; and such justice shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Proceedings not to be quashed for want of form.

158. No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by *certiorari* or otherwise into any of the superior courts.

(1) The concluding portion of this section, which was repealed by the Summary Jurisdiction Act, 1884, is omitted. Proceedings must now be taken under the Summary Jurisdiction Acts, 1848 and 1879.

(2) This section is repealed by the Summary Jurisdiction Act, 1884, so far as relates to any matter to which the Summary Jurisdiction Acts apply.

Secs. 159, 160.

159. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions (1)

Parties allowed to appeal to quarter sessions, on giving security.

160. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

SCHEDULES.

SCHEDULE (C.)

Schedule C.

Form of Mortgage Deed.

"The company."

Mortgage, number £ .

By virtue of [*here name the special Act*], we, "The company," in consideration of the sum of pounds paid to us by *A. B.* of do assign unto the said *A. B.*, his executors, administrators, and assigns, the said undertaking [and (*in case such loan shall be in anticipation of the capital authorised to be raised*) all future calls on shareholders], and all the tolls and sums of money arising by virtue of the said Act, and all the estate, right, title, and interest of the company in the same, to hold unto the said *A. B.*, his executors, administrators, and assigns, until the said sum of pounds, together with interest for the same at the rate of for every one hundred pounds by the year, be satisfied [the principal sum to be repaid at the end of years from the date hereof (*in case any period be agreed upon for that purpose*)], [at *or any place of payment other than the principal office of the company*]. Given under our common seal, this day of in the year of our Lord .

SCHEDULE (D.)

Schedule D.

Form of Bond.

"The company."

Bond, number , £ .

By virtue of [*here name the special Act*], we, "The company," in consideration of the sum of pounds to us in hand paid by *A. B.* of do bind ourselves and our successors unto the said *A. B.*, his executors, administrators, and assigns, in the penal sum of pounds.

The condition of the above obligation is such, that if the said company shall pay to the said *A. B.*, his executors, administrators, or assigns, [at (*in case any other place of payment than the principal office of the company be intended*),] on the day of which will be in the year one thousand eight hundred and , the principal sum of pounds, together with interest for the same at the rate of pounds per centum per annum, payable half-yearly on the day of and day of then the above-written obligation is to become void, otherwise to remain in full force. Given under our common seal, this day of , one thousand eight hundred and .

SCHEDULE (E.)

Schedule E.

Form of Transfer of Mortgage or Bond.

I, *A. B.* of in consideration of the sum of paid to me by *G. H.* of do hereby transfer to the said *G. H.*, his executors, administrators, and assigns, a certain bond [*or* mortgage] number made by "The company" to bearing date the day of for securing the sum of and interest [*or if such transfer be by indorsement*, the within security], and all my right estate, and interest in and to the money thereby secured [*and if the transfer be of a mortgage*, and in and to the tolls, money, and property thereby assigned]. In witness whereof I have hereunto set my hand and seal, this day of one thousand eight hundred and .

(1) The concluding portion of this section, which is repealed by the Summary Jurisdiction Act, 1884, is omitted.

WATCHING AND LIGHTING ACT, 1833.

3 & 4 WILL. IV., c. 90.

Secs. 5—10.

On application of three rated inhabitants, churchwardens to convene a meeting in vestry to determine whether the provisions of this Act shall be adopted.

5. And be it further enacted, that from and after the passing of this Act, upon the application in writing of three or more of the ratepayers of any parish, it shall be lawful for the churchwardens thereof, and they are hereby required, within ten days after the receipt of such application as aforesaid, to appoint and notify a time and place for a public meeting of the ratepayers of the said parish, for the purpose of determining whether the provisions in this Act contained shall be adopted and carried into execution in the said parish: Provided always, that the time appointed for holding the said meeting shall not be less than ten days and not more than twenty-one days from the time of the said application so being delivered to them as aforesaid, and that notification of the time and place of meeting shall be made by forthwith affixing a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to the parochial affairs of any such parish, and also by publication of the same in the parish church or chapel on the Sunday previous to the day appointed for holding such meeting, during or immediately after divine service.

Chairman to be elected who shall determine any controversies.

6. And be it further enacted, that such person as may be elected by the ratepayers present shall preside as chairman at such meetings; and that if any controversy shall arise at any such meeting as to the qualification or right of voting or eligibility of any person claiming to vote, or as to the qualification or eligibility of any candidate, such controversy shall be determined by the chairman presiding at such meeting.

Chairman to read requisition, and require persons to determine whether Act shall be adopted.

7. And be it further enacted, that the chairman who shall preside at any meeting assembled as herein directed shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require the persons assembled thereat to determine by majority of votes, as herein mentioned, whether the provisions of this Act, as herein set forth, shall or shall not be adopted and acted upon within such parish: Provided nevertheless, that it shall be lawful for the majority of the ratepayers present to adjourn such meeting from time to time.

If meeting determine to proceed the provisions of this Act shall thenceforth take effect.

8. And be it further enacted, that if at any such meeting it shall be determined by a majority consisting of two thirds of the votes of the ratepayers present at such meeting that the provisions of this Act shall be adopted, then and in such case such provisions shall from thenceforth take effect and come into operation in such parish; and it shall forthwith be determined that a certain number not being more than twelve nor less than three inspectors shall be elected to carry such purposes into effect; and the number of inspectors so determined upon shall be elected in manner herein mentioned.

Inhabitants to fix amount of money to be raised.

9. And be it further enacted, that the ratepayers of such parish shall at their first meeting, or at some adjournment thereof, and so on from time to time in every succeeding year at a meeting to be called for that purpose in manner herein directed, fix and determine the total amount of money which the inspectors shall have power to call for in any one year, in order to carry into effect the provisions of this Act, such sum to be raised in the manner herein directed, upon the full and fair annual value of all property rateable for the relief of the poor within such parish, such full and fair annual value to be computed according to the last valuation for the time being acted upon in assessing the poor's rate for the said parish: Provided nevertheless, that any five rated inhabitants, qualified to vote as herein mentioned, may, at such meeting or adjournment thereof, in writing given to the chairman of the said meeting, demand a poll to be taken of the ratepayers qualified to vote upon the question as to whether this Act and the provisions thereof, or any part thereof, shall be adopted in such parish, and also as to the amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting, and which said demand of a poll the said chairman is required forthwith to deliver to the churchwardens of the said parish.

Poll may be demanded as to adoption of Act.

Notice of poll to be given by churchwardens.

10. And be it further enacted, that the said churchwardens of the said parish shall, on the first Sunday next after the receipt of such demand of a poll, affix, or cause to be affixed a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to parochial affairs of any such parish, specifying some day, not earlier than ten days and not later than twenty-one days after such Sunday, and at what place or places within the said parish, the ratepayers are required to signify their votes for or against the adoption of this Act, or such part thereof as may have been agreed upon at the said meeting, as well as with respect to the annual amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as deter-

mined at such meeting, which votes shall be received on two successive days, commencing at eight of the clock in the forenoon and ending at four of the clock in the afternoon of each day; and the said notice shall be to the following effect:

Form of notice.

"The churchwardens of this parish [*insert the name of the parish*] having received a demand for a poll, duly signed according to the provisions of an Act of the fourth year of the reign of King William the Fourth, intituled 'An Act,' &c. [*setting out the title of the Act*], the ratepayers of this parish of [*insert the name of the parish*] are hereby required, all and each of them, on the day of next, and the following day, to signify to the said churchwardens, by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the churchwardens at [*insert here the place*], their votes for or against the adoption of the aforesaid Act, or so much thereof as relates to watching or lighting [*as the case may be*], the amount of the money to be raised in the succeeding year for the purposes thereof, being [*here insert the sum agreed on at the meeting*], and the number of inspectors to be elected [*insert the number also agreed on*], such sum and such number of inspectors being fixed and determined upon at a meeting of the ratepayers called pursuant to the said Act.

"(Signed)

Churchwardens."

Form of declaration.

11. And be it further enacted, that the said declaration shall be to the following effect:

"I *A. B.* of Street [*or* place *or* house] in this parish of vote [for *or* against, *as the case may be*], the adoption of the Act of the fourth year of the reign of His Majesty King William the Fourth, intituled 'An Act,' &c. [*set out title of the Act*], or so much thereof as relates to watching or lighting [*as in the notice*], the amount of the money to be raised in the succeeding year for the purposes thereof, being [*as in notice*], and the number of inspectors to be elected [*as in notice*]."

Churchwardens to examine the votes, and declare whether two thirds of them are in favour of adopting this Act.

12. And be it further enacted, that the said churchwardens shall carefully examine the votes to them delivered as aforesaid, and shall compare them with the last rate made for the relief of the poor of the said parish, and shall be empowered to call before them and examine any parish officer touching the said votes, or any ratepayer so giving his vote, and after a full and fair summing-up of the said votes shall, by public notice according to the form and manner hereafter prescribed, declare whether or not two thirds of the votes given have been given in favour of the adoption of the said Act (or so much thereof as relates to watching or lighting, as in the notice), and also as to the sum of money to be raised in the succeeding year, and the number of inspectors to be elected to be (as in the notice): Provided always, that the whole number of persons voting shall be a clear majority of the ratepayers of the parish: Provided also, that in case of a poll being demanded as aforesaid, the adoption or non-adoption of this Act, with the sum to be raised, and the number of inspectors to be elected as aforesaid, shall be decided by such number of votes as aforesaid: Provided also, that the expenses incurred by the churchwardens in calling such meeting, giving the notices as aforesaid, and in taking such poll, shall be paid out of the rate collected for the relief of the poor in the said parish.

Ratepayers may inspect votes.

13. Provided always, and be it further enacted, that any of the ratepayers of the aforesaid parish, not exceeding five together, may inspect, at or in the vestry-room, or in some convenient place within the same parish, and they are hereby empowered to inspect, the votes so given for and against the adoption of this Act, with the sum to be raised, and number of inspectors to be elected as aforesaid, at all seasonable times within one month after such notice shall have been given; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid ratepayers of the said parish at all seasonable times within the period aforesaid.

No person to vote unless he has been rated one year.

14. And be it further enacted, that no person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing as such, under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such ratepayer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting.

Notice of adoption of this Act.

15. And be it further enacted, that notice of the adoption of this Act (or any part thereof, specifying it), with the amount of the sum to be raised in the succeeding year, and the number of inspectors to be elected by any parish, shall be forthwith given by the churchwardens for the time being of the said parish by affixing a notice of the same to the principal door of every church and chapel within the said parish, or on the usual place of affixing notices relating to the parochial affairs of such parish; and in such case the provisions of this Act shall from thenceforth take effect and come into operation in such parish: Provided always that it shall be lawful for the inhabitants present at any meeting called in manner herein directed, at any time after the expiration of three years from the time when the provisions of this Act shall have been

Act may be abandoned.

Secs. 15–19.

adopted, to determine that the provisions of this Act shall, from and after a day to be fixed upon at such meeting, cease to be acted upon; in which case, from and after such last-mentioned day, the provisions of this Act shall no longer be in force in such parish: Provided, nevertheless, that the provisions in this Act contained shall remain and continue in force for the purpose of collecting and recovering any rate which may have been previously made; and if on the abandonment and ceasing to act upon the provisions of this Act there shall be any balance in the hands of the said inspectors, after defraying the expenses incurred in carrying into effect the provisions of this Act, the said balance shall be paid over to the overseers of the poor of the said parish, to be applied in aid of the poor rates of the said parish.

If meeting determine against adopting this Act.

16. And be it further enacted, that in case any such meeting convened as aforesaid, or, in case of a poll having been demanded as aforesaid, a majority of two thirds of the votes as aforesaid shall not have determined to adopt the provisions of this Act, it shall not be lawful for the inhabitants to meet again in less than one year from the period at which such meeting shall have been so convened as aforesaid.

Mode of electing inspectors.

17. And be it further enacted, that the inspectors herein mentioned shall be elected in manner following; (that is to say,) the churchwardens of any parish adopting the provisions of this Act shall, in the manner herein first directed, forthwith call a meeting of the ratepayers of such parish, and each candidate, being a person who shall reside within such parish, and who shall have been assessed or charged by the last rate made for the relief of the poor in respect of a dwelling-house or other tenement or premises of the annual value, according to the said rate, of fifteen pounds or more, shall be eligible to be elected an inspector for the purposes of this Act, and shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other person in like manner qualified; and if more candidates than the number of inspectors authorised to be elected shall be proposed, and a poll shall be demanded by any ten persons qualified to vote on behalf of any such candidates, then the chairman shall open and proceed with such poll, and in a book or books prepared for that purpose, which book or books the churchwardens are hereby required to cause to be prepared, shall enter or cause to be entered the name of all such candidates, and the name of every person duly qualified to be present and vote who shall desire to vote, together with his description and abode, and shall register the vote of every such person for every or any such candidate as every such person may respectively require; and if the votes of all the persons duly qualified and desirous to vote cannot be conveniently collected and registered by four of the clock of the same day upon which the poll shall have been commenced, then the chairman shall at that hour adjourn such poll to the day next succeeding, unless such day shall be a Sunday, Christmas Day, or Good Friday, and in that case to the day following, and then proceed to collect and register the votes of all persons duly qualified and applying to vote; provided, nevertheless, that the poll shall finally close at four of the clock on the day to which it shall have been adjourned, or sooner, provided all persons duly qualified and desirous to vote shall have voted, and after the lapse of one hour without any person offering to vote; and as soon after the close of the poll as may be possible the result thereof shall be declared at the place where the election may have been holden, and certified by the chairman to the overseers of the poor; and the said churchwardens shall be reimbursed all such reasonable charges and expenses as may be incurred in providing clerks and books, and otherwise in the performance of the duties hereby required of them by the candidates at the said election for the said office: Provided, nevertheless, that if the provisions of this Act are adopted at the meeting first called for that purpose, the said inspectors may be appointed at the same time by the ratepayers of such parish then present, unless a poll should be demanded, and if such poll should be demanded it shall be proceeded with as herein directed.

At the end of twelve months the inspectors to give notice to churchwardens that they are ready to produce their accounts, and churchwardens to call a meeting for that purpose.

18. And be it further enacted, that in every parish adopting the provisions of this Act the inspectors shall, within one month next after the expiration of twelve calendar months from the day of such adoption, give notice to the churchwardens of the said parish that they are ready to produce their accounts and vouchers for the previous year, and thereupon the said churchwardens shall give due notice, in the manner required with respect to the first meeting to be held under this Act, that a meeting of the ratepayers of the said parish will be held at an hour and place in the said notice to be mentioned, on some day, not being a Sunday, within ten days from the receipt of such notice, for the purpose of the said inspectors producing such accounts and vouchers, and for the election of inspectors for the execution of this Act, and for determining the amount of the money to be raised for the purposes of this Act, for the current year; and in every future year such meeting shall, for the purposes aforesaid, be held on the same day in the corresponding month, except such day should fall on a Sunday, and then on the day following.

Meetings in future years.

Inspectors at such meeting to produce accounts; one

19. And be it further enacted, that at such annual meeting the said inspectors shall produce their accounts and vouchers of all moneys received and paid by virtue of this Act for the previous year; and a duplicate or copy of such accounts, verified on oath before any two justices by the

aid inspectors or any two of them, shall be deposited with the said inspectors, and shall be pen at all reasonable times to the inspection of all parties interested; and at such annual neeting one third of the inspectors, or as near thereto as the number appointed will admit of, hall go out of office in rotation; and in place of such inspectors so going out of office a like umber of other inspectors shall be elected: Provided always, that any of such outgoing inspec- ors shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain n office, anything herein contained to the contrary notwithstanding.

third of them to go out of office and others elected.

20. And be it further enacted, that the chairman appointed to preside at such annual meeting hall proceed in such manner as the chairman at the first meeting to be held under this Act is ereinbefore directed to proceed at the election of the inspectors to be first appointed for the xecution of this Act, and shall decide on questions which may arise as to the eligibility or quali- cation of any person whatsoever, and as to all matters whatsoever connected with the said lection, and shall declare the result of the same as aforesaid.

Chairman to decide questions as to eligibility, &c.

21. And be it further enacted, that in case any inspector shall die, or become disqualified by hange of residence or otherwise, or shall neglect to act, and in case of any casual vacancy hap- ening in any manner whatever, so that the number of inspectors shall be reduced to less than hree, notice shall be immediately given by the acting inspectors to the churchwardens of the arish, who shall forthwith, in the manner directed by this Act, call a meeting of the rated ıhabitants as aforesaid for the purpose of filling up such vacancy or vacancies.

How vacancies in the number of inspectors shall be filled up.

22. And be it further enacted, that the inspectors for executing this Act in any parish shall ıeet on the first Monday in every month, at noon, at some convenient place or office previously ublicly notified; and at such monthly meeting it shall be lawful for any inhabitant rated to the elief of the poor of any such parish to appear there, and prefer any matter of complaint which e may think proper to make concerning any matter or thing done by force or in pursuance of or nder pretence of the provisions of this Act.

Inspectors to meet monthly.

23. And be it further enacted, that such inspectors shall meet at all other times and so often at any previous meeting shall be determined upon; and it shall be at all times competent for ıy one inspector, when three inspectors only shall have been appointed, and in all other cases r any two inspectors, by writing under his or their hands, to summon, upon at least forty-eight ours notice, the inspectors for any special purpose therein named, and for such time as shall be erein named; and that at all meetings of such inspectors any number not less than one third of e whole number when more than three inspectors shall have been appointed, and when only ree inspectors shall have been appointed then not less than two inspectors, shall constitute a ıorum for transacting business.

Special meetings of inspectors.

Quorum.

24. And be it further enacted, that it shall be lawful for the said inspectors elected in any arish under this Act for the time being, and they are hereby authorised and required, to appoint, ıring pleasure, such treasurer and other officers as they shall think necessary for effecting the ırposes of this Act, and to remove and displace the same, and to hire and rent a sufficient office house or room for holding their meetings and transacting their business, and also to appoint itable salaries, wages, and allowances for such treasurer and other officers, and also to agree r a reasonable rent for such office or house or room, and to pay such salaries, wages, and owances, and such rent, out of the moneys received by the inspectors under the authority of is Act: Provided, nevertheless, that no person shall at the same time hold two offices or uations under the said inspectors.

Inspectors to appoint officers during pleasure, and rent an office for the transaction of their business.

25. And be it further enacted, that it shall be lawful for the said inspectors, or any two or re of them, and they are hereby required, to take security from the treasurer to be appointed virtue of this Act for the due execution of his office of treasurer, according to the true intent d meaning of this Act, which security shall be to the full amount of the sum likely to be in e hands of the said treasurer at any one time; and in case any such treasurer shall neglect or use for the space of three weeks next after his appointment to give or offer such security to e satisfaction of the said inspectors, then the appointment of every such person so neglecting refusing shall be null and void to all intents and purposes, and the said inspectors shall within ree weeks then next assemble and appoint some other fit and proper person to the office of asurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and point from time to time until security shall be given to their satisfaction as aforesaid.

Security to be taken from treasurer.

26. And be it further enacted, that every such treasurer and other officer appointed by virtue this Act shall under his respective hand, and at such time or times and in such manner as e said inspectors shall direct, deliver to the said inspectors, or such person as they shall point, true and perfect accounts in writing of all matters and things committed to his charge virtue of this Act, and also of all moneys which shall have been by such officer received by tue of or for the purposes of this Act, and of how much thereof shall have been expended d disbursed, and for what purposes, together with proper vouchers for such payments, and

Treasurer and officers to account.

Secs. 26–29.

Proceedings against officers neglecting to account.

that every such officer shall pay all such moneys as shall remain due from him to the treasurer for the time being, or to such person or persons as the said inspector shall appoint to receive the same; and if any such treasurer, officer, or other person shall refuse or neglect to make and render such account, or to produce and deliver up the vouchers relating to the same, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said inspectors or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said inspectors by notice in writing under the hands and seals of any two or more of the said inspectors given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said inspectors or such other person or persons as aforesaid respecting the same, then and in every such case, upon complaint made by the said inspectors, or by such person or persons as they the said inspectors shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to any justice of the peace, such justice may and he is hereby authorised and required to issue a summons under his hand and seal for the officer so refusing or neglecting to appear before two justices of the peace; and upon the said officer appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices to hear and determine the matter in a summary way; and if, upon confession of the party, or by the testimony of any credible witness or witnesses upon oath (which oath such justices are hereby empowered to administer), it shall appear to such justices that any moneys remain due from such officer, such justices may and they are hereby authorised and required, upon non-payment thereof, by warrant under their hands and seals, to cause such money to be levied by distress and sale of the goods and chattels of such officer; and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, or if it shall appear to such justices that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to remain, without bail or mainprize, until he shall have given a true and perfect account as aforesaid, or until he shall have paid such moneys as aforesaid, or compounded with the said inspectors for such money, and shall have paid such composition in such manner as they shall appoint (which composition the said inspectors are hereby empowered to make and receive), and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said inspectors or to such other person or persons as aforesaid; but no such offender shall be kept or detained in such common gaol or house of correction for want of sufficient distress by virtue of this Act for any longer space or time than three calendar months.

Commitment of offender not to discharge his sureties.

27. And be it further enacted, that no prosecution or commitment, under the provisions of this Act, of any treasurer or other officer or person to be appointed under the powers of this Act, shall acquit or discharge any surety or security that shall or may have been taken by or given to the said inspectors for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively.

Officers taking any fee or reward besides the salary or fees appointed to forfeit £50.

28. And be it further enacted, that if any person who shall be employed as treasurer, or any other officer or servant who shall be in anywise employed by the said inspectors for putting this Act or any of the powers thereof into execution, shall exact, take, or accept any fee or reward whatsoever other than such salaries, allowances, and rewards as are appointed by this Act, or shall be appointed, allowed, and approved of by the said inspectors, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, or shall in anywise be concerned or interested in any bargain or contract made or to be made by the said inspectors; and no person during the time he holds the office of inspector shall accept or hold any office or place of trust created by virtue of this Act within the said parish, or shall be concerned directly or indirectly in any contract with the said parish; every such person so offending shall be incapable of ever serving or being employed under this Act, and shall over and above forfeit the sum of fifty pounds to any person or persons who shall sue for the same.

Inspectors may sue and be sued in the name of any one of them.

29. And be it further enacted, that the said inspectors may sue and be sued in the name of any one of the inspectors for the time being; and all actions or suits that may be necessary or expedient to be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, may be

brought in the name of any one of the said inspectors; and that no action or suit which may be brought, commenced, or prosecuted by or against the said inspectors, or any of them, by virtue or on account of this Act, shall abate or be discontinued by the death, resignation, or removal of such inspector, but such inspector shall be deemed plaintiff or defendant in any such action or suit (as the case may be): Provided also, that in all cases in which the inspector as aforesaid shall, in pursuance of this Act, be the plaintiff or defendant on the record in any action or actions, suit or suits, in which in effect the said inspectors shall be suing or sued in the name of such one inspector as aforesaid, be (although appearing as the plaintiff or defendant on the record) may and shall nevertheless (if not otherwise interested or objectionable) be a good examinable and competent witness in every action or suit either for or against the said inspectors; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any and every such action, suit, or proceeding shall and may be lawfully made by such one inspector, notwithstanding he shall be nominal plaintiff or defendant on the record as aforesaid: Provided also, that every or any such inspector in whose name any action or suit shall be commenced, prosecuted, or defended in pursuance of this Act shall always be reimbursed and paid, out of the moneys to arise by virtue of this Act, all such costs, charges, and expenses as he shall be put to or become chargeable with by reason of his being made plaintiff or defendant therein; and in case of his removal from office, or ceasing to act as such inspector, all such costs, charges, and expenses shall be paid by the inspector for the time being; and no inspector shall be personally answerable or liable for the payment of the same or any part of them, unless such action or suit shall arise in consequence of his own wilful neglect or default, or have been brought or commenced or be defended without the order or direction of the said inspectors.

Proceedings at meetings of inspectors to be entered in books, which shall be good evidence.

30. And be it further enacted, that all acts, orders, and proceedings of the said inspectors at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the inspectors who were then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as evidence of all such acts, orders, and proceedings upon any appeal or trial or information, or any proceedings, civil or criminal, and in any court or courts of law or equity whatsoever.

Accounts to be kept.

31. And be it further enacted, that the said inspectors shall and they are hereby required from time to time to order and direct a book or books to be provided and kept, in which book or books shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been dispersed and paid; and such book or books shall at all reasonable times be open to the inspection of the said inspectors and of every inhabitant rated to the relief of the poor of the parish adopting the provisions of this Act, without fee or reward; and the said inspectors and other persons aforesaid, or any of them, shall or may take copies of or extracts from the said book or books, or any part thereof, without paying for the same; and in case the said inspectors shall refuse to permit or shall not permit the said persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such inspector shall forfeit and pay any sum of money not exceeding five pounds for each default, to be levied and applied in manner hereinafter provided.

Inspectors to issue an order to overseers for payment of money for the purposes of this Act.

32. And be it further enacted, that as soon as the inspectors have been elected as aforesaid, it shall be lawful for them, or any two or more of them, from time to time to issue an order under their hands to the overseers of the poor of any parish to which the provisions of this Act shall be extended, by which order they shall require the said overseers to levy the amount mentioned in the said order.

Power to collect rates.

33. And be it further enacted, that the overseers aforesaid shall, for the purpose of collecting, raising, and levying the rate necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges, as for levying money for the relief of the poor in the said parish: Provided always, that owners and occupiers of houses, buildings, and property (other than land) rateable to the relief of the poor in any such parish shall be rated at and pay a rate in the pound three times greater than that at which the owners and occupiers of land shall be rated at and pay for the purposes of this Act: Provided also, that the total amount of the sum to be collected, raised, and levied for the purposes of this Act within any one year shall not exceed such sum as shall have been agreed on by the inhabitants of the said parish as aforesaid, and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, buildings, and other property within the said parish shall be rated or shall be rateable according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish.

Land and

34. Provided always, and be it further enacted, that it shall be lawful for the overseers of the

Secs. 34–39.

Houses to be rated separately.

poor of any such parish, and they are hereby required, whenever, according to the rate made for the relief of the poor, one and the same person shall be rated in one sum in respect of land, and also of houses, buildings, and other property, to cause such land, and also such houses, buildings, and other property, to be separately assessed, and the sum hereby authorised to be levied shall be assessed accordingly: Provided always, that every court-yard, yard, or garden (such garden not being a market garden or nursery ground) shall be included in and make part of the assessment to be made on the house, buildings, or other property to which they may be respectively attached: Provided also, that such land, houses, buildings, and other property shall not in the whole be assessed at a higher amount than they were in the last rate made for the relief of the poor within the said parish.

Power of succeeding overseers to collect rate.

35. And be it further enacted, that if the overseers of the poor of any parish adopting the provisions of this Act shall go out of office before they shall have collected or levied the amount mentioned in the order issued under the hands of the said inspectors in pursuance of this Act, they shall deliver to the succeeding overseers, within seven days from the time they go out of office, a full and particular account in writing of the names of the parties from whom any money may be due on account of the rate made in pursuance of this Act, as well as the last order issued to them by the said inspectors; and in such case the succeeding overseers shall have the like powers and remedies under this Act for the collecting and recovery thereof, and shall be liable to the same penalties and forfeitures in case of the non-payment to the said inspectors, as their predecessors had or were liable to.

Overseers to pay amount to treasurer.

36. And be it further enacted, that the overseers of the poor of every parish adopting the provisions of this Act, to whom any such order as aforesaid shall be issued, shall pay over the amount mentioned in such order to the treasurer to be appointed in the said parish under this Act within three calendar months from the delivery of such order to one of the overseers, and shall keep the accounts of the said rate levied for the purposes of this Act separate and distinct from the accounts of the rates levied in the same parish for the relief of the poor; and at the time of making any payment to the said treasurer the said overseers shall deliver to him a note in writing signed by them, specifying the amount so paid, which note shall be kept by the treasurer as a voucher for his receipt of that particular amount; and the receipt of the said treasurer specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amount, and shall be allowed as such in passing their accounts with their respective parishes.

Receipt of treasurer to be a discharge to overseers.

Where other persons are authorised to collect poor's rates, such persons to be deemed overseers.

37. And be it enacted, that where any persons other than the overseers of the poor shall by virtue of any office or appointment be authorised and required to make and collect or cause to be collected the rate for the relief of the poor in any parish to which all or any of the provisions of this Act shall be extended, such persons, by whatsoever title they may be called, shall be deemed to be overseers of the poor within the meaning of this Act, and to be included under and denoted by the words "overseers of the poor," for all the purposes of this Act, as fully as if they were commonly called or known by the title of overseers of the poor.

Overseers may be distrained upon for non-payment.

38. And be it enacted, that in case the amount directed by such order as aforesaid to be paid by the overseers in any parish to which all or any of the provisions of this Act shall be extended shall not be paid to the said treasurer within the time specified for that purpose in the said order, any justice of the peace, upon complaint thereof made to him by the said treasurer or by any one of the inspectors, may and he is hereby authorised and required to issue a summons under his hand and seal for the said overseers so refusing or neglecting to pay such money as aforesaid to appear before two justices of the peace; and upon the said overseers appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices and they are hereby required, in case the said money is not paid, to issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers shall not be sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act, and shall be collected by the like method.

Watchmen, &c. to be appointed, and provided with arms, clothing, &c.

39. And be it further enacted, that the said inspectors shall from time to time appoint and employ such number of able-bodied watch-house keepers, serjeants of the watch, watchmen, patrols, street-keepers, and other persons as they shall think sufficient for the proper protection of the inhabitants, houses, and property, streets and other places within the limits of this Act, by day or by night, or by day and by night, and provide for the use of all such watchmen, watch-house keepers, serjeants of the watch, patrol, and persons as aforesaid such clothing, arms, ammunition, and weapons, and shall assign to them such beats and rounds and duties, and appoint such hours for them to be on duty, and also such wages, rewards, and gratuities, or remunerations for their services, and also make such rules, orders and regulations relative to

such watch-house keepers, serjeants of the watch, watchmen, patrol, streetkeepers, and other persons, and their duties, as to the said inspectors shall seem meet, and also shall and may offer and give, as well to the said persons as to any other not specially employed by them, such gratuities and rewards for apprehending felons and others, offenders within the limits of this Act, as to them shall seem proper; and shall and may defray the expenses of prosecuting any such felons and offenders, for the protection of the inhabitants of any parish adopting the provisions of this Act, or in defending any of the said persons or other officers of the said inspectors in the execution of their duty, as they shall think proper; and the said wages, rewards, gratuities, and the costs of such prosecutions or defences, and all other expenses that may be incurred by the said inspectors for the protection and guard of the inhabitants, shall and may be paid by the said inspectors out of the moneys received in pursuance of this Act.

Watchmen, &c. to deliver up clothing on removal, &c.

40. And be it further enacted, that all such clothing, arms, ammunition, and weapons, as provided for the use of such watchmen, watch-house keepers, serjeants of the watch, patrol, and persons as aforesaid, shall remain and continue the property of the inspectors for the time being, and in case of the resignation, removal, or death of any such watchmen, watch-house keeper, serjeant of the watch, patrol, or person as aforesaid, shall be returned to the said inspectors; and in case of neglect or refusal so to do, the said watchmen, watch-house keeper, serjeant of the watch, patrol, or person as aforesaid, or in case of his death, the party in possession thereof, shall be subject and liable to a penalty not exceeding the sum of twenty pounds, to be recovered for the use of the said inspectors.

Penalty.

Duty of watchmen, &c.

41. And be it further enacted, that the watchmen, serjeants of the watch, patrols, and other persons to be appointed by virtue of this Act shall, during the time they shall be on duty, use their utmost endeavours to prevent any mischief by fire, and also to prevent all robberies, burglaries, and other felonies and misdemeanours, and other outrages, disorders, and breaches of the peace, within the limits of the parish adopting the provisions of this Act; and to apprehend and secure all felons, rogues, vagabonds, and disorderly persons who shall disturb the public peace, or any person or persons wandering, secreting, or misbehaving himself, herself, or themselves, or whom they shall have reasonable cause to suspect of any evil designs, and to secure and keep in safe custody every such person, in order that he or she may be conveyed as soon as conveniently may be before one of His Majesty's justices of the peace, to be examined and dealt with according to law; and it shall and may be lawful to and for the said watchmen, serjeants of the watch, patrols, and other person or persons so appointed as aforesaid, to call and require any person or persons to aid and assist them in taking such felons, rogues, vagabonds, and all disorderly or suspected persons as aforesaid; and in case any person or persons shall assault or resist or shall promote or encourage the assaulting or resisting any of the watchmen, serjeants of the watch, patrols, or other person or persons so appointed as aforesaid, in the execution of their duty, every such person shall for every such offence forfeit and pay any sum not exceeding forty shillings; and in case any such offender shall not, on conviction, pay the said forfeiture, such justice is hereby required to commit him, her, or them to the house of correction, there to be kept to hard labour, if the said justice shall so order, for any time not exceeding three calendar months, unless such forfeiture shall be sooner paid; or instead of committing the said offender as aforesaid, the said justice may, by warrant under his hand and seal, cause the said forfeiture, as well as the costs (if any) to be levied by distress and sale of the goods and chattels of the offender, returning the overplus (if any) of the money raised or recovered, after discharging the said forfeiture and the costs and expenses of recovering and levying the same, to the owner of the goods and chattels so seized and distrained.

Watchmen, &c. to be sworn in, and to have the power of constables.

42. And be it further enacted, that all watchmen, serjeants of the watch, and patrols shall be sworn in as constables before any justice of the peace, and act as such while in execution of the powers and authorities of this Act; and they are hereby invested with and shall have and enjoy the like powers and authorities, privileges, and immunities, and shall be subject and liable to such and the like penalties and forfeitures, as any constable or constables is or are invested with, or shall or may have and enjoy, or is or are or shall be subject or liable to by law: Provided nevertheless, that no person by being sworn in and acting as or executing the office of a constable shall thereby gain a settlement in such parish.

Certain fees to be paid over to inspectors.

43. And be it further enacted, that in all such cases in which any of the duties usually performed by constables shall have been executed by any of the officers appointed by the inspectors as hereinbefore enacted, all fees and allowances for the performance of such duties shall be paid over to the said inspectors, to be by them applied in aid of the rate levied under the provisions of this Act.

Fire engines to be provided.

44. And be it further enacted, that it shall be lawful for the said inspectors from time to

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time to provide and keep up fire engines, with pipes and other utensils proper for the same, for the use of the parish adopting the provisions of this Act, and to provide a proper place or places for the keeping of the same, and to place such engines under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable, and the expenses attending the providing and keeping of such engines shall be paid out of the money authorised to be received by the inspectors under the provisions of this Act.

Lamp irons to be put up.

45. And be it further enacted, that it shall be lawful for the said inspectors, and they are hereby empowered, from time to time to cause such lamp irons or lamp posts or other posts to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or inclosures (doing as little damage as may be practicable thereto), or to be put up and erected in such other manner, within all or any of the said roads, streets, and places within the limits of this Act, as they shall think proper; and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp irons and lamp posts as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every twenty-four hours as they shall think necessary: and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed as they shall think necessary for watching all or any of the streets, roads, and places within the limits of this Act.

Gas pipes not to be laid on private premises without consent.

46. Provided always, and be it further enacted, that nothing herein contained shall extend or be construed to extend to authorise or empower the said inspectors, or any body or bodies politic or corporate, or person or persons contracting with the said inspectors for lighting with gas such roads, streets, and public places, to carry or lay any pipe or pipes, cocks or branches from any mains or pipes, against, into, or through any dwelling house or dwelling houses, manufactories, public or private buildings, or to continue the same, without the consent in writing of the owner or owners, occupier or occupiers for the time being of such dwelling house or dwelling houses, manufactories, public or private buildings respectively, nor to enable any body or bodies politic or corporate, or person or persons contracting with the said inspectors for lighting such streets and public places, to enter into or upon any private lands or grounds, without the consent in writing of the owner or owners, occupier or occupiers of such lands or grounds for that purpose first had and obtained.

Owners of private grounds may alter position of pipes.

47. Provided also, and be it further enacted, that in case the soil, pitching, or pavement of any road or way, for the purpose of laying any gas main or gas pipe along, under, or across the same, be broken up with the consent of the owner or owners of the soil for the time being, and after the same shall have been so laid and placed such owner or owners shall be desirous of having the same removed, it shall be lawful for such owner or owners at any time or times thereafter, if he, she, or they shall deem it necessary or expedient, at his, her, or their own costs and charges, to alter and vary the position of such pipe or pipes, main or mains, and to relay the same, so that no damage be done thereby to the said body or bodies politic or corporate or person or persons contracting with the said inspectors, and so that such body or bodies politic or corporate or person or persons contracting with the said inspectors as aforesaid be not thereby prevented from or obstructed in lighting any public or private lamp, unless such damage or obstruction be unavoidable.

For stopping the escape of gas.

48. And be it further enacted, that whenever any gas shall be found to escape from any of the pipes which shall be laid down or set up by order of the said inspectors in pursuance of this Act, the body or bodies politic or corporate, or person or persons whosoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any houses, manufactory, building, or other premises within the limits of any parish adopting the provisions of this Act, shall at their own expense, immediately after receiving notice by parol or in writing from any person or persons whatsoever, to be given or left at their office or usual place of transacting their business, of any such escape of gas, cause the most speedy and effectual measures to be taken to stop or prevent such gas from escaping; and in case the said body or bodies politic or corporate, or person or persons as aforesaid, shall not within twenty-four hours next after such notice by parol or in writing being given of any such escape of gas, effectually stop and prevent the gas from escaping, and wholly and satisfactorily remove the cause of complaint, then and in every such case the said body or bodies politic or corporate, or person or persons as aforesaid, shall for every such offence forfeit and pay any sum not exceeding five pounds for each and every day, after the expiration of twenty-four hours from the time of giving any such notice, during which the gas shall be suffered to escape as aforesaid; which penalty shall from time to time be recoverable in a summary way, on the oath or affirmation of one or more credible witness or witnesses before any two justices of the peace, and shall and may be recovered, with all reasonable charges, by distress and sale of the goods and chattels of any such

Penalty for neglect.

body or bodies politic or corporate, or person or persons as aforesaid, by the warrant of any two justices of the peace as aforesaid, to be granted in like manner and subject to the like provisions as are herein directed touching other penalties to be recovered by virtue of this Act.

Power to convey away washings of gas works.

49. And be it further enacted, that it shall be lawful for the body or bodies politic or corporate, or other person or persons whosoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, to lay iron pipes, of such breadth, depth, and dimensions, and in such manner as they shall think expedient, under the roads, streets, and other public places within the limits of this Act, for the purpose of carrying off the washings or other waste liquids which may arise in the prosecution of the works aforesaid, the said body or bodies politic or corporate, or other person or persons as aforesaid, doing as little damage as may be in laying the said pipes, and immediately repairing, at their own expense, all such damage; provided that no such washings or other waste liquids, or any other matter or thing made or arising in the manufacture of such gas, shall be conducted or conveyed into any river, brook, canal, or running stream; and that no such pipe shall be laid in any situation where the same can, shall, or may in any manner interfere with, prejudice, or affect any of the present or future public or private wells, sewers, or drains within the limits of the parish adopting the provisions of this Act, or without the consent of the said inspectors.

Penalty for conveying washings into any river, &c.

50. And be it further enacted, that if any body or bodies politic or corporate, company or companies of proprietors, or any other person or persons whatsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, shall at any time empty, drain, or convey, or cause or suffer to be emptied, drained, or conveyed, or to run or flow, any washings or other waste liquids, substances, or things whatsoever which shall arise or be made in the prosecution of the said gas works, or in the manufacture or process of making or procuring such gas, into any river, brook, or running stream, reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch communicating with any of them, or do or cause to be done any annoyance, act, or thing to the water contained in any of them, whereby the water contained therein, or any part thereof, shall or may be spoiled, fouled, or corrupted, then and in every such case any such body or bodies politic or corporate, company or companies of proprietors, or other person or persons, so offending as aforesaid, shall forfeit and pay for every such offence the sum of two hundred pounds; and such penalty or forfeiture shall and may be sued for and recovered, together with full costs of suit, in any of His Majesty's courts of law, by regular or summary action of debt or on the case, or by bill, plaint, or information, wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and the whole of such penalty shall be paid to the person or persons who shall inform or sue for the same: Provided always, that no such penalty or forfeiture shall be recoverable unless the same be sued for within six calendar months from after the time when such annoyance, nuisance, injury, damage, act, or thing shall have ceased and determined: Provided also, that over and above and in addition to the said penalty of two hundred pounds, and whether such penalty shall or shall not have been sued for or recovered, in case any of the said washings or other waste liquid, or noisome or offensive liquid, substances, or things, shall be emptied, drained, conducted or conveyed, or caused or suffered to run or flow, in manner aforesaid, into any river, brook, or running stream, or any reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch communicating with any of them, or any such annoyance, nuisance, injury, damage, act, or thing shall be done or caused to be done as aforesaid, and notice thereof in writing shall have been given by any person or persons to whom the same shall belong, or by any other person or persons whomsoever, to the said body or bodies politic or corporate, company or companies of proprietors, or any of them, or other the person or persons making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within any parish or part of a parish adopting the provisions of this Act, so offending, or to his, her, or their clerk or clerks, or to any person in his or their service or employ, and such body or bodies politic or corporate, company or companies of proprietors, or other person or persons, shall not within twenty-four hours after such notice shall have been given to them or him as aforesaid, stop and hinder or prevent all and every such washings, waste liquids, or noisome or offensive liquids, substances, or things, from being emptied, drained, conducted, or conveyed, or from running or flowing, in manner aforesaid, and every such other annoyance, nuisance, injury, damage, act, or thing from being done as aforesaid, then and in every such case the said body or bodies politic or corporate, company or companies of proprietors, or other person or persons so offending, shall forfeit and pay the sum of twenty pounds for each and every day such washings, waste liquids, or noisome

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or offensive liquids, substances, or things, shall be so emptied, drained, conducted, or conveyed, or caused or suffered to run or flow, in manner aforesaid, or such other annoyance, nuisance, injury or damage, act or thing shall be so done or caused to be done as aforesaid; and such last-mentioned penalty shall and may be recovered and levied in such and the like manner as any other penalty or forfeiture is in and by this Act directed to be recovered and levied, and shall be paid to the informer, or to the person or persons who, in the judgment of the justice before whom the conviction shall take place, shall have sustained any annoyance, injury, or damage by any such act so done or committed.

Gas pipes to be laid four feet from water pipes and in a particular manner.

51. And be it further enacted, that all and every the pipes or other conduits to be used or laid for the conveyance of gas, in, under, through, along, across, or round any road, street, or other place within the limits of any parish adopting the provisions of this Act, shall be so laid at the greatest practical distance, and whenever the width of the carriageway in such street or place will allow thereof, at the distance of four feet at least from the nearest part of any water pipe already laid down or hereafter to be laid down for the conveyance of water in, under, through, along, across, or round any of the said roads, streets, or other places within the limits of any parish adopting the provisions of this Act, excepting in cases where it shall be unavoidably necessary to lay the gas pipes across any of the said water pipes, in which cases the said gas pipes shall be laid over and above the said water pipes, at the greatest practical distance therefrom, and shall form therewith a right angle, and in such cases the said gas pipes so crossing the said water pipes shall be at least nine feet in length, so that no joint of any of the said gas pipes shall be nearer to any part of the said water pipes than four feet at least; and in laying down the said gas pipes the said contractors or other persons supplying gas shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and shall in such trench properly form the jointing with the other pipes to be added thereto with proper and sufficient materials, and shall also make and keep all and every such pipes, and all pipes connected and communicating therewith, and all the screws, joints, inlets, apertures, or openings therein respectively, air-tight, and in all and every respect prevent the said gas from escaping therefrom, upon pain of forfeiting for every offence the sum of five pounds.

To prevent escape of gas and contamination of water.

52. And be it further enacted, that whenever the water of any company of proprietors for supplying the inhabitants of any houses within the limits of any parish, part of a parish, or place adopting the provisions of this Act, with water shall be contaminated by any of the gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish, part of a parish, or place, adopting the provisions of this Act, the body or bodies politic or corporate, or person or persons making, furnishing, or supplying such gas, shall forfeit and pay the sum of twenty pounds, to be sued for and recovered, and shall be applied to and for the use and benefit of the said company supplying water as aforesaid; and in case any such water shall be contaminated or affected by gas in any way whatsoever, then and in every such case the said company or other persons making, furnishing, or supplying such gas shall, within twenty-four hours next after the notice thereof in writing, signed by the treasurer or other officer of and for such water company as aforesaid, or by any person making use of such water, to be left at the usual place or office of transacting business of the said body or bodies politic or corporate, or other person or persons, cause the most proper and effectual measures to be taken to stop and prevent gas from escaping from their mains, works, or pipes, or contaminating or affecting the water of such company as aforesaid; and in case the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying gas, shall not, within twenty-four hours next after such notice so left as aforesaid, effectually stop and prevent the gas from so escaping, and wholly and satisfactorily remove the cause of every such complaint, and prevent all and every such contamination whereof notice shall be given as aforesaid, that then the said body or bodies politic or corporate, or other person or persons as aforesaid, shall on each and every complaint forfeit and pay to the treasurer or other officer for the time being of such water company as aforesaid, for the use and benefit of the said company, over and above the beforementioned penalty of twenty pounds, the sum of ten pounds for each and every day during which the water of the said last mentioned company shall be and remain contaminated or affected by such gas; and in default of payment thereof as aforesaid, such penalty or penalties shall and may be recovered by information, to be exhibited on the oath of one credible witness, by and in the name of the treasurer or other officer for the time being of the said water company as aforesaid, or by and in the name of any one or more of the directors of the said company, at the option of the parties prosecuting such information against the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying gas, before any two justices of the peace, with costs, to be assessed by such justices, and to be levied by distress and sale of the goods and chattels of the said body or

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bodies politic or corporate, or other person or persons making, furnishing, or supplying such gas, together with the charges of such distress and sale, by warrant under the hand and seal of such justices, which warrant such justices are hereby empowered to grant; and such penalty or penalties, when so levied, shall be paid to the treasurer or other officer for the time being of such water company, for the use of such water company.

For ascertaining if the water be contaminated.

53. And be it further enacted, that in any case in which it shall be or become a question upon such complaint as aforesaid, whether the said water be contaminated or affected by the gas of the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of this Act, it shall be lawful for the company of proprietors, or other the owners or proprietors of any waterworks, to dig to and about and search and examine the mains, pipes, conduits, and apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, for the purpose of ascertaining whether such contamination proceed or be occasioned by the gas of the said body or bodies politic or corporate, or other person or persons as aforesaid; and if it shall appear that the said water has been contaminated by any escape of gas as aforesaid, the costs and expenses of the said digging, search, and examination, and of the repair of the pavement of the roads, street, or streets which shall be taken up or disturbed, shall be borne and paid by the said body or bodies politic or corporate, or person or persons as aforesaid; which costs and expenses of digging, search, and examination shall be ascertained and determined, if necessary, by such justices as aforesaid, and be recovered in like manner as any penalty may be recovered by virtue of this Act: Provided always, that if upon such examination it shall appear that such contamination has not arisen from any such escape of gas from any of the mains, pipes, or conduits of the said body or bodies politic or corporate, or other person or persons as aforesaid, then and in such case the said company of proprietors, or other the owners or proprietors of such waterworks, shall bear and pay all the costs and expenses of such search, examination, and repair as aforesaid, and shall also make good to the said body or bodies politic or corporate, or other person or persons as aforesaid, any loss, injury, or damage which may be occasioned to the said mains, pipes, conduits, or apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, in and by such search and examination, the amount of such injury, loss, or damage to be ascertained and determined by such justices of the peace as aforesaid.

Persons supplying gas liable to be indicted for nuisance.

54. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to prevent any person from proceeding by indictment or otherwise against any of the officers, servants, or workmen of the body or bodies politic or corporate, or other person or persons whomsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, in respect of any works or other means which shall be employed by them or any of them in making the said gas, and using the same in furnishing with lights as aforesaid, as a public or private nuisance, or from bringing any action against the said body or bodies politic or corporate, company of proprietors, or person or persons as aforesaid, or any of their officers, servants, or workmen, for any injury sustained by reason of any such works, or the use of the said gas, or the method of lighting therewith, whether such injury shall proceed from the preparation or the use of the same gas, or method of lighting, or the carelessness or want of skill of any of the persons employed therein, or from any other cause whatsoever.

Penalty for wilfully destroying or injuring lamps.

55. And be it further enacted, that if any person shall wilfully break, throw down, spoil, or damage any watchhouse, watchbox, or lamp, lamp iron, lamp post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, it shall be lawful for any person or persons who shall see the offence committed to apprehend, and also for any other person or persons to assist in apprehending, the offender or offenders, and by the authority of this Act, and without any warrant, and to deliver him or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable despatch to convey him, her, or them before any justice of the peace; and such justice shall examine upon oath any witness or witnessess who shall appear to be produced to give evidence touching such offence; and if the party accused shall be convicted of any such offence, either by his, her, or their confession, or upon such evidence as aforesaid, he, she, or they shall forfeit any sum not exceeding forty shillings for every lamp, lamp iron, or lamp post so broken, thrown down, or damaged, and shall also make full satisfaction for the damage which shall have been done thereby, and not exceeding five pounds for any other such offence as aforesaid, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act, and shall be levied and recovered in the same manner as any forfeiture

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is by this Act hereinbefore directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty.

How persons accidentally breaking lamps are to be dealt with.

56. And be it further enacted, that if any person shall carelessly or accidentally break any of the said lamps, lamp irons, or lamp posts, or do any such damage or injury as hereinbefore is mentioned, and shall not, upon demand, make satisfaction to the said inspectors for the damage or injury so done, it shall and may be lawful for any justice of the peace, upon any complaint thereof made to him upon oath, to summon the party complained of, and upon hearing the parties upon both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money, by way of satisfaction to the said inspectors for such damage, as such justice shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same and all expenses attending the recovery thereof may be levied and recovered as any forfeiture is by this Act hereinbefore directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty.

Power for inspectors to contract for the works directed to be done by this Act.

57. And be it further enacted, that it shall and may be lawful to and for the said inspectors from time to time to enter into any contract or contracts with any person, company or companies whatsoever, for lighting the same streets, roads, and other places, or any of them, or any part thereof, either with oil or with gas, or with any other material or in any other manner whatsoever, or for furnishing lamps, lamp irons, lamp posts, watchboxes, posts, chains, pales, rails, and other things necessary for the purposes aforesaid, or any materials for the same, which contract or contracts shall specify the several works to be done and the prices to be paid for the same, and the time or times when the works shall be completed, and the penalties to be suffered in cases of non-performance thereof, and shall be signed by two or more of the said inspectors, and also by the person or persons contracting to perform such works respectively, which contract or contracts, or a copy or copies thereof, shall be entered in a book to be kept for that purpose; but no contract above the value or sum of twenty pounds shall be entered into, unless previous to the making of any such contract fourteen days notice shall be given in one or more of the public newspapers published in the county in which the said parish shall be situate, expressing the intention of entering into such contract, in order that any person or persons willing to undertake the same may make proposals for that purpose, to be offered and presented to the said inspectors at a certain time and place in such notice to be mentioned: Provided always, that if the said inspectors shall be of opinion that it will not be advantageous to contract with the person or persons offering the lowest price, it shall be lawful for the said inspectors to contract with such other person or persons as they shall think proper.

Inspectors may sue for breach of contract;

58. And be it further enacted, that in case the same shall not be well and sufficiently performed, according to the terms, intent, and meaning of such contract or contracts, or shall not be finished or completed at or within the time or times specified in such contract or contracts, then the said inspectors may cause an action to be brought in any of His Majesty's courts of law at Westminster, against any such contractor, for any penalty contained in his contract; and on proof of his signing the said contract or contracts, or non-performance thereof at the time or times for that purpose to be therein mentioned, the said inspectors shall be entitled to and recover the full penalty contained in any such contract, which, when recovered, shall be applied for the purposes of this Act: Provided always, that it shall be lawful for the said inspectors (if they think fit) to compound and agree with any contractor for any penalty incurred by him for the breach or non-performance of any such contract, for such sum of money as the said inspectors shall think proper, not being less than the injury or damage sustained by the breach or non-performance of such contract, and all costs, charges, and expenses which shall be occasioned thereby; and it shall be lawful for the said inspectors to cancel or make void any contract with any person or persons whomsoever, by mutual consent, if they shall think proper.

or may compound with contractor.

Inspectors may purchase or rent ground or buildings for the purposes of this Act.

59. And be it further enacted, that the said inspectors may and they are hereby authorised and empowered to treat with the owner or owners and occupier or occupiers of any houses, buildings, lands, and grounds, for the purposes of this Act, for such sum or sums of money, or yearly rent, or for such time as to them shall appear reasonable (which sum or sums of money and yearly rent shall be respectively paid out of the moneys to arise by virtue of this Act), in such place or places as they may think proper.

Property of lamps, &c. vested in the inspectors.

60. And be it further enacted, that the property of and in all lamps, lamp irons, lamp posts, watch-houses, watchboxes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within any parish or part of a parish adopting the provisions of this Act, or any of them, and of and in all the iron, timber, stone, bricks, and other materials and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said inspectors), shall be and the same are hereby vested in the said inspectors, and may be sold and disposed of from time to time as they shall think proper; and the money arising from such sale or sales shall be applied towards the purposes of this Act; and the said

inspectors are hereby authorised and empowered to bring or cause to be brought any action or actions in such name or names and in manner as herein is provided, or to prefer or order and direct the preferring of any bill or bills of indictment, against any person or persons who shall steal, take, or carry away (as the case may be) all or any part of such lamp irons, lamp posts, watch-houses, watchboxes, iron, timber, and stone, bricks, furniture, posts, chains, pales, rails, or other materials and things as aforesaid; and in all such actions or bills of indictment it shall be and be deemed and taken to be sufficient to state generally that the article or articles, thing or things, for or on account of which such action or actions shall be brought, or such bill or bills of indictment preferred, is or are the property of the inspectors, without particularly stating or specifying the name or names of all or any of the said inspectors.

Inspectors of adjoining parishes may unite.

61. And be it further enacted, that it shall be lawful for the inspectors appointed by any parish adopting the provisions of this Act to unite with the inspectors of any adjoining parish or parishes, for the better carrying into effect the purposes of this Act.

Recovery and application of penalties.

63. And be it further enacted, that all fines, penalties, and forfeitures inflicted or imposed by this Act, or by virtue of any rule or order made in pursuance hereof (the mode of recovery whereof is not herein otherwise provided for), may in case of non-payment thereof be recovered in a summary way, by order and adjudication of any two justices of the peace, on complaint to them for that purpose exhibited, and afterwards be levied, as well as the costs (if any) of such proceedings, on non-payment, by distress and sale of the goods and chattels of the offender or respective offenders, or person or persons liable to pay the same, by warrant under the hands and seals of such justices; all which penalties, not herein directed to be otherwise applied, shall be paid to the said inspectors or their treasurer, to be applied for such purposes of this Act as the said inspectors shall order and direct, except in all such cases where the penalty or forfeiture shall be incurred by the said inspectors, and then the same shall be paid to the informer; and if upon the return of such warrant or warrants it shall appear that no sufficient distress can be had whereupon to levy the said penalty or penalties and such costs as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of any such justices, upon the confession of the offender or offenders, or otherwise, that he, she, or they have or hath not sufficient goods and chattels whereupon such penalties, forfeitures, costs, and expenses can be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant of distress, and thereupon it shall be lawful for such justices, and they are hereby required and empowered, by warrant or warrants under their hands and seals, to commit such offender or offenders to the common gaol or house of correction in the said county or place in which the said parish shall be situate, there to be kept, with or without hard labour [1].

Inspectors exempted from personal liability.

64. Provided always, and be it further enacted, that nothing herein contained shall be deemed, construed, or taken to extend to render the said inspectors personally, or any of their goods and chattels (other than such as may be invested in them in pursuance of this Act), liable to the payment of any sum or sums of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is herein directed to be made by the said inspectors.

Appeal to the quarter sessions against order of inspectors, &c.

66. Provided also, and be it further enacted, that if any person or persons shall find himself, herself, or themselves aggrieved by any order, direction, or appointment of the said inspectors, or any order or conviction of one or more justice or justices of the peace, it shall be lawful for such person or persons to appeal to any general or quarterly sessions of the peace to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situate, within four calendar months next after the cause of complaint shall have arisen, or if such sessions shall be held before the expiration of one calendar month, then such appeal shall be made to the secondly succeeding sessions, either of which court of sessions is hereby empowered to hear and finally determine the matter of the said appeal, and to make such order therein as to them shall seem meet, which order shall be final and conclusive to and upon all parties; provided that the person or persons so appealing shall give or cause to be given at least fourteen days' notice in writing of his, her, or their intention of appealing as aforesaid, and of the matter or cause thereof, to the said inspectors, or other the respondent or respondents, that (?and) within five days after such notice shall enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace, which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever.

[1] This section is given as amended by 47 & 48 Vict. c. 43, which also repeals section 62.

Secs. 67–73.

Appeals against rate to be subject to same rules as appeals against poor rates.

67. Provided also, and be it further enacted, that if any person or persons shall find himself, herself, or themselves aggrieved by any rate made by the overseers of the poor for the purposes of this Act, he, she, and they may appeal to any general or quarterly sessions of the peace, to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situated; and all such appeals shall be subject to the same rules, regulations, provisions, and directions, and shall be prosecuted and proceeded with in the like manner, as appeals against rates made for the relief of the poor in such parish.

Plaintiff not to recover in any action after tender of sufficient amends.

68. Provided also, and be it further enacted, that no plaintiff or plaintiffs shall recover in any action or actions for any irregularity, trespass, or other proceedings made or committed in execution of this Act if tender of sufficient amends shall be made by or on behalf of the party or parties who shall have committed any such irregularity, trespass, or wrongful proceedings before such action brought; and in case no tender shall have been made, it shall be lawful for the defendant or defendants in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he or they shall think fit, whereupon such proceedings, order, and adjudication shall be made, had, and given in and by such court as in other actions where the defendant is allowed to pay money into court.

Limitations of actions.

69. And be it further enacted, that no action or suit shall be commenced against any person or persons for anything done in pursuance of or under the authority of or colour of this Act until twenty-one days notice has been given thereof in writing to the said inspectors, nor after sufficient satisfaction or tender thereof has been made to the party or parties aggrieved, nor after six calendar months next after the fact committed for which such action or actions, suit or suits, shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other county or place; and the defendant or defendants in such actions or suits may plead the general issue, or give this Act and every special matter in evidence, at any trial or trials which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such action or suit was brought before twenty-one days notice thereof was given as aforesaid, or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county or place than as aforesaid, then the jury or juries shall find a verdict for the defendant or defendants therein; and if a verdict or verdicts shall be found for any such defendant or defendants, or if the plaintiff or plaintiffs in such action or actions, suit or suits, shall become nonsuit, or suffer a discontinuance of such action or actions, or if, upon any demurrer or demurrers in such action or actions, judgment shall be given for the defendant or defendants therein, then and in any of the cases aforesaid such defendant or defendants shall have double costs, and shall have such remedy for recovering the same as any defendant or defendants may have for his, her, or their costs in any other case by law.

Proceedings not to be unlawful for want of form.

70. And be it further enacted, that no proceedings to be had and taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by *certiorari* or any other writ or process whatsoever into any of His Majesty's courts of record at Westminster or elsewhere.

Parishes may adopt only parts of Act.

71. And be it further enacted, that the provisions of this Act may be adopted in any parish either as to lighting or as to watching, or as to lighting and watching, as may be deemed expedient; and that the provisions of this Act may be adopted in any parish so far as the same relate to lighting, although such parish shall be watched under or by virtue of any Act of Parliament passed for that purpose, and may be adopted in any parish so far as the same relate to watching, although such parish shall be lighted under or by virtue of any Act of Parliament passed for that purpose.

Limiting the powers of the Act.
10 Geo. IV., c. 44.

72. And be it further enacted, that nothing in this Act contained shall be construed to extend to abridge, repeal, alter, amend, or interfere with the powers and provisions contained in an Act made and passed in the tenth year of the reign of His late Majesty King George the Fourth, intituled "An Act for improving the Police in and near the Metropolis," or to extend to any parish or place already regulated by or under the provisions of any Act of Parliament for all the purposes herein-before provided for, or to interfere with the powers which any corporate body may have with respect to watching and lighting.

Parts of parishes may adopt the provisions of this Act;

73. And be it further enacted, that it shall and may be lawful to and for the inhabitants of part of any parish to hold a meeting of the inhabitants of such part, to be convened in manner herein directed, and to be composed of such inhabitants only, for the purpose of determining whether the provisions in this Act contained, or any of them, shall be adopted and carried into execution in such part of the said parish; and that all such meetings shall be subject and liable to all the clauses, regulations, and restrictions in this Act contained in respect of meetings to be convened for the purposes thereof; and that the churchwardens of the said parish shall act in the same manner for such part of the parish the inhabitants of which may be desirous of adopt-

ing the provisions of this Act, for carrying the provisions of the same into effect, as they could by virtue hereof act for the parish at large; and that the overseers of the poor of the said parish, or of any township or division of the said parish, shall be amenable to the provisions of this Act, so far as they may relate to the part of such parish situate within or partly within the division or district for which such overseers shall act, for the purpose of levying, raising, and paying the rates within the part of such parish adopting the provisions of this Act, in the same manner as they would be if the whole parish, township, or place for which they act had adopted the provisions of this Act: Provided always, that no proceedings of the said inhabitants, nor any rate to be raised or levied in pursuance of such proceedings, shall extend to any part of the said parish which may already be regulated by or under the provisions of any Act for the purposes in this Act mentioned, nor interfere with the powers and provisions of such Act or the execution thereof in any respect whatsoever.

Secs. 73–77.

but not to interfere with any local Act.

74. And be it further enacted, that it shall be lawful for any surveyor or other person or persons acting by or under the authority of Commissioners of Sewers, at any time or times in the day time, to enter into any manufactory, gasometer, receiver, or other building, belonging to any gas company or companies, or the said inspectors, in order to inspect and examine if there be any escape of gas, or any washings, or other waste liquids, substances, or other things whatsoever, which shall arise or be produced in the prosecution of the said gas works, or in the manufacture or process of making or procuring such gas, into any public sewer or drain; and if such surveyor or other person or persons acting by or under the authority of Commissioners of Sewers shall at any such time or times be refused admittance or entrance into any such manufactory, gasometer, receiver, or other building, for the purpose of making such inspection and examination as aforesaid, or on being admitted shall be obstructed in or prevented from making such inspection and examination as aforesaid, the said gas company or companies, or the said inspectors, so offending shall forfeit and pay for every such offence the sum of twenty pounds.

Surveyor of Commissioners of Sewers may enter into gas works, to see if there be any escape of gas, &c.

75. Provided always, and be it further enacted, that nothing in this Act contained shall extend, or be deemed or construed to extend, to prejudice, diminish, alter or take away any of the rights, powers, or authorities vested in Commissioners of Sewers, but all the rights, powers, and authorities vested in them shall be as good, valid, and effectual as if this Act had not been made.

Not to prejudice the rights of the Commissioners of Sewers;

76. Provided always, and be it further enacted, that nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or any of the powers vested by charter or otherwise in the chancellors, masters, and scholars, and their successors, of the said Universities.

nor to affect the Universities.

77. And be it further enacted, that the powers given to watch and light any parish shall be understood to be given to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct, and chapelry, or parts within the same; and that where the word "parish" is used, it shall be understood to extend to any parts within the same; and that the powers given to a churchwarden shall be understood to be given to any chapelwarden, overseer, or other person usually calling any meeting on parochial business; and that the words "justices of the peace" shall be understood to mean justices of the peace for the county, city, borough, town, division, riding, shire, liberty, or place in which the parish which may adopt the provisions of this Act shall be situate; and the word "ratepayer" to include all persons assessed to and paying rates for the relief of the poor.

Construction of Act.

REGULATION OF BREAD ACT, 1836.

6 & 7 WILL. IV. c. 37.

An Act to repeal the several Acts now in force relating to Bread to be sold out of the City of London and the Liberties thereof, and beyond the Weekly Bills of Mortality and Ten Miles of the Royal Exchange; and to provide other Regulations for the making and Sale of Bread, and for preventing the Adulteration of Meal, Flour, and Bread, beyond the Limits aforesaid.

[28*th July*, 1836.]

1. From and after the first day of October, one thousand eight hundred and thirty-six all and every Acts or Act of Parliament now in force relating to the making and selling of bread, or to the assize and price thereof, or to the punishment of persons who shall adulterate meal, flour, or bread, or who shall sell bread deficient in its due weight, out of the city of London and the

Section 1.

All Acts relating to the making and selling of bread,

Secs. 1—7.

or to the punishment for adulterating meal, &c. out of the City of London and beyond the bills of mortality, repealed.

liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, be and the same are hereby repealed: and there shall be no longer any assize of bread beyond the limits aforesaid, or any regulation respecting the price thereof.

Bread made of the articles herein mentioned may be sold.

2. And be it enacted, that it shall and may be lawful for the several bakers or sellers of bread out of the city of London and the liberties thereof, and beyond the weekly bills of mortality and ten miles of the Royal Exchange, to make and sell or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of flour or meal of wheat, barley, rye, oats, buck wheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, barm, leaven, potatoe or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredient or matter whatsoever, subject to the regulations hereinafter contained.

Bakers to make bread of any weight, or size.

3. And be it enacted, that it shall and may be lawful for the several bakers or sellers of bread beyond the limits aforesaid to make and sell, or offer for sale, in his, her, or their shop, or to deliver to his, her, or their customer or customers, bread made of such weight or size as such bakers or sellers of bread shall think fit; any law or usage to the contrary notwithstanding.

Bread to be sold by weight, and in no other manner.

4. And be it enacted, that from and after the commencement of this Act all bread sold beyond the limits aforesaid shall be sold by the several bakers or sellers of bread respectively beyond the said limits by weight; and in case any baker or seller of bread beyond the limits aforesaid shall sell or cause to be sold bread in any other manner than by weight, then and in such case every such baker or seller of bread shall for every such offence forfeit and pay any sum not exceeding forty shillings, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct (1): Provided always, that nothing in this Act contained shall extend or be construed to extend to prevent or hinder any such baker or seller of bread from selling bread usually sold under the denomination of French or fancy bread or rolls without previously weighing the same (2).

Penalty.

Proviso for French and fancy bread and rolls.

Bakers to use avoirdupois weight.

5. And be it enacted, that the several bakers or sellers of bread respectively beyond the said limits in the sale of bread shall use avoirdupois weight of sixteen ounces to the pound, according to the standard in the exchequer, and the several gradations of the same for any less quantity than a pound; and in case any such baker or seller of bread shall at any time use any other than the avoirdupois weight, and the several gradations of the same, he, she, or they shall for every such offence forfeit and pay any sum not exceeding five pounds nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place shall from time to time order and adjudge.

Penalty for using any other.

Bakers to provide in their shops beams, scales and weights, &c., and to weigh bread, &c.

6. And be it enacted, that every baker or seller of bread beyond the limits aforesaid shall cause to be fixed in some conspicuous part of his, her, or their shop, on or near the counter, a beam and scales with proper weights, or other sufficient balance, in order that all bread there sold may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid; and in case any such baker or seller of bread shall neglect to fix such beam and scales, or other sufficient balance, in manner aforesaid, or to provide and keep for use proper beam and scales and proper weights, or balance, or shall have or use any incorrect or false beam or scales or balance, or any false weight not being of the weight it purports to be, according to the standard in the exchequer, then and in every such case he, she, or they shall for every such false beam and scales and balance, or false weight, forfeit and pay any sum not exceeding five pounds, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct.

Penalty.

Bakers and sellers of bread, &c. delivering by cart, &c. to be provided with scales, weights, &c. for weighing bread.

7. And be it enacted, that every baker or seller of bread beyond the limits aforesaid, and every journeyman, servant, or other person employed by such baker or seller of bread, who shall convey or carry out bread for sale in and from any cart or other carriage, shall be provided with and shall constantly carry in such cart or other carriage a correct beam and scales with proper weights, or other sufficient balance, in order that all bread sold by every such baker or seller of bread, or by his or her journeyman, servant, or other person, may from time to time be weighed in the presence of the purchaser or purchasers thereof, except as aforesaid; and in case any such baker or seller of bread, or his or her journeymen, servant, or other person, shall at any time carry out or deliver any bread without being provided with such beam and scales with proper weights, or other sufficient balance, or whose weights shall be deficient in their due weight according to the standard in the exchequer, or shall at any time refuse to weigh any bread

(1) See *R.* v. *Kennett*, L. R. 4 Q. B. 565, 20 L. T. N. S. 656, 10 B. & S. 534, 33 J. P. 824; *Hill* v. *Browning*, L. R. 5 Q. B. 453, 22 L. T. N. S. 584, 19 W. R. 21, 34 J. P. 774; *Jones* v. *Huxtable*, L. R. 2 Q. B. 460, 36 L. J. M. C. 122, 16 L. T. N. S. 381, 15 W. R. 900, 8 B. & S. 433.

(2) See *Aerated Bread Co.* v. *Gregg* or *Grigg*, L. R. 8 Q. B. 355, 42 L. J. M. C. 117, 28 L. T. N. S. 816, 21 W. R. 848; *R.* v. *Wood*, L. R. 4 Q. B. 559, 38 L. J. M. C. 144, 20 L. T. N. S. 654, 17 W. R. 851, 10 B. & S. 534, 33 J. P. 823.

purchased of him, her, or them, or delivered by his, her, of their journeyman, servant, or other person, in the presence of the person or persons purchasing or receiving the same, then and in every such case every such baker or seller of bread shall for every such offence forfeit and pay any sum not exceeding five pounds, which the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall order and direct [1].

Penalty.

8. And be it enacted, that no baker or other person or persons who shall make bread for sale beyond the limits aforesaid, nor any journeyman or other servant of any such baker or other person, shall at any time or times, in the making of bread for sale beyond such limits, use any mixture or ingredient whatsoever in the making of such bread, other than and except as hereinbefore mentioned, on any account or under any colour or pretence whatsoever, upon pain that every such person, whether master or journeyman, servant or other person, who shall offend in the premises, and shall be convicted of any such offence by the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, shall for every such offence forfeit and pay any sum not exceeding ten pounds, or in default thereof, shall, by warrant under the hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain with or without hard labour from the time of such commitment, unless the penalty shall be sooner paid, as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed or published in or near the city, county, borough, or place where the offence shall have been committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered [2].

Adulterating bread.

Penalty.

Names of offenders to be published.

9. And be it enacted, that if any person beyond the limits aforesaid shall put into any corn, meal, or flour which shall be ground, dressed, bolted, or manufactured for sale beyond such limits, either at the time of grinding, dressing, bolting, or manufacturing the same, or at any other time, any ingredient or mixture whatsoever not being the real and genuine produce of the corn or grain which shall be so ground; or if any person shall beyond the limits aforesaid knowingly sell or offer or expose for sale, either separately or mixed, any meal or flour of one sort of corn or grain as the meal or flour of any other sort of corn or grain, or any ingredient whatsoever mixed with the meal or flour so sold or offered or exposed for sale, then and in every such case every such person shall, upon conviction before any one or more magistrate or magistrates, justice or justices, of the city, county, borough, or place where such offence shall have been committed, on the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, or by his, her, or their own confession, forfeit and pay for every such offence any sum not exceeding twenty pounds [2].

Adulterating corn, meal, or flour.

Selling flour of one sort of corn as the flour of another sort.

Penalty.

10. And be it enacted, that every person who shall make for sale, or sell or expose for sale, beyond the limits aforesaid, any bread made wholly or partially of peas or beans, or potatoes, or of any sort of corn or grain other than wheat, shall cause all such bread to be marked with a large Roman M; and if any person shall at any time beyond the limits aforesaid make or sell, or expose for sale, any such bread without such mark as hereinbefore directed, then and in every such case every person so offending shall, upon conviction in manner hereinafter mentioned, forfeit and pay for every pound weight of such bread, and so in proportion for any less quantity which shall be so made for sale, or sold or exposed for sale, without being so marked as aforesaid, any sum not exceeding ten shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge: Provided always, that nothing in this Act contained shall extend or be construed to extend to require any bread made of the meal or flour of wheat only, and in the making of which potatoe yeast shall be used, to be marked as hereinbefore is mentioned.

Bread made of mixed meal or flour to be marked with a Roman M.

Penalty.

Proviso.

11. And be it enacted, that it shall be lawful for any magistrate or magistrates, justice or justices of the peace, within the limits of their respective jurisdictions, and also for any peace officer or officers authorised by warrant under the hand and seal or hands and seals of any such magistrate or magistrates, justice or justices (and which warrant any such magistrate or

Magistrates or peace officers by their warrants may search a baker's premises, and if

[1] See *Robinson* v. *Cliff*, L. R. 1 Ex. D. 294, 45 L. J. M. C. 109, 34 L. T. N. S. 689; *Ridgeway* v. *Ward*, L. R. 10 Q. B. D. 110, 54 L. J. M. C. 20, 33 W. R. 166.

[2] Sections 8, 9, 12, 13, 17, 24 and 25 have been partially and sections 18, 19, 20, 21, 22, 23 and 26 wholly repealed by the Summary Jurisdiction Act, 1884. The Act is given above as it now stands altered.

Secs. 11–13.

any adulterated flour, bread, &c. be found, the same may be seized and disposed of as herein mentioned.

magistrates, justice or justices, is and are hereby empowered to grant), at seasonable times in the daytime, to enter into any house, mill, shop, stall, bakehouse, bolting house, pastry warehouse, outhouse, or ground of or belonging to any miller, mealman, or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale, beyond the limits aforesaid, and to search or examine whether any mixture or ingredient not the genuine produce of the grain such meal or flour shall import or ought to be shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated, or whether any mixture or ingredient other than is allowed by this Act shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated, and also to search for any mixture or ingredient which may be intended to be used in or for any such adulteration or mixture; and if on any such search it shall appear that any such meal, flour, dough, or bread so found shall have been so adulterated by the person in whose possession it shall then be, or any mixture or ingredient shall be found which shall seem to have been deposited there in order to be used in the adulteration of meal, flour, or bread, then and in every such case it shall be lawful for every such magistrate or magistrates, justice or justices of the peace, or officer or officers authorised as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal, flour, dough, or bread which shall be found in any such search, and deemed to have been adulterated, and all ingredients and mixtures which shall be found and deemed to have been used, or intended to be used, in or for any such adulteration as aforesaid; and such part thereof as shall be seized by any peace officer or officers authorised as aforesaid shall, with all convenient speed after seizure, be carried to the nearest resident magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any magistrate or magistrates, justice or justices, who shall make any such seizure in pursuance of this Act, or to whom anything so seized under the authority of this Act shall be brought, shall adjudge that any such meal, flour, dough, or bread so seized shall have been adulterated by any mixture or ingredient put therein other than is allowed by this Act, or shall adjudge that any ingredient or mixture so found as aforesaid shall have been deposited or kept where so found for the purpose of adulterating meal, flour, or bread, then and in every such case every such magistrate or magistrates, justice or justices of the peace, is and are hereby required, within the limits of their respective jurisdictions, to dispose of the same as he or they, in his or their discretion, shall from time to time think proper.

Penalty if ingredients for adulteration of meal or bread are found in any premises.

12. And be it enacted, that every miller, mealman, or baker beyond the limits aforesaid, in whose house, mill, shop, stall, bakehouse, bolting house, pastry warehouse, outhouse, ground, or possession any ingredient or mixture shall be found which shall, after due examination, be adjudged by any magistrate or magistrates, justice or justices of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread, shall, on being convicted of any such offence, either by his, her, or their own confession, or by the oath, or in case of a Quaker by affirmation, of one or more credible witness or witnesses, forfeit and pay on every such conviction any sum not exceeding ten pounds for the first offence, five pounds for the second offence, and ten pounds for every subsequent offence, or in default of payment thereof shall, by warrant under the hand and seal or hands and seals of the magistrate or magistrates, justice or justices, before whom such offender shall be convicted, be apprehended and committed to the house of correction or some prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain with or without hard labour from the time of such commitment (unless the penalty be sooner paid), as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, to cause the offender's name, place of abode, and offence to be published in some newspaper which shall be printed or published in or near the city, county, borough, or place where the offence shall have been committed, and to defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered [1].

First offence; Second offence; subsequent offence.

Names of offenders to be published.

Obstructing search.

13. And be it enacted, that if any person or persons shall wilfully obstruct or hinder any such search as hereinbefore is authorised to be made, or the seizure of any meal, flour, dough, or bread, or of any ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour,

[1] See note [2] *ante*, p. 1465.

dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredient or mixture as aforesaid, or any meal, flour, dough, or bread which shall be seized as being adulterated, or as not being made pursuant to this Act, he, she, or they so doing or offending in any of the cases last aforesaid shall for every such offence, on being convicted thereof, forfeit and pay such sum, not exceeding ten pounds, as the magistrate or magistrates, justice or justices, before whom such offender or offenders shall be convicted, shall think fit and order: Provided also, that if any person making or who shall make bread for sale beyond the limits aforesaid shall at any time make complaint to any magistrate or magistrates, justice or justices of the peace, within his or their jurisdiction, and make appear to him or them, by the oath, or in case of a Quaker by affirmation, of any credible witness, that any offence which such person shall have been charged with, and for which he or she shall have incurred and paid any penalty under this Act, shall have been occasioned by or through the wilful act, neglect, or default of any journeyman, or other servant employed by or under such person so making complaint, then and in any such case any such magistrate or magistrates, justice or justices, may and is or are hereby required to issue out his or their warrant, under his or their hand and seal or respective hands and seals, for bringing any such journeyman or servant before any such magistrate or magistrates, justice or justices, or any magistrate or justice of the peace acting in and for the city, county, division, or place where the offender can be found; and on any such journeyman or servant being thereupon apprehended and brought before any such magistrate or magistrates, justice or justices, he or they, within his or their respective jurisdictions, is and are hereby authorised and required to examine into the matter of such complaint, and on proof thereof upon oath or affirmation, to the satisfaction of any such magistrate or magistrates, justice or justices of the peace, who shall hear such complaint, then any such magistrate or magistrates, justice or justices, is and are hereby directed and authorised by any order under his or their respective hand or hands, to adjudge and order what reasonable sum of money shall be paid by any such journeyman or servant to his master or mistress as or by way of recompense to him or her for the money he or she shall have paid by reason of the wilful act, neglect, or default of any such journeyman or servant; and if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of the sum of money which any such magistrate or magistrates, justice or justices, shall order him to pay by reason of such his said wilful neglect or default, then any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, is or are hereby authorised and required, by warrant under his or their hand and seal or hands and seals, to cause such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the city, county, division, or place in which such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any term not exceeding one calendar month [1].

Penalty.

Offences occasioned by wilful default of journeymen and servants.

Proceedings.

If penalty on journeymen is not paid, magistrates may order imprisonment, &c.

14. Provided always, and be it enacted, that no master or mistress, journeyman, or other person exercising or employed in the trade or calling of a baker beyond the limits aforesaid, shall on the Lord's day, or on any part thereof, make or bake any bread, rolls, or cakes of any sort or kind, or shall on any other part of the said day after the hour of half-past one of the clock in the afternoon sell or expose for sale, or permit or suffer to be sold or exposed for sale, any bread, rolls, or cakes of any sort or kind, or bake or deliver, or permit or suffer to be baked or delivered, any meat, pudding, pie, tart, or victuals, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking; and every person offending against the last-mentioned regulations, or any one or more of them, and being thereof convicted before any justice of the peace of the city, county, or place where the offence shall be committed, within six days from the commission thereof, either upon the view of such justice, or on confession by the party, or proof by one or more witness or witnesses upon oath or affirmation, shall for every such offence pay and undergo the forfeiture, penalty, and punishment hereinafter mentioned; (that is to say) for the first offence the penalty of ten shillings, for the second offence the penalty of twenty shillings, and for the third and every subsequent offence respectively the penalty of forty shillings, and shall moreover, upon every such conviction, bear and pay the costs and expenses of the prosecution, such costs and expenses to be assessed, settled, and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper to be allowed to the prosecutor or prosecutors for loss of time in instituting and following up the prosecution, at a rate not exceeding three shillings per diem, and to be paid to the prosecutor or prosecutors for his, her, or their own use and benefit, and the residue of such penalty to be paid

Bakers not to bake bread or rolls on the Lord's Day, or sell bread or bake pies, &c., except between certain hours.

Penalty.

First offence; Second offence; subsequent offence.

(1) See note (2) *ante*, p. 1465.

Secs. 14–24.

to such justice, and within seven days after his receipt thereof to be transferred by him to some one of the overseers of the poor, or to some other officer (as the convicting justice or justices may direct), of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid; and in case the whole amount of the penalty, and of the costs and expenses aforesaid, be not forthwith paid after conviction of the offender or offenders, such justice shall and may, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender or offenders, and in default and insufficiency of such distress commit the offender or offenders to the house of correction, with or without hard labour, on a first offence for the space of seven days, on a second offence for the space of fourteen days, and on a third or any subsequent offence for the space of one month, with or without hard labour, unless the whole of the penalty, costs, and expenses be sooner paid and discharged: Provided nevertheless, that it shall be lawful for every baker residing beyond the limits aforesaid to deliver to his or her customers on the Lord's day any bakings until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this Act contained: Provided always, that the provisions of this Act, so far as they authorise the baking and preparing bread on Sundays, shall not extend to Scotland.

Bakings may be delivered till half past one on Sundays.

No miller, mealman, or baker to act as a justice of the peace under this Act.

Penalty, £100.

15. Provided always, and be it enacted, that no person who shall follow or be concerned in the business of a miller, mealman, or baker shall be capable of acting or shall be allowed to act as a justice of the peace under this Act, or in putting in execution any of the powers in or by this Act granted; and if any miller, mealman, or baker shall presume so to do, he or they so offending in the premises shall for every such offence forfeit and pay the sum of one hundred pounds to any person or persons who will inform or sue for the same, to be recovered, together with full costs of suit, in any of His Majesty's courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoign, wager of law, or more than one imparlance shall be allowed.

Opposing execution of the Act.

Penalty.

16. And be it enacted, that in case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this Act, every such person offending therein shall for every such offence forfeit any sum not exceeding ten pounds, at the discretion of the magistrate or magistrates, justice or justices of the peace, before whom he or she shall be convicted of such offence.

Recovery and application of penalties and forfeitures.

Distress.

Imprisonment.

17. And be it enacted, that all penalties, forfeitures, and fines by this Act inflicted or authorised to be imposed (the manner of levying and recovering and applying whereof is not herein otherwise directed) shall, upon proof and conviction of the offences respectively before any magistrate or justice of the peace for the city, county, or place where the offence shall have been committed (as the case may require), either by the confession of the party offending, or by the oath, or in case of a Quaker on affirmation, of any credible witness or witnesses, which oath or affirmation every such magistrate or justice is in every such case hereby fully authorised to administer, be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party or parties offending, by warrant under the hand and seal of such magistrate or justice; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such magistrate or justice of the peace as aforesaid, and he is hereby authorised and required, by warrant or warrants under his hand and seal, to cause such offender or offenders to be committed to the common gaol or house of correction of the city, county, or place where the offender shall be or reside, there to remain, without bail or mainprize, for any time not exceeding one calendar month, with or without hard labour, (save and except as herein otherwise directed) unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the moneys arising by such penalties, forfeitures, and fines respectively, when paid or levied, if not otherwise directed to be applied by this Act, shall be from time to time paid, one moiety thereof to the informer or person suing for and recovering the same [1].

Proceedings not to be quashed for want of form.

24. And be it enacted, that no order, judgment, or conviction made touching or concerning any of the matters in this Act contained, or of any proceedings to be had touching the conviction of any offender or offenders against this Act, shall be quashed for want of form, or be removed or removable by *certiorari*, or any other writ or process whatsoever, into any of His Majesty's courts of record at Westminster [1].

[1] See note [2], *ante*, p. 1465.

25. Provided always, and be it hereby enacted, that if any person or persons convicted of any fence punishable by this Act shall think him, her, or themselves aggrieved by the jndgment of ie magistrate or magistrates, justice or jnstices, before whom he, she, or they shall have been nvicted, it shall be lawful for such person or persons from time to time to appeal to the jnstices the next general or general qnarter sessions of the peace which shall be held for the city, unty, division, liberty, town, or place where such judgment shall have been given, and that the ecution of such judgment shall in such case be suspended (1).

Appeal to quarter sessions.

29. And be it further enacted, that every action or suit which shall be brought or commenced gainst any magistrate or magistrates, justice or justices, or any peace officer or officers, for any atter or thing done or committed by virtue of or under this Act, shall be commenced within x calendar months next after the fact committed, and not afterwards, and shall be laid or rought in the city, connty, or place where the matter in dispnte shall arise, and not elsewhere, nd that the statute made in the twenty-fourth year of the reign of King George the Second, tituled "An Act for rendering Justices of the Peace more safe in the Execution of their ffice, and for indemnifying Constables and others acting in obedience to their Warrants," so r as the said Act relates to the rendering the justices more safe in the execution of their office, all extend and be construed to extend to the magistrate and magistrates, justice and justices f the peace, acting under the authority or in pursuance of this Act; and that no action or suit hall be had or commenced against, nor shall any writ be sned out, or copy of any writ be served pon, any peace officer or officers, for any thing done in the execntion of this Act, nntil seven ays after a notice in writing shall have been given to or left for him or them at his or their sual place of abode, by the attorney for the party intending to commence such action, which otice in writing shall contain the name and place of abode of the person intending to bring uch action, and also of his attorney, and likewise the cause of action or complaint; and any eace officer or officers shall be at liberty, and may by virtue of this Act, at any time within even days after any such notice shall have been given to or left for him, tender or cause to be endered any sum or sums of money as amends for the injury complained of to the party omplaining or to the attorney named in such notice; and if the same be not accepted, the efendant or defendants in any such action or actions may plead such tender in bar of such ction or actions, together with the general issue or any other plea, with leave of the court in hich the action shall be commenced; and if, upon issue joined on such tender, the jury shall ind the amends tendered to have been sufficient, they shall find a verdict for the defendant or efendants; and in every such case, or if the plaintiff shall become nonsuit or discontinne his ction, or if judgment shall be given for the defendant or defendants upon demurrer, or if any ction or suit shall be brought after the time limited by this Act for bringing the same, or shall e brought in any other county or place than as aforesaid, then and in every such case the jury hall find a verdict for the defendant or defendants, and the defendant or defendants shall be ntitled to his or their costs; but if the jury shall find that no such tender was made, or that he amends tendered were not sufficient, or shall find against the defendant or defendants on ny plea or pleas by him or them pleaded, they shall then give a verdict for the plaintiff, and uch damages as they shall think proper; and the plaintiff shall thereupon rccover his costs gainst every such defendant or defendants.

Limitation of actions.

Part of 24 Geo. II. c. 44, extended to this Act.

Service of writ upon peace officer.

Tender of amends.

Costs.

30. And be it further enacted, that if any action or suit shall be commenced against any ther person or persons than a magistrate, justice, or peace officer for any thing done in pursuance f this Act, the defendant or defendants in any such action or suit may plead the general issue, nd give this Act and the special matter in evidence at any trial to be had thereupon, and that he same was done in pursuance and by the authority of this Act; and if it shall appear so to ave been done, or if a verdict shall be recorded for the defendant or defendants, or if the laintiff or plaintiffs shall be nonsuited or discontinue his, her, or their action after the efendant or defendants shall have appeared, or if judgment shall be given upon a verdict or emurrer against the plaintiff or plaintiffs, the defendant or defendants in every such action hall and may recover treble costs, and have the like remedy for the same as any defendant or efendants hath or have in other cases by law for the recovery of his, her, or their costs.

In actions for executing Act general issue may be pleaded.

Treble costs.

31. Provided also, and be it further enacted, that no person shall be convicted of any offence under this Act unless the complaint is made within forty-eight hours after the offence shall have been committed, or within such reasonable time as to the justice or justices shall seem fit, except in cases of perjury; and that no person who shall be prosecuted to conviction for any offence done or committed against this Act shall be liable to be prosecuted for the same offence under any other law.

Limitation of information.

(1) See note (2), *ante*, p 1465.

Secs. 32, 33.

Application of penalties.

32. And be it also enacted, that all penalties and forfeitures by this Act inflicted, and the application of which is not hereinbefore directed, shall, when recovered or paid, go and be disposed of in manner following; (that is to say,) one moiety thereof, where any offender or offenders shall be convicted, either by his, her, or their confession, or by the oath or affirmation of one or more credible witness or witnesses, shall go and be paid to the person or persons who shall inform against and prosecute to conviction any such offender or offenders; and the other moiety thereof (or in case there be no such person informing then the whole thereof) shall go and be paid to some one of the overseers of the poor, or to some other officer (as the convicting justice or justices may direct) of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this Act by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid.

Proviso for rights of particular persons.

33. Provided always, and be it enacted, that this Act or any thing herein contained shall not extend or be construed to extend in any way to affect, lessen, or infringe upon any right or custom of the universities of Oxford or Cambridge or either of them, or of any lord or lords of any leets, or the rights of any clerk or clerks of the market in any place, which may be exercised and enjoyed by them or any of them by virtue of any charter, bye-laws, prescriptions, usages, customs, privileges, grants, or Acts of Parliament, except so far as relates to the assize of bread and the regulations of the price and weight thereof, but that all such rights and privileges shall be held, exercised, and enjoyed by the parties respectively entitled thereto as fully and amply to all intents and purposes as the same were held, exercised, and enjoyed before the passing of this Act, any thing herein contained to the contrary notwithstanding.

CANAL BOATS ACT, 1877.

40 & 41 VICT. c. 60.

An Act to provide for the Registration and Regulation of Canal Boats used as Dwellings.

[14*th August*, 1877.]

Secs. 1, 2.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Registration of use of canal boat as dwelling.

1. After the expiration of twelve months after the commencement of this Act, or if the regulations of the Local Government Board hereinafter mentioned have not at that time come into force, then after the expiration of six months from the date at which they have come into force, a canal boat shall not be used as a dwelling unless it has been registered in accordance with this Act.

The owner of a canal boat may register that boat with the registration authority hereinafter mentioned as a dwelling for such number of persons of the specified age and sex as may be allowed under the provisions of this Act; and the boat shall be used as a dwelling only for the number of persons of the age and sex for which it is registered.

If a canal boat is used as a dwelling in contravention of this Act, the master of the boat, and also the owner of the boat, if he is in fault, shall each be liable to a fine not exceeding twenty shillings for each occasion on which the boat is so used (1).

Local Government Board to make regulations for registration, fixing number of persons, promoting cleanliness, and preventing infectious disease.

2. The Local Government Board shall make regulations, and may from time to time revoke and vary such regulations (2)—.

(1.) For the registration of canal boats under this Act, including certificates of registration, and the fees in connection with such registration; and

(2.) For the lettering, marking, and numbering of such boats; and

(1) As to application of fines, see Canal Boats Act, 1884, 47 & 48 Vict. c. 75, s. 8.

(2) As to penalty for contravention of regulations, see the Canal Boats Act, 1884, 47 & 48 Vict. c. 75, s. 2, *post*. And as to application of fines, see *ibid*, s. 8, *post*.

(3.) For fixing the number, age, and sex of the persons who may be allowed to dwell in a canal boat, having regard to the cubic space, ventilation, provision for the separation of the sexes, general healthiness, and convenience of accommodation of the boat; and

(4.) For promoting cleanliness in and providing for the habitable condition of canal boats: and

(5.) For preventing the spread of infectious disease by canal boats.

The registration authority shall register every canal boat which conforms to the conditions of registration provided by the said regulations for the number of persons allowed by those regulations to dwell therein.

Certificate of registry and lettering and numbering of boat.

3. Upon the registry of a boat under this Act, the registration authority shall give to the owner thereof two certificates of registry, identifying the owner and the boat, and stating the place to which the boat is registered as belonging, and the number, age, and sex of the persons allowed to dwell in the boat, and such other particulars as may be provided by regulations under this Act, or may seem fit to the registration authority, and the master shall have the care of one of such certificates (1).

Every canal boat when registered shall be lettered, marked, and numbered in some conspicuous manner (as directed by the regulations made under this Act), and such lettering, marking, and numbering shall include the word "registered," and the name of the place to which the boat is registered as belonging, and the registered number (2).

Any boat not lettered, marked, and numbered in conformity with this section, or having the letter, mark, or number altered, defaced, or obliterated, shall be deemed, for the purposes of this Act, to be an unregistered canal boat.

Power of sanitary authority for prevention of infectious disease in canal boats.

4. Where any sanitary authority within whose district a canal or any part of a canal is situate is informed by the master of a canal boat or otherwise that a person on a canal boat is suffering from an infectious disorder, the authority shall cause such steps to be taken as may by the certificate of their medical officer of health, or of any other legally qualified practitioner, appear requisite for preventing the said disorder from spreading, and for that purpose may exercise the power of removing a person suffering as aforesaid, and all other powers in relation to provisions against infection conferred by the Public Health Act, 1875, and may also, if need be, detain the boat; but such boat shall not be detained a longer time than is necessary for cleansing and disinfecting the same.

38 & 39 Vict. c. 55.

Authorised person may enter boat, &c.

5. Where any person duly authorised by a registration or sanitary authority, or by a justice of the peace, has reasonable cause to suppose, either that there is any contravention of this Act on board a canal boat, or that there is on board a canal boat any person suffering from an infectious disorder, he may, on producing (if demanded) either a copy of his authorisation, purporting to be certified by the clerk or a member of the sanitary authority, or some other sufficient evidence of his being authorised as aforesaid, enter by day such canal boat and examine the same and every part thereof, in order to ascertain whether on board such boat there is any contravention of this Act, or a person suffering from an infectious disorder, and may, if need be detain the boat for the purpose, but for no longer time than is necessary.

The master of the boat shall, if required by such person, produce to him the certificate of registry (if any) of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such person may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such person under this section shall be deemed to be an obstruction of such person.

If such person is obstructed in the performance of his duty under this Act in the case of any boat, the person so obstructing shall be liable to a fine not exceeding forty shillings.

6. [Education of children dwelling on board canal boats, 33 & 34 Vict. c. 75, 36 & 37 Vict. c. 86, 39 & 40 Vict. c. 79.]

Registration authority.

7. For the purpose of the registration of canal boats the registration authority shall be such one or more of the sanitary authorities having districts abutting on a canal as may from time to time be prescribed by regulation of the Local Government Board.

A canal boat shall be registered with some registration authority having a district abutting on the canal on which such boat is accustomed or intended to ply.

33 & 34 Vict. c. 75. 36 & 37 Vict. c. 86. 39 & 40 Vict. c. 79.

With a view of determining the place to which a canal boat belongs, for the purpose of the Elementary Education Acts, 1870, 1873, and 1876, the registration authority shall register any

(1) The certificate of registry is made void by structural alterations, see Canal Boats Act, 1884, 47 & 48 Vict. c. 75, s. 1, *post*.

(2) See now the Canal Boats Act, 1884, 47 & 48 Vict. c. 75, s. 7, *post*.

Secs. 7—14.

canal boat in respect of which an application is made for registration as belonging to some place which is either a school district or is part of a school district, and is situate wholly or partly within the jurisdiction of the registration authority with which it is registered.

Expenses of sanitary authority.

8. The expenses incurred in the execution of this Act by a local authority shall be defrayed as follows:

(1.) When they are incurred by an urban sanitary authority, a rural sanitary authority, or a port sanitary authority, they shall be defrayed out of the fund or rate out of which the expenses of such authority, as a sanitary authority under the Public Health Act, 1875, are defrayed; provided that when they are incurred by a rural sanitary authority they shall be deemed to be general expenses; and

38 & 39 Vict. c. 55.

(2.) When they are incurred by a vestry or district board in the metropolis they shall be defrayed as expenses incurred by such vestry or board in the execution of the Metropolis Management Act, 1855, and the Acts amending the same.

18 & 19 Vict c. 120.

Regulations to be laid before Parliament.

9. An order of the Local Government Board making, revoking, or varying any regulation in pursuance of this Act shall not come into force until it has lain in a complete form as settled and approved by the Board for forty days before both Houses of Parliament during the session of Parliament.

The Local Government Board shall take steps for enabling all persons interested in any regulations made by that Board in pursuance of this Act to obtain copies thereof at such places in the neighbourhood of canals as the Local Government Board may prescribe, on payment of such sum not exceeding sixpence as may be prescribed by that Board.

Illegal detention of certificate of registry.

10. If the master of any canal boat illegally detains the certificate of registry of such boat, he may, on summary conviction before two justices, be directed by order of such justices to deliver up such certificate, and shall, in addition thereto, be liable to a fine not exceeding forty shillings, and the justices may direct any part of such fine to be paid to the person injured by the detention of such certificate.

Application of fees under this Act.

11. All fees paid in respect of registration under this Act shall be carried to the fund or rate out of which the expenses incurred in the execution of this Act by the authority making such registration are by this Act declared to be payable.

12. [Power of canal company, &c., to establish schools.]

Recovery of penalties.

13. Offences under this Act may be prosecuted, and fines under this Act may be recovered on summary conviction before two justices having jurisdiction, either in the place to which the boat in respect of which the offence was committed is registered as belonging, or in the place where the offence is committed, or in the place where the alleged offender for the time being is, in manner provided by the Act of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of Justices of the Peace out of Sessions within England and Wales with respect to summary convictions and orders," and the Acts amending the same (1).

Definitions.

14. In this Act, unless the context otherwise requires—

The expression "sanitary authority" means an urban sanitary authority, a rural sanitary authority, or a port sanitary authority; provided that in the case of the parishes mentioned in Schedule A. and the districts mentioned in Schedule B. to the Metropolis Management Act, 1855, so far as they are not within the jurisdiction of a port sanitary authority, the vestry of any such parish and the district board of any such district elected under the Metropolis Management Act, 1855, and the Acts amending the same, shall be deemed to be sanitary authorities, and where other sanitary authorities are by this Act empowered to exercise powers conferred by the Public Health Act, 1875, may exercise similar powers conferred by any Act of Parliament extending to such parishes or districts:

18 & 19 Vict. c. 120.

The expression "parent" includes guardian, and every person who is liable to maintain or has the actual custody of any child:

The expressions "urban sanitary authority" and "rural sanitary authority" and "port sanitary authority" have the same meaning as in the Public Health Act, 1875:

38 & 39 Vict. c. 55.

The expression "canal" includes any river, inland navigation, lake, or water being within the body of a county, whether it is or not within the ebb and flow of the tide:

The expression "canal boat" means any vessel, however propelled, which is used for the conveyance of goods along a canal as above defined, and which is not a ship duly registered under the Merchant Shipping Act, 1854, and the Acts amending the same:

17 & 18 Vict. c. 104.

The expression "owner" includes a person who, though only the hirer of a canal boat, appoints the master and other persons working such boat:

(1) As to application of fines, see Canal Boats Act, 1884, 47 & 48 Vict. c. 75, s. 8, *post*.

The expression "master" in relation to a canal boat means the person having for the time being command or charge of the boat.

Secs. 14–17.

15. This Act shall come into operation on the first day of January one thousand eight hundred and seventy-eight, which day is in this Act referred to as the commencement of this Act.

Commencement of Act.

16. This Act shall not extend to Scotland or Ireland.

Extent of Act.

17. This Act may be cited as the Canal Boats Act, 1877.

Short title.

CANAL BOATS ACT, 1884.

47 & 48 VICT. c. 75.

An Act to amend the Canal Boats Act, 1877. [14*th August*, 1884.]

Secs. 1—6.

Whereas it is expedient to amend the Canal Boats Act, 1877, in this Act referred to as the principal Act:

40 & 41 Vict. c. 60.

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Certificate of registry made void by structural alterations.

1. A certificate of registration granted under the principal Act shall cease to be in force in the event of any structural alterations having been made in the canal boat affecting the conditions upon which the certificate of registration has been obtained.

Penalty for contravention of regulations under Canal Boats Acts.

2. If default is made in complying with any of the regulations made or to be made by the Local Government Board and Education Department under the principal Act or this Act, and for the time being in force, the master of the boat with respect to which the default is made, and also the owner of the boat, if in default, shall for each default be liable on summary conviction to a fine not exceeding twenty shillings.

Enforcement of Act by registration and sanitary authority, and report to be made.

3. It shall be the duty of every registration or sanitary authority within whose district any canal, or any part of a canal is situate, to enforce within such district the provisions of the principal Act and this Act, and any regulations made thereunder by the Local Government Board; and every such authority shall, within twenty-one days after the thirty-first day of December in every year, make a report to the Local Government Board as to the execution of the principal Act and this Act, and of the regulations made thereunder as aforesaid, and as to the steps taken by such authority during the year to give effect to the provisions of the said Acts and regulations.

Inquiries and reports by Local Government Board.

4. The Local Government Board shall in every year present a report to both Houses of Parliament as to the execution of the principal Act and this Act, and the observance of the regulations made by them thereunder; and shall cause inquiries to be made from time to time by an inspector or inspectors to be appointed by them for that purpose.

Such inspectors shall for the purpose of any inquiry under this Act have, in relation to witnesses and their examination, the production of papers, and inspection of places and matters required to be inspected, similar powers to those which poor-law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts, and may enter any canal boat at any time by day, and examine the same and every part thereof, and may, if need be, for the purpose of such inquiry, detain the boat, but for no longer time than is necessary.

The master of the boat shall, if required by any such inspector, produce to him the certificate of registry, if any, of the boat, and permit him to examine and copy the same, and shall furnish him with such assistance and means as such inspector may require for the purpose of his entry and examination of and departure from the boat in pursuance of this section.

A refusal to comply with the requisition of such inspector under this section shall be deemed to be an obstruction of such inspector.

If such inspector is obstructed in the performance of his duty under this Act, the person obstructing him shall be liable to a fine not exceeding forty shillings.

Power to make regulations as to school certificates, &c.

5. The power to make regulations given to the Local Government Board by the principal Act and this Act shall include power to the Education Department to make regulations with respect to the form of certificates or pass books as to attendance at school to be used by children in canal boats.

Annual report by Education Department.

6. The Education Department shall every year report to Parliament as to the manner in which the Elementary Education Acts, 1870 and 1873, 1876 and 1880, are enforced with respect to children in canal boats, and shall for that purpose direct Her Majesty's inspector of schools to communicate with the school boards and school attendance committees in their district.

Secs. 7—11.

Lettering and numbering of canal boats.

7. A canal boat shall not be deemed to be lettered, marked, and numbered in conformity with section three of the principal Act, unless it is so lettered, marked, and numbered on both sides of the canal boat, or in some suitable position on the stern of the boat, so that the lettering, marking, and numbering may be plainly visible from both sides of the canal whereon the boat may be.

Application of fines.

8. Every fine recovered under the principal Act or this Act shall be paid in the case of a prosecution by any registration or sanitary authority or person authorised by any such authority to such authority or person, and if paid to such person shall be paid by him to such authority, and shall be applied towards the expenses of executing the principal Act and this Act, any Act to the contrary notwithstanding.

Definition of term "by day."

9. The expression "by day" in the principal Act and this Act shall be deemed to include the hours between six o'clock in the morning and nine o'clock at night.

Amendment of definition of canal boat.

10. If it shall at any time appear to the Local Government Board, on the representation of any registration or sanitary authority or of any inspector appointed under this Act, that the principal Act and this Act ought to apply to any vessel or class of vessels which would be within the definition of canal boat contained in section fourteen of the principal Act, if such vessel or class of vessels were not registered under the Merchant Shipping Act, 1854, and the Acts amending the same, the Local Government Board may declare that the principal Act and this Act shall apply to such vessel or class of vessels, although the same may be registered as aforesaid, and thereupon the same shall be deemed to be a canal boat or canal boats within the meaning of the principal Act and this Act, and the definition contained in section fourteen of the principal Act shall be amended accordingly.

Short title and construction of Act.

11. This Act may be cited as the Canal Boats Act, 1884, and shall be construed as one with the Canal Boats Act, 1877, which Act and this Act may be cited together as the Canal Boats Acts, 1877 and 1884.

FACTORIES (STEAM WHISTLES) ACT, 1872.

35 & 36 VICT. c. 61.

An Act to regulate the use of Steam Whistles in certain Manufactories. [*6th August*, 1872.]

Secs. 2—4.

Use of steam whistles and trumpets.

2. No person shall use or employ in any manufactory, or any other place, any steam whistle or steam trumpet for the purpose of summoning or dismissing workmen or persons employed without the sanction of the sanitary authority, and every person offending against this section shall be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which such offence continues: Provided always, that the sanitary authority, in case they have sanctioned the use of any such instrument as aforesaid, may at any time revoke such sanction on giving one month's notice to the person using the same: Provided also, that it shall be lawful for the Local Government Board, on representation made to them by any person that he is prejudicially affected by such sanction, to revoke the same, and such revocation shall have the same force and effect as if it had been made by the sanitary authority.

Definition.

3. "Sanitary authority" means the authority at the time being empowered to execute the Nuisance Removal Acts, as defined and extended by the Sanitary Act, 1866 (1).

Legal procedure.

4. All offences and penalties under this Act may be prosecuted and recovered in England in manner directed by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, and any Acts amending the same (2).

(1) See now, the Public Health Act, 1875, ss. 91 and 313, *ante*, pp. 87 and 215.
(2) *i.e.*, the Summary Jurisdiction Acts, 1848 and 1879.

PUBLIC HEALTH (CONFIRMATION OF BYE-LAWS) ACT, 1884.

47 VICT. c. 12.

An Act to amend the Public Health Act, 1875, so far as relates to the Confirmation of Bye-laws.
[19*th May*, 1884.]

Secs. 1—4.

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and construction.

1. This Act may be cited as the Public Health (Confirmation of Bye-laws) Act, 1884, and shall be construed as one with the Public Health Act, 1875.

Definitions.

2. In this Act, if not inconsistent with the context, the following expressions have the meanings hereinafter respectively assigned to them; (that is to say),

"Incorporated enactments" means section one hundred and twenty-eight of the Towns Improvement Clauses Act, 1847 (1), sections sixty-eight and sixty-nine of the Town Police Clauses Act, 1847 (2), and section forty-two of the Markets and Fairs Clauses Act, 1847 (3), which Acts are hereinafter referred to as the incorporated Acts:

"Confirming authority" means, as regards bye-laws, rules, and regulations confirmed prior to the nineteenth day of August one thousand eight hundred and seventy-one, or made under any of the incorporated enactments by reason of the incorporation thereof with any local Act and confirmed prior to the tenth day of August, one thousand eight hundred and seventy-two, one of Her Majesty's principal Secretaries of State; and as regards other bye-laws, rules, and regulations, the Local Government Board.

Confirmation of bye-laws.

3. Every bye-law made or to be made under any of the incorporated enactments by reason of the incorporation thereof with the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875, or any Local Act, or any Provisional Order or any Act confirming such Provisional Order, and every rule and regulation made or to be made by an urban authority under section forty-eight of the Tramways Act, 1870, shall be deemed to have required or to require the confirmation of the confirming authority, and not to have required, or to require any other confirmation, allowance, or approval.

Saving clause.

4. This Act shall not invalidate the confirmation, allowance, or approval of any bye-law, rule, or regulation confirmed, allowed, or approved prior to the passing of this Act, nor shall this Act apply to any bye-law made or to be made under any of the incorporated enactments by reason of the incorporation thereof with any local Act, if such bye-law has or will come into force without any confirmation, allowance, or approval, or if by the express provisions of the local Act and without reference to the provisions with respect to confirmation, allowance, or approval of bye-laws in any of the incorporated Acts, such bye-law is required to be confirmed, allowed, or approved otherwise than by the confirming authority.

PUBLIC LIBRARIES ACT, 1884.

47 & 48 VICT. c. 37.

An Act to amend the Public Libraries Acts. [28*th July*, 1884.]

Section 1.

Power of council board, &c. to accept parliamentary grant.

1. Whereas doubts have arisen as to whether authorities acting under the Public Libraries Acts, have power to fulfil the conditions required for a parliamentary grant in aid of the establishment of a school of science and art, and it is expedient to remove such doubts: It is therefore hereby declared and enacted that,—

Where any authority acting under the Public Libraries Acts accepts a grant out of moneys provided by Parliament from any committee of the Privy Council on Education towards the purchase

(1) 10 & 11 Vict. c. 34, s. 128 (Bye-laws as to slaughter-houses), see *ante*, p. 1015.
(2) 10 & 11 Vict. c. 89, ss. 68, 69 (Bye-laws as to hackney carriages and public bathing), see *ante*, pp. 1046, 1047.
(3) 10 & 11 Vict. c. 14, s. 42 (Bye-laws as to markets), see *ante*, p. 1059.

Secs. 1—5.

of the site, or the erection, enlargement, or repair, of any school for science and art, or school for science, or school for art, or of the residence of any teacher in such school, or towards the furnishing of any such school, such authority shall have power to accept such grant upon the conditions prescribed for the acceptance thereof by the said committee, and to execute such instruments as may be required by the said committee for carrying into effect such conditions, and upon payment of the grant shall, together with their successors, be bound by such conditions and instrument, and have power and be bound to fulfil and observe the same.

Explanation of 18 & 19 Vict. c. 70, s. 18. 18 & 19 Vict. c. 70, s. 9.

2. Whereas section eighteen of the Public Libraries Act, 1855, as regards England, and section nine of the Public Libraries Act (Ireland), 1855, as regards Ireland, provide for the erection of buildings "suitable for public libraries, or museums, or both, or for schools for science or art":

. . . . . .

and doubts are entertained as to the meaning of those provisions: Now, therefore, it is hereby declared and enacted that—

Buildings may under the said sections be erected for public libraries, public museums, schools for science, art galleries, and schools for art, or for any one or more of those objects.

Power to establish library, museum, or school for science or art in connection with any of the others of them.

3. (1.) Where any of the following institutions, namely, a public museum, a public library, a school for science and art, a school for science, a school for art, or an art gallery has been established either before or after the passing of this Act under the Public Libraries Acts, or any of them, there may at any time be established in connection therewith any other of the said institutions without any further proceedings being taken under the said Acts.

(2.) Section ten of the Public Libraries Amendment Act (England and Scotland), 1866, and section seventeen of the Public Libraries Act (Scotland), 1867, are hereby repealed, without prejudice to anything done under those sections.

Definitions.

4. In this Act,—

The expression "Public Libraries Acts" means as respects England, Scotland, and Ireland respectively, the Acts mentioned in the first, second, and third parts respectively of the schedule to this Act.

The expression "authority acting under the Public Libraries Acts" means the council, board, magistrates, or commissioners acting in execution of the said Public Libraries Acts.

Short titles.

5. This Act may be cited as the Public Libraries Act, 1884.

The Acts mentioned in the first part of the schedule to this Act may be cited together with this Act as the Public Libraries (England) Acts, 1855 to 1884.

Schedule.

SCHEDULE.

Part I.

Public Libraries (England) Acts.

Session and Chapter.	Title.
18 & 19 Vict. c. 70	The Public Libraries Act, 1855.
29 & 30 Vict. c. 114	The Public Libraries Amendment Act (England and Scotland), 1866.
34 & 35 Vict. c. 71	The Public Libraries Act, 1855, Amendment Act, 1871.
40 & 41 Vict. c. 54	The Public Libraries Amendment Act, 1877.

Parts II. and III.

[*Scotland and Ireland.*]

CONTAGIOUS DISEASES (ANIMALS) ACT, 1884.

47 VICT. c. 13.

An Act to amend the Contagious Diseases (Animals) Act, 1878. [19*th May*, 1884.]

Secs. 1—3.

41 & 42 Vict. c. 74.

Whereas it is expedient to amend the Contagious Diseases (Animals) Act, 1878, in this Act referred to as the principal Act:

Be it enacted, &c.

Power to Privy Council to prohibit landing of foreign animals in certain cases.

1. For the purpose of preventing the introduction into the United Kingdom of the infection of foot and mouth disease, the Privy Council may from time to time by general or special order prohibit, whenever they deem it expedient so to do, the landing of animals from any foreign country or countries or any specified part thereof, and they shall prohibit such landing whenever they are not satisfied with respect to any foreign country, or any specified part thereof, that having regard to the sanitary condition of the animals therein, or imported therefrom, to the laws made by such country for the regulation of the importation and exportation of animals, and for the prevention of the introduction or spreading of disease, and to the administration of such laws, the circumstances are such as to afford reasonable security against the importation therefrom of animals affected with foot and mouth disease.

Extension of provisions relating to quarantine.

2. The provisions relating to quarantine contained in Part II. of the fifth schedule annexed to the principal Act shall apply to animals brought from foreign countries from which the importation of animals is for the time being prohibited.

Amendment of 41 & 42 Vict. c. 74, Sch. V., Pt. 4.

3. The Privy Council may, if they think fit, exercise the powers vested in them, under Part IV. of the said fifth schedule, so far as relates to the admission of animals without being subject to slaughter, in relation to any specified part of a foreign country in the same manner as in relation to the whole of a foreign country, subject to such regulations as to the route by which the animals are conveyed to this country, quarantine, or otherwise as the Privy Council may from time to time by general or special order direct.

Additional power to Privy Council. 41 & 42 Vict. c. 74.

4. In addition to the powers conferred on the Privy Council by the Contagious Diseases (Animals) Act, 1878, the Privy Council may make such orders as they think fit for prohibiting the conveyance of animals by any specified vessel to or from any port in the United Kingdom for such time as they may consider expedient.

Orders to be laid before Parliament.

5. Any order made in pursuance of this Act shall forthwith after the making thereof, if Parliament is then sitting, and if it is not sitting then forthwith after the next meeting of Parliament, be laid before both Houses of Parliament.

Construction of Act and short title.

6. This Act, so far as is consistent with the tenour thereof, shall be construed as one with the Contagious Diseases (Animals) Act, 1878, and shall apply to Ireland with the modifications and subject to the provisions contained in Part IV. of the principal Act, and this Act and the principal Act may be cited together as the Contagious Diseases (Animals) Acts, 1878 and 1884, and this Act may be cited separately as the Contagious Diseases (Animals) Act, 1884.

CONTAGIOUS DISEASES (ANIMALS) TRANSFER OF PARTS OF DISTRICTS ACT, 1884.

47 & 48 VICT. c. 47.

An Act to enable Local Authorities to transfer the whole or certain parts of their districts for the purposes of the Contagious Diseases (Animals) Act, 1878, *to the districts of neighbouring Local Authorities.* [7*th August*, 1884.]

Secs. 1, 2.

41 & 42 Vict. c. 74.

Whereas it is expedient for the more effectual and convenient administration of the provisions of the Contagious Diseases (Animals) Act, 1878, to enable local authorities to transfer the whole or certain parts of their districts for the purposes of that Act to the districts of neighbouring local authorities:

Be it therefore enacted, &c.

Short title.

1. This Act may be cited as the Contagious Diseases (Animals) Transfer of Parts of Districts Act, 1884, and shall be construed as one with the Contagious Diseases (Animals) Act, 1878.

Transfer of powers from one local

2. Wherever the whole or any part of the district within which any local authority exercises jurisdiction under the provisions of the Contagious Diseases (Animals) Act, 1878, or any Order

Secs. 2—5.

authority to another.

of Council from time to time in force by virtue thereof, is wholly surrounded by or has a common boundary with the district within which any other local authority exercises the like jurisdiction, those two local authorities may by agreement in writing between themselves make and from time to time vary and rescind provisions for the exercise by one of them (in this Act referred to as the administering authority) of jurisdiction under the said Act or any such Order within the whole or any part or parts of the district of the other (in this Act referred to as the surrendering authority) and for ascertaining the proportion of the expenses of the administering authority to be paid by the surrendering authority, such proportion to be fixed with reference to the rateable value of the part of the district of the surrendering authority surrendered to the administering authority as compared with the rateable value of the original area of the district of the administering authority.

The district or part of a district subjected, in pursuance of an agreement under this section, to the jurisdiction of the administering authority, shall, for the purpose of the exercise of such jurisdiction, be deemed to be part of the district of the administering authority, and be dealt with accordingly.

Any expenses payable by a surrendering authority to an administering authority under this section shall be paid out of the rate or fund out of which such expenses would have been paid had they been incurred by the surrendering authority itself.

Provided that where the surrendering authority is a borough and the administering authority is a county to the rate of which such borough is assessed, the first provision of section forty-seven of the Contagious Diseases (Animals) Act, 1878, requiring repayment by the local authority of the county to the local authority of the borough therein mentioned shall not apply.

Formation of united district.

3. A local authority may from time to time by agreement concur with any other local authority or authorities in appointing out of their respective bodies a joint committee consisting of such number of members with such tenure of office as they may determine, and in assigning to such joint committee a district consisting of the whole or such parts of the districts of the constituent authorities as such authorities may determine, and in delegating to such joint committee within their district the whole or any part of the jurisdiction of a local authority under the Contagious Diseases (Animals) Act, 1878, or any Order of Council from time to time enforced by virtue thereof, and any such committee shall, in respect of any jurisdiction so assigned to them, exercise the same powers and be subject to the same obligations, and the said Act and any Order made in pursuance thereof shall, in respect of the district so assigned, take effect as if such district were the district of a local authority and the joint committee were a local authority within the meaning of the said Act.

All expenses incurred by such joint committee shall be apportioned among the component areas belonging to the different constituent authorities in proportion to the rateable values of such areas, as compared with each other, and shall be paid out of the rates or funds out of which such expenses would have been paid had they been incurred by the constituent authorities themselves.

Execution of agreement.

4. Any agreement made by a local authority under this Act shall be binding so far as respects such authority if executed by the chairman for the time being of the local authority and two other members of such authority, or, where such authority is a corporation, if executed under the corporate seal.

No such agreement shall be valid unless it has been approved by the Privy Council.

Definition of "jurisdiction."

5. The expression "jurisdiction" shall not include the power of making or levying a rate, but shall include all other powers, duties, and obligations exerciseable by or imposed on a local authority or its officers under the Contagious Diseases (Animals) Act, 1878, or any Order of Council from time to time enforced by virtue of such Act.

PUBLIC HEALTH (OFFICERS) ACT, 1884.

47 & 48 VICT. c. 74.

An Act to amend the Public Health Act, 1875, *with respect to the officers of local authorities.*

[14*th August,* 1884.]

Secs. 1, 2.

Short title.

1. This Act may be cited as the Public Health (Officers) Act, 1884, and shall be construed as one with the Public Health Act, 1875, in this Act called the principal Act.

Restriction on recovery of penalties.

2. Proceedings for the recovery of any penalty under the hundred and ninety-third section [1] of the principal Act shall not be taken except with the consent in writing of the Attorney-General.

[1] *Ante,* p. 153.

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COUNTY AUTHORITIES.

Local Government Board, Whitehall, S.W.,
30th September, 1875.

SIR,

I am directed by the Local Government Board to draw the attention of the court of quarter sessions to the Sale of Food and Drugs Act of the last session (38 & 39 Vict. c. 63), which will come into force on the 1st of October, 1875.

In accordance with the recommendation of the Select Committee of the House of Commons upon the Adulteration of Food and Drugs Act, 1872 (35 & 36 Vict. c. 74), the present statute repeals that Act, together with the Adulteration of Food and Drink Act, 1860 (23 & 24 Vict. c. 84), and the 24th section of the Sale of Poisons and Pharmacy Act, 1868 (31 & 32 Vict. c. 121), and, whilst re-enacting several of the provisions thus repealed, it has made many important amendments in the previous law.

The following statement shows the most material of these amendments:—

Appointment of Analysts.

Express power is now given to the Local Government Board, by section 10, to require, in the case of any future appointment of an analyst, satisfactory proof of his competency. They are, moreover, empowered to qualify their approval by such modifications with respect to the period of appointment and removal, or otherwise, as they may think proper. It must, however, be distinctly understood that these provisions do not in any way relieve the local authority from the responsibility of satisfying themselves that the person appointed by them is in every respect qualified to discharge with efficiency the duties of his office.

Another important amendment is that in future no analyst is to be appointed for any place in which he is engaged, either directly or indirectly, in any trade or business connected with the sale of food or drugs.

The Act of 1872 prescribed as the qualifications of an analyst that he should possess competent medical, chemical, and microscopical knowledge; but section 10 of the new Act requires that he should possess competent knowledge, skill, and *experience*.

The Act, however, in no way interferes with any existing appointment.

In consequence of the difficulty which had been experienced in obtaining the services of a competent analyst for small areas, section 11 empowers the town council of any borough to engage the services of the analyst for the county or any neighbouring borough, and the Board hope that the local authorities referred to will freely avail themselves of this new power. At the same time they may remark that the facilities thus afforded by the Legislature to meet the difficulty referred to has removed any ground which may have previously existed for neglecting to comply with the requirements of the law.

Duties of Analysts.

Complaints have been made that, when a long interval has been suffered to elapse between the taking of the sample and the making of the analysis, in the case of commodities liable to decomposition, a change has often taken place in the constitution of the article, which has rendered the analysis unreliable. These complaints are met by section 13, which requires that the analysis shall be made with all convenient speed; and it will be seen, by reference to the note to the form of certificate given in the schedule, that, as regards perishable articles, the analyst is to report specially whether or not any such change has taken place.

Under the repealed Acts the analyst was required to specify in the certificate whether, in his opinion, the article was adulterated, and in case of articles of food and drink, whether they were so adulterated as to be injurious to the health of the consumer. In the present Act a form of certificate is prescribed, which requires him to state the parts or percentages of the foreign materials; but he will be at liberty to express therein his opinion as to the purpose for which the mixture was made, and also whether or not the ingredients are injurious to health.

The Act of 1872 required the analyst to make to the authority by whom he was appointed a quarterly report, showing the number of articles analysed and the nature of the adulterations detected. Every such report must, for the future, specify the result of each analysis, and the sum paid in respect thereof, and must be presented at the next meeting of the authority. Certified copies of all such reports are to be annually transmitted by the authority to the Local Government Board. (See section 19.)

Proceedings to obtain Analyses.

Under the Act of 1872, the only officers who could be employed to obtain samples for analysis were inspectors of nuisances, inspectors of weights and measures, and inspectors of markets. Section 13 authorises the employment of medical officers of health and police constables for this purpose, in addition to the inspectors before referred to, and not only the authority appointing such officers, but any authority charged with the execution of the Act, may direct them to procure samples.

Another important amendment will be observed in section 14, which requires the purchaser to notify to the seller, after the purchase has been completed, his intention to submit the article purchased for analysis, and to offer to divide it into three parts, each to be marked and sealed or fastened up. If such offer is accepted, he is to deliver one of such parts to the seller and one to the analyst, and to retain the third himself, for production in case of proceedings. If the offer is refused, the purchaser is to divide the article into two parts, retaining one himself, and delivering or sending the other to the analyst.

Hitherto it has been necessary for the officer of the local authority personally to deliver the sample to the analyst. This provision having entailed considerable expense and inconvenience, especially in cases where the analyst resided outside the district, it is provided by section 16 that if he does not reside within a distance of two miles of the residence of the person requiring the article to be analysed, the sample may be forwarded to him by post in a registered packet, subject to any regulations of the Postmaster-General. A copy of the regulations which the Postmaster-General has issued on the subject will be found at the end of this circular.

It has frequently happened that a trader has refused to allow a sample to be purchased when he has had a suspicion that it was required for analysis. Section 17 now imposes a penalty not exceeding £10 upon any trader refusing to sell for analysis samples in such quantity as shall be reasonably requisite of any articles exposed for sale, if the officer tenders the price for the same.

Description of Offences.

In lieu of the somewhat complicated provisions of the previous Act as to the offences of adulterating articles with injurious ingredients, and of selling the same when so adulterated, the present Act (section 3) imposes a penalty of £50 for mixing, with intent to sell, any article of food with any ingredient so as to render the article injurious to health, or for selling any article so mixed, the offender being liable to be imprisoned for six months, with hard labour, for every second and subsequent offence.

Section 4 imposes similar penalties on any person who, except for the purpose of compounding in accordance with the demand of the purchaser, mixes, with intent to sell, any drug with any ingredient so as to affect injuriously its quality or potency, or who sells any drug so mixed.

By a further amendment (section 5) proof of guilty knowledge on the part of the defendant is not required from the prosecutor; but the defendant may show that he had no knowledge of the adulteration, and that he could not with reasonable diligence have obtained that knowledge.

The principal offence created by the Act of 1872 was that in relation to the ordinary retail sale of articles of food which had been adulterated, although not with injurious or poisonous ingredients; but, as there was no statutory definition of the term adulteration, there was a great want

of uniformity in the administration of the law, and considerable hardships were in consequence inflicted upon some branches of the trading community.

It is obvious, moreover, that there may be other fraudulent practices which do not necessarily constitute adulteration, such as the substitution of one article for another, or the admixture of one article with another of the same kind, but of inferior quality. The term adulteration, therefore, is not used in the present Act, and in future it will constitute an offence to sell, to the prejudice of the purchaser, any article not of the nature, substance, and quality of that demanded. It will not, however, be an offence to add to food or drugs any matter or ingredient required for their production or preparation as articles of commerce in a state fit for carriage or consumption, provided that the addition does not fraudulently increase the bulk, weight, or measure of the article, or conceal its inferior quality. Exceptions are also made in favour of proprietary medicines and patented articles, and the seller is also protected when the article is unavoidably mixed with extraneous matter in the process of collection or preparation.

Section 8 further amends the law, in the case of compound articles, by enabling the seller to protect himself against proceedings if, with the article, he delivers to the purchaser a label, distinctly and legibly written or printed, to the effect that the article is mixed. It is necessary, however, that the matter added should not be injurious to health, or intended fraudulently to increase the bulk, weight, or measure, or to conceal the inferior quality of the compounded article. The giving of a false label renders the person liable to a penalty of £20.

While these alterations have been made to meet the reasonable objections of traders as to the uncertainty of the law, it will be seen that section 9 constitutes a new offence, by providing that no person shall, with the intent that the same may be sold in its altered state without notice, abstract from any article of food any part of it, so as to affect injuriously its quality, substance, or nature; and no person shall sell any article so altered without making disclosure of the alteration, under a penalty not exceeding £20. This amendment will, for example, render the fraudulent abstraction of cream from milk an offence punishable summarily.

It will be observed that, with respect to tea, special provision is made by section 30, under which all imported tea will be subject to examination by persons appointed by the Commissioners of Customs; but, although this provision will doubtless operate as a protection both to the public and the trading community, it will not exempt any seller of tea from the proceedings to which he may be liable under the provisions before mentioned.

Before concluding this part of their circular, the Board are desirous of removing an erroneous impression which appears to prevail in certain localities, viz., that the special legal provisions made by the Licensing Act, 1872, with regard to the offence of adulterating beer, are still in force.

It is true that statute contained enactments on this subject, and a schedule of adulterants of beer was appended to it. Moreover, certain regulations, framed with regard to the then state of the law, were issued, under which the officers of the Commissioners of Inland Revenue and the police were in the habit of instituting prosecutions in cases where the percentage of salt and other substances was considered excessive. The Act of 1872, however, together with the schedule, was repealed by the Licensing Act, 1874, with the express intention that proceedings for the offence of adulterating beer should thenceforward be placed on the same footing as those in respect of other articles.

Proceedings against Offenders.

An important amendment in the law will be found in section 21, which enables a defendant to tender himself and his wife to be examined on his behalf.

It will also be observed that the justices or Court of Appeal may in their discretion, upon the request of either party cause any article to be sent to the Commissioners of Inland Revenue to be analysed by the chemical officers of that department at Somerset House, the expense of such analysis to be paid by the complainant or defendant, as the justices may direct. It will also be competent for the defendant to require the analyst to be called as a witness, and the parts of the articles retained by the purchaser to be produced (section 21).

As it is important that great care should be observed in forwarding the samples to the Commissioners of Inland Revenue, and that the analysis should be effected with the greatest despatch consistent with accuracy, the Commissioners have prepared instructions for the guidance of the clerks to the justices in performing the new duty imposed upon them. A copy of these instructions is appended to this circular, and the board suggest that the court of quarter sessions should cause them to be communicated to the clerks to the justices in the several petty sessional divisions of the county.

In connection with proceedings against offenders, the Board may further point out that it will be open to the defendant to prove that he is protected by any provision or exception contained in

he Act with reference to compounded articles. He will be entitled to be discharged if he proves o the satisfaction of the justices or court that he bought the article as the same in nature, ıbstance, and quality as that demanded of him, and with a written warranty, that he had no eason to believe that the article was otherwise, and that he sold it in the same state as when he urchased it; but he will be liable to pay the costs of the prosecutor in such a case, unless he as given him due notice of his intention to rely on this defence.

Section 27 constitutes the forging of a warranty a misdemeanor punishable by imprisonment, nd imposes a penalty of £20 for the misapplication of warranties and the giving of false arranties.

Section 28 enables a person in an action brought by him for breach of contract on the sale of ay article of food or of any drug, to recover the penalty incurred by him, together with the costs ı relation to the proceedings under the Act, if the article was sold to him as being of the same ature, substance, and quality as that which was demanded of him, and he purchased it not nowing it to be otherwise.

Application of Penalties.

Penalties recovered under the Act by the officers of a local authority who have appointed an ıalyst, or agreed to the acting of an analyst within their districts, are to be paid to them, ıd by them to such authority, to be applied towards the expenses of executing the Act.

The Board have thought it right not to confine their observations to those provisions of the ct which relate more immediately to the duties devolving upon the court of quarter sessions; ıt in drawing attention to a statute of so much importance, they have adverted to the chief terations in the law which affect the trading community and the public, and which may be ımmed up as follows:—

As regards the Trading Community—

It protects the seller—

(1.) By permitting those practices in the established usage of trade with respect to the addition of harmless ingredients not intended fraudulently to increase the bulk or weight of the article, or to conceal its inferior quality, which clearly ought not to constitute an offence.

(2.) By enabling him to protect himself in the case of a mixed article, by affixing a label to it.

(3.) By giving him the right, when he has a written warranty, to plead the warranty as a defence.

(4.) By providing that, if convicted, he may, in an action against the wholesale vendor for breach of contract, recover the costs of his conviction, if he proves that the article was sold to him as being of the same nature, substance, and quality as that demanded of him, that he purchased it not knowing it to be otherwise, and that he afterwards sold it in the same state.

(5.) By requiring the purchaser, when he intends to have the article analysed, to divide the sample, and leave one part with the seller.

(6.) By providing, in the case of tea, that it shall be examined by officers of the Customs at the port of landing.

(7.) By enabling the seller and his wife to be examined as witnesses on his behalf.

(8.) By authorising the justices, where the result of the analysis is questioned, to have the article referred for analysis to the laboratory at Somerset House.

As regards the Public—

(1.) The former law only protected the public against adulterated or mixed articles; but the new Act protects the purchaser against the delivery of any article which differs in substance, nature, or quality from the one demanded.

(2.) It punishes the seller who abstracts any part of an article so as to affect injuriously its quality.

(3.) It prevents the sale of articles mixed with ingredients not in accordance with the demand of the purchaser without a label indicating that they are mixed.

(4.) It enables medical officers of health and police constables, in addition to the inspectors authorised by the former law, to obtain articles and submit them for analysis when directed to do so.

(5.) It assists the local authority of a small district in obtaining the services of an efficient analyst by empowering them to engage the analyst of another authority; and it enables a purchaser, in a district where there is no analyst, to obtain analyses from the analyst of another district.

(6.) It compels the trader to sell a sample for analysis on demand.

(7.) And, lastly, it renders the law more intelligible, and therefore more practicable, accessible, and certain.

It will be seen, therefore, that whilst some of the amendments which have been made afford to the trading community the reasonable protection to which they were justly entitled, others have rendered the law much more stringent and effectual in the interest of the public.

I am, &c.,
JOHN LAMBERT,
Secretary.

To the Clerk of the Peace.

Regulations issued by the Postmaster-General for the transmission by post of samples for analysis :—

1. Each packet must be addressed according to the official designation of the analyst, as "public analyst," or otherwise, and the nature of its contents must be stated on the front of the packet.
2. Any postmaster at whose office a packet for a public analyst shall be tendered for registration, may refuse to accept it for this purpose unless it be packed in so secure a manner as to render it at least unlikely that its contents will escape and injure the correspondence.
3. Liquids for analysis shall be contained in stout bottles or bladders, which shall be enclosed in strong wooden boxes with rounded edges—the boxes being covered by stout wrappers of paper or cloth ; and no such package shall exceed 8 inches in length, 4 inches in width, and 3 inches in depth.
4. No packet whatever addressed to a public analyst shall exceed the dimensions of 18 inches in length, 9 inches in width, or 6 inches in depth.
5. The postage and registration fee on each packet must of course be prepaid.

Regulations to be observed in transmitting articles for analysis to the Commissioners of Inland Revenue:—

1. The sample retained by the purchaser, as stated in sections 14 and 15 of the Act, should be carefully sealed up and secured either in paper or in a box, as the case may be.
2. The seal should bear a motto or device not in common use, to enable its identity to be sworn to.
3. If sent through the post, the instructions issued by the Postmaster-General for the transmission of such samples should be carefully carried out, and the parcel should be addressed to

THE COMMISSIONERS OF INLAND REVENUE,
INLAND REVENUE OFFICE,
SOMERSET HOUSE,
LONDON, W.C.

The Principal of the Laboratory.

And in addition to the nature of the contents being stated on the front of the packet, as enjoined by the Postmaster-General, the name of the place whence sent should be stated.

If dispatched by railway or other conveyance, the address above given, with the name of the place from which forwarded, will be sufficient.

4. At the time the parcel is dispatched by post or otherwise, a letter should be sent by post to the principal of the laboratory, apprising him of the transmission of the sample for analysis, and stating the nature of the alleged adulteration, and such other particulars as may be considered necessary to facilitate the examination of the sample.

MEDICAL OFFICERS AND INSPECTORS OF NUISANCES.

THE PUBLIC HEALTH ACT, 1875.

MEMORANDUM RELATIVE TO THE JOINT APPOINTMENT OF MEDICAL OFFICERS OF HEALTH OR OF INSPECTORS OF NUISANCES FOR TWO OR MORE SANITARY DISTRICTS.

Local Government Board, Whitehall, S.W.,
February, 1876.

By section 189 of the Public Health Act, 1875, every urban sanitary authority is required to appoint, from time to time, fit and proper persons to be medical officer of health and inspector of nuisances; and, by section 190, every rural sanitary authority is required to appoint, from time to time, fit and proper persons to be medical officer or officers of health and inspector or inspectors of nuisances.

By section 191, sub-section 2, it is enacted that the same person may, with the sanction of the Local Government Board, be appointed medical officer of health or inspector of nuisances for two or more districts, by the local authorities of such districts; and that the Local Government Board shall, by order, prescribe the mode of such appointment, and the proportions in which the expenses of such appointment and the salary and charges of the officer shall be borne by the authorities.

In those cases in which sanitary authorities, whether urban or rural, propose to make appointments in pursuance of section 191, sub-section 2, the following course of proceeding should be adopted.

Each of the authorities proposing to combine should pass a resolution agreeing to combine with the other authorities in the appointment of the same person as medical officer of health or inspector of nuisances, as the case may be; and, when an arrangement has been arrived at as to the period for which the appointment is to be made, the amount of the salary to be paid to the officer when appointed, and the proportions to be borne by each authority, copies of the resolutions embodying the proposals should be transmitted to the Local Government Board for their consideration.

If the proposal be sanctioned by the Board, they will then issue the order required by the statute.

The order will provide:—

(*a.*) For the election of a joint committee, to consist of a certain number of members of each authority, upon whom the appointment of the officer will devolve.

(*b.*) For convening a meeting of the joint committee, at which the appointment is to be made in the mode prescribed by the order.

(*c.*) For the appointment of the clerk of one of the authorities to act as clerk to the committee, for the purpose of conducting the requisite proceedings in regard to the appointment.

(*d.*) For the proportions in which the salary and charges of the officer, as well as the expenses of the appointment, including the remuneration of the clerk to the joint committee, shall be borne by the several authorities.

(*e.*) For the tenure of office and duties of the officer; and also for his qualification in the case of a medical officer of health.

(*f.*) For the re-appointment, from time to time, of the person elected under the order, provided that the sanitary authorities by whom the appointment was made should be desirous of continuing his appointment for a further period.

When the appointment has been duly made, in pursuance of the order, the clerk to the joint committee should forthwith report the appointment to the Local Government Board for their approval.

JOHN LAMBERT, *Secretary.*

REPORTS OF MEDICAL OFFICERS OF HEALTH.

ANNUAL REPORTS OF MEDICAL OFFICERS OF HEALTH APPOINTED UNDER BOARD'S ORDERS OF 11TH NOVEMBER, 1872.

Local Government Board, Whitehall, S.W.,
30th December, 1876.

SIR,

I am directed by the Local Government Board to forward to you, herewith, copies of instructions which have been prepared by the medical officer of the Board with reference to the annual reports which are to be made by medical officers of health appointed under the Board's order of the 11th November, 1872; and I am to request that one of the copies may, without delay, be sent to each medical officer of health in the rural [*or* urban] sanitary district. I am also to enclose forms for use by the medical officers of health in making their reports for 1876, three copies of which should, at the same time, be sent to each of them.

The Board attach much importance to the annual reports of the medical officers of health. If carefully made in accordance with the instructions, the reports will afford valuable information and assistance both to the sanitary authority and to the Board. It is also important that they should be made within a reasonable time from the close of the year to which they relate and the Board rely upon receiving, within the time specified, the copies which are to be transmitted to them.

I am, &c.,
JOHN LAMBERT,
Secretary.

To the Clerk to the
Rural [*or Urban*] *Sanitary Authority.*

ANNUAL REPORTS OF MEDICAL OFFICERS OF HEALTH.

Instructions.

Every medical officer of health, appointed under the order of the Local Government Board dated the 11th November, 1872, is required to make an annual report with regard to each sanitary district, or division of a district, which is under his superintendence. This report is to be for the year ending the 31st of December, or, if the officer at that date has not been in office for a whole year, then for so much of the year as has elapsed since his appointment. The report is to be made to the sanitary authority, and a copy of it is to be sent by the medical officer of health to the Local Government Board. It should be made as soon as practicable after the expiration of the year to which it relates. The medical officer of health ought not, in general, to have any difficulty in doing this within a month or six weeks; but if from any special circumstances the report cannot be completed within six weeks, it should be understood that the delay must not be indefinite, and that the report, complete or incomplete, should be in the hands of the sanitary authority within, at most, three months from the end of the year. The Board's copy of the report should be forwarded to them when the original is sent to the sanitary authority, except where the report is likely to be printed by order of the authority. In such cases the Board need only be supplied with a printed copy. But in all cases in which the report cannot be sent to the Board within six weeks from the end of the year, they should be informed by the medical officer of health as to the reason for the delay.

Article 14 of section 4 of the Board's order (a copy of which section is printed below) provides that the annual report is to contain information as to the sickness and deaths that have occurred during the year; the measures taken in order to prevent the spread of disease; and the proceedings of the medical officer of health. It would be well if the report, so far as it relates to the medical officer of health's proceedings, were, in the main, the same in arrangement as the articles which deal with these proceedings; thus stating first what has been done under articles 1—3, which make it the duty of the medical officer of health to inform himself as to the sanitary state of the district, and to make the inquiries and inspections necessary for this purpose; next, the advice which has been given to the sanitary authority under articles 4 and 5; and, lastly, the action he has taken under articles 6—10 in the several matters therein referred to.

As regards the duties imposed under these several articles, each of which will thus be reported on, special attention should be had to the provisions of article 3, which directs systematic inspections of the district to be made by the medical officer of health, apart from the inquiries which under other articles of the order he has to make into particular outbreaks of

disease, or into unwholesome conditions to which his attention may have been specially called by complaints or otherwise. The object of these systematic inspections is that the medical officer of health may assure himself that he is well acquainted with all the discoverable circumstances which are likely to affect the public health in his district. How often these inspections require to be made, and how detailed the inquiries should be, must be determined by the particular circumstances of the locality. In some neighbourhoods a house-to-house inspection should as far as practicable be made; in others this may not be needful; but every medical officer of health should at certain times set himself to examine into the state of his district, devoting some time to each portion of it, so as to be sure that no part escapes his notice. In making such an inspection the medical officer of health will usually require the assistance of the inspector of nuisances. Of these inspections, of the judgment he has formed thereon as to the sanitary state of his district, and of the advice he has in consequence given to the sanitary authority, and the action taken by the authority thereon, the annual report should contain a full account.

As regards the tabular statements of sickness and mortality (forms for which statements are now issued by the Board), only one observation appears to be needful. The district under the superintendence of a medical officer of health will often contain several parts evidently differing in their circumstances, or having very different death rates, either of all registered deaths, or of those from some particular disease or class of diseases. The observation of these differences can scarcely fail to lead to valuable information, and it is in view of those differences that in article 14 the tabular statements are required to be classified according to *localities*, and that provision for such a classification is made in the enclosed forms for returns of deaths. In the absence of any ascertained differences of the above sort, it will still be desirable to classify the deaths of the district according to the part of the district in which they occur; and for this purpose any areas of known population (such as parishes, townships, or wards) may be taken as representing "*localities*" for the purposes of the order. Classification on this basis will be likely to lead to the discovery of real differences when the returns for several years can be compared together.

Having regard to the imperfect character of the information which is obtainable as to non-fatal sickness, such a classification cannot, it seems, be generally attempted in the sickness returns; but in particular cases medical officers of health may be able, and may find it useful, so as to classify the pauper sickness of which they receive information.

What has been said above with regard to the information which an annual report should contain must be understood, not as suggesting that the report should be limited to these subjects, or that more detailed or differently arranged tabular statements may not be added, but as indicating the minimum of information which will satisfy the requirements of the Board's order. Many medical officers of health will doubtless, and with great advantage to the administration of their district, give much more detailed information than they are actually required to furnish, and will give especial prominence to the questions to which they have been led by the circumstances of the past year to devote particular attention, or in the investigation of which they may have arrived at valuable conclusions. Any information of this kind will be gladly received by the Local Government Board.

EDWARD C. SEATON, M.D.,
Medical Officer.

Local Government Board,
December, 1876.

EXTRACT FROM THE GENERAL ORDER OF THE LOCAL GOVERNMENT BOARD OF THE 11TH NOVEMBER, 1872, AS TO MEDICAL OFFICERS OF HEALTH [1].

SECTION IV.—*Duties.*

The following shall be the duties of a medical officer of health in respect of the sanitary district for which he is appointed; or if he shall be appointed for more than one district, or for a part of a district, then in respect of each of such districts, or of such part:—

(1.) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.

(2.) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.

(3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.

(4.) He shall be prepared to advise the sanitary authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the sanitary authority; and, in cases requiring it, he shall certify, for the guidance of the sanitary authority, or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.

(5.) He shall advise the sanitary authority on any question relating to health involved in the framing and subsequent working of such bye-laws and regulations as they may have power to make.

(6.) On receiving information of the outbreak of any contagious, infectious, or epidemic disease of a dangerous character within the district, he shall visit the spot without delay and inquire into the causes and circumstances of such outbreak, and advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and, so far as he may be lawfully authorised, assist in the execution of the same.

(7.) On receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall, as early as practicable, take such steps authorised by the statutes in that behalf as the circumstances of the case may justify and require.

(8.) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the sanitary authority, he shall himself inspect and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour, exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or unfit for the food of man; and if he finds that such animal or article is diseased, or unsound, or unwholesome, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be seized, taken, and carried away, in order to be dealt with by a justice according to the provisions of the statutes applicable to the case.

(9.) He shall perform all the duties imposed upon him by any bye-laws and regulations of the sanitary authority, duly confirmed, in respect of any matter affecting the public health, and touching which they are authorised to frame bye-laws and regulations.

(10.) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.

(11.) He shall attend at the office of the sanitary authority, or at some other appointed place, at such stated times as they may direct.

(12.) He shall from time to time report, in writing, to the sanitary authority, his proceedings, and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district, so far as he has been enabled to ascertain the same.

[1] See now as to medical officers of health, whose salaries are partly repaid out of moneys voted by Parliament, the General Order. *post*, p. 1556.

(13.) He shall keep a book or books, to be provided by the sanitary authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon, and of any action taken on previous reports, and shall produce such book or books, whenever required, to the sanitary authority.

(14.) He shall also prepare an annual report, to be made to the end of December in each year, comprising tabular statements of the sickness and mortality within the district, classified according to diseases, ages, and localities, and a summary of the action taken during the year for preventing the spread of disease. The report shall also contain an account of the proceedings in which he has taken part or advised under the Sanitary Acts, so far as such proceedings relate to conditions dangerous or injurious to health, and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses that the sanitary authority has power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. It shall also record the action taken by him, or on his advice, during the year, in regard to offensive trades, bakehouses, and workshops.

(15.) He shall give immediate information to the Local Government Board of any outbreak of dangerous epidemic disease within the district, and shall transmit to the Board, on forms to be provided by them, a quarterly return of the sickness and deaths within the district, and also a copy of each annual and of any special report.

(16.) In matters not specifically provided for in this order, he shall observe and execute, so far as the circumstances of the district may require, the instructions of the Local Government Board on the duties of medical officers of health, and all the lawful orders and directions of the sanitary authority applicable to his office.

(17.) Whenever the Diseases Prevention Act of 1855 is in force within the district, he shall observe the directions and regulations issued under that Act by the Local Government Board, so far as the same relate to or concern his office.

(18.) Where more than one medical officer of health shall be appointed by a sanitary authority, such authority, with the approval of the Local Government Board, may either assign to each of the officers a portion of the district, or may distribute the duties of medical officer of health amongst such officers.

TABLE OF MORTALITY and SICKNESS in the _____ division of the _____ sanitary district of _____ 1876.

For the twelve calendar months ending December 31st, 1876. (Prepared in accordance with notes on back of sheet.) [*See next page.*]

NAME OF DISEASE.	(A.) DEATHS (among all classes) registered as having occurred in the District or Division.				(B.) SICKNESS and DEATHS among Paupers.				(C.) If there be any Hospital or other Public Medical Institution in or near the District or Division, the subjoined columns are to be filled up.					
	Total Deaths registered as above; including those entered in columns IV. and V.		Deaths of persons who have come into the District or Division with their fatal illness upon them.		Sickness and Deaths among out-door paupers; and among any paupers who belong to the District or Division, and have been removed into the Workhouse on account of illness; whether the Workhouse be within or without of the District or Division.				IN-PATIENTS. Sickness and Deaths in such institutions among inmates WHO BELONG to the District or Division.				OUT-PATIENTS. New cases of Sickness among persons WHO BELONG TO the District or Division, and are out-patients of Hospitals or patients of Dispensaries.	
					New Cases.		Deaths.		New Cases.		Deaths.			
	Aged under 5 years.	Aged 5 years and upwards.	Aged under 5 years.	Aged 5 years and upwards.	Aged under 5 years.	Aged 5 years and upwards.	Aged under 5 years.	Aged 5 years and upwards.	Aged under 5 years.	Aged 5 years and upwards.	Aged under 5 years.	Aged 5 years and upwards.	Aged under 5 years.	Aged 5 years and upwards.
I.	II.	III.	IV.	V.	VI.	VII.	VIII.	IX.	X.	XI.	XII.	XIII.	XIV.	XV.
Small-pox														
Measles														
Scarlatina														
Diphtheria														
Croup (not "spasmodic")														
Whooping Cough														
"Continued" Fevers. Typhus														
"Continued" Fevers. Enteric														
"Continued" Fevers. Of other, or doubtful sorts														
Diarrhœa and Dysentery														
Cholera														
Rheumatic Fever														
Erysipelas														
Pyæmia														
Puerperal Fever														
Ague														
Phthisis														
Bronchitis, Pneumonia, and Pleurisy														
Heart Disease														
Injuries														
DISEASES NOT NAMED ABOVE														
Total														

1876.

RETURN FOR TWELVE CALENDAR MONTHS, ENDING THE 31ST OF DECEMBER, 1876.

To be made by the medical officer of health in respect of the sanitary district, or division of district, for which he acts.

* _____ *division of the* _____ † *sanitary district of* _____

It will be observed that this form is the same as that upon which medical officers of health make their quarterly returns to the Local Government Board; and information given in this table is a summary of their returns for the year 1876. The blanks on this side should be filled in, as well as the columns of the table on the other side.

The table has reference to A—Mortality among all classes.

B—Sickness and mortality among persons receiving poor law medical relief.

C—Sickness and mortality among patients of any hospital or other public medical institution.

And in recording the facts under various headings, attention has been given to the following points:—

NOTE 1. *Medical officers of health of "combined districts" must make a separate return for the district of each sanitary authority.*

2. *Medical officers of health acting for the whole district of a sanitary authority should strike out the words [Division of the] above* (*).

3. *Medical officers of health acting for a portion only of the district of a sanitary authority should write, in space above* (*), *the number or other designation of the division for which they act.*

4. *Insert in the space* (†) *the word "urban" or "rural," according as the sanitary authority for the district is urban or rural.*

5. *Vagrants and visitors* coming into the district are considered (for the purposes of B and C) as belonging to the district, unless brought into the same for the purpose of treatment in some public medical institution therein. New cases of sickness occurring in *club* or other *private medical practice* are not included in the columns of the table. In filling the schedule care has been taken not to count the same case of sickness twice over, *e.g.*, once when attended at his own home, and again when removed to a public institution.

AREA and POPULATION of the district or division to which this return relates.

Area in acres _____

Population (1871) _____

_____ *Medical officer of health.*

(*Date*) _____

MEMORANDUM.

ON HOSPITAL ACCOMMODATION TO BE GIVEN BY LOCAL AUTHORITIES.

A large part of the mortality of England is caused by diseases which spread readily by infection from person to person; such as scarlatina, typhus, small-pox. In order to prevent the extension of such diseases in neighbourhoods where they have begun, it is of the utmost importance that, in addition to whatever other sanitary measures may be requisite, every practicable endeavour should be made to separate the sick from the healthy. Such separation is comparatively easy, if means to attain it are taken early, while cases of the disease are very few: but any interval of delay allows the cases of sickness to multiply, and perhaps at last to become so numerous that endeavours to isolate them cannot succeed. These considerations are especially important with regard to the poorer classes of the population, whose usually crowded and ill-ventilated dwellings give extreme facilities for infection; and among these classes, the sick, generally speaking, cannot be separated from the healthy, except in proportion as they can be removed from home into proper hospital accommodation provided for their reception.

Under the 131st section of the Public Health Act, 1875, every sanitary authority (whether urban or rural) has power to provide "for the use of the inhabitants of their district, hospitals or temporary places for the reception of the sick." When this provision has been made, any justice may order the removal to such place of any person suffering from any dangerous infectious disease, if he is without proper lodging or accommodation, or lodged in a room occupied by more than one family, or is on board any ship or vessel.

The present memorandum is intended for the assistance of sanitary authorities, who having to secure the isolation that is needed for cases of dangerous infectious disease, but not yet having the requisite hospital accommodation within their districts, desire to provide such accommodation under the powers of section 131 of the Public Health Act, 1875, or otherwise.

A condition of the highest degree of importance for the usefulness of any such accommodation is, that the accommodation shall be ready beforehand. The quantity of accommodation wanted will, of course, be widely different in different cases; but it must always be remembered that when two infectious diseases are prevalent in one place at one time, patients having the one infectious disease cannot properly be in the same ward with patients having the other infectious disease. In kind, the accommodation ought, in all cases, to be as good as the authority can reasonably supply. It is believed, however, that, even under these conditions, the costs of providing hospital accommodation, whether for villages or for towns, needs not ever be proportionately great.

As regards villages,—each village ought to have the means of accommodating instantly, or at a few hours' notice, say, four cases of infectious disease in at least two separate rooms, without requiring their removal to a distance. A decent four-room or six-room cottage, at the disposal of the authority, would answer this purpose; or permanent arrangement might be made beforehand with trustworthy cottage-holders, not having children, that they should receive and nurse, in case of need, patients requiring such accommodation; and small adjacent villages (if under the same sanitary authority) might often have such arrangements in common. If, in villages where such provision as this has been made, cases of disease in excess of the accommodation occur, the sick must not be crowded together, but temporary further provision should be made for them. The most rapid and the cheapest way of obtaining this further accommodation, may often be to hire other neighbouring cottages; or, in default of this, tents or huts may be erected upon adjacent ground.

In towns, hospital accommodation for infectious diseases is wanted more constantly, as well as in larger amount, than in villages; and in towns there is greater probability that room will be wanted at the same time for two or more infectious diseases which ought not to be treated in the same ward. The permanent provision to be made in a town, in order to obtain reasonable security against the spread of infectious diseases, should consist of not less than four rooms, in two separate pairs; each pair to receive the sufferers from one infectious disease, the men and women of course separately. The number of cases for which permanent provision should be made must depend upon various circumstances, chiefly upon the size of the town; and, as no closely limited amount of permanent accommodation can be trusted always to suffice for the requirements of considerable epidemics, foresight, must from the first be used, how, in emergency, additional accommodation can be temporarily given, to meet requirements in excess of the permanent provision. Accordingly, for a town of any importance, the hospital provision ought to consist of a permanent building, having around it space enough for the erection of temporary

structures, as occasion may require. Considerations of ultimate economy make it wise to have the permanent building equal to somewhat more than the average necessities of the place, so that recourse to temporary extensions may less often be wanted. In small towns, for instance, if a hospital, consisting of four wards and the necessary administrative offices, is to be provided, the original expense of making each ward serve for (say) eight persons, will be far less than double that of making the wards for four. And in any case it is well to make the administrative offices somewhat in excess of the wants of the permanent wards: because thus, at little additional first cost, they will be ready to serve, when occasion comes, for the wants of the temporary extensions.

It is not proposed to discuss in detail, in this memorandum, the principles on which permanent hospitals for infectious diseases should be built; but it may be noted, that, in order to the practical success of any such hospital, the following conditions have particularly to be studied:—

Accessibility of situation, so that the sick may not be exhausted by long journeys; *wholesomeness of situation*; and, as far as consists with these conditions, *an open, uncrowded neighbourhood*:

Adequate ward-space for each patient, approaching as nearly as circumstances allow to 2000 cubic feet, with a floor space of not less than 144 square feet:

Thoroughly good provision for ward ventilation (*i.e.*, for sufficient *unceasing* entrance of pure air and of exit of ward air), with arrangements also for immediate change of air in the whole ward, when necessary:

Perfect security *against the possibility of any foul air* (as from privies or sinks) entering any ward:

Means of *warming* each ward in winter to a temperature of 60° Fahrenheit, and of keeping it cool in summer:

Safe means (safe both for the hospital and for the neighbourhood) for disposing of *excremental matters and of slops*, and for cleansing and disinfecting *infected linen and bedding*:

Facilities for obtaining, in the use of the hospital, the *very strictest cleanliness* of every part.

When the pressure of a particular epidemic requires temporary extension of the accommodation, or when, the provision of a permanent hospital having been neglected, accommodation for cases of infectious disease is suddenly required, *huts*, or, in summer, *tents*, will sufficiently answer the purpose.

The *tents* may be either such as the bell tent or hospital marquee of Her Majesty's army, or one of the various forms of tent and marquee used in civil life. *Huts* may be of wood or iron; and, if the administrative part of the original building have been thoughtfully devised, these temporary erections may be of very simple construction. Both tents and huts need to be carefully arranged and regulated, especially in the following respects.

As to Tents.—It is essential to secure the dryness of the ground upon which they are pitched, by trenching around and between them, so as to carry off all rainfall and prevent the lodgment of moisture. The tents should everywhere be distant at least a diameter and a half from each other. The approaches should be paved or otherwise prepared, to prevent their being trodden into mud in wet weather, and it is especially requisite that abundant proper means be provided for the reception of refuse matters, and that no casting of slops or other refuse upon the ground in the vicinity of the tents be allowed. In the distribution of patients in active stages of disease, not more than one patient should be assigned to a bell tent of the ordinary regulation size, nor more than three such patients to the regulation hospital marquee [1]; and in other forms of tents the number of patients should be regulated in similar proportions. Tents should always be provided with special ventilating openings. They should have boarded floors, raised sufficiently above the ground so as to allow of air passing freely beneath. From the ready inflammability of the ordinary canvas of which tents are constructed, much care is required in the use of lights in tents; and tents should not be used in states of weather which render artificial warming necessary, if sufficiently rapid provision for the isolation of the sick can otherwise be had. The safest method of warming a hospital marquee is by a flue carried beneath the floor, from a stove placed in an excavation outside the tent to a chimney also beyond the tent wall.

As to Huts.—Dryness of site is, as in the case of tents, of the first importance. Each hut should be trenched round. Its floors should be raised a foot or a foot and a half from the earth, so as to permit the free under passage of air; but care must be taken to prevent the lodgment

[1] *Regulation Bell Tent.*—Diameter, 14 ft.; height, 10 ft.; area of base, 154 square ft.; cubic space, 513 ft.

Regulation Hospital Marquee.—Length 29 ft.; width 14 ft.; side walls, 5 feet 4 in.; height to ridge, 11 ft. 8 in.; area of base, 396 square ft.; cubic capacity, 3,366 ft.

of moisture or impurities beneath the floor. In some cases a layer of concrete under the hut may be necessary to prevent dampness. A distance not less than three times the wall-height of a hut should intervene between any two huts, and each hut should be so placed as not unnecessarily to interfere with free circulation of air round other huts. In huts, as in permanent buildings for the treatment of infectious diseases, 2,000 cubic feet, with 144 square feet of floor, is the standard of space that should be allowed to each patient. The ventilation of huts, also, is of equal importance with that of permanent hospital buildings. It is best secured by the combination of side-windows with roof-opening, the latter protected from rain, and running the whole length of the ridge of the roof. The side-windows should not be of less size than ordinary house windows; they must freely open top and bottom, and for this purpose had best be sash-windows; they should be placed in similar series on opposite sides of the wards, one window between each pair of beds. The ventilating opening beneath the ridge may have flaps, moveable from within the hut by ropes and pulleys, so that the opening to windward can be closed, if necessary, in high winds. Double-walled wood huts may have additional ventilation by the admission of air between the outer and inner walls, and its passage into the interior of the hut through openings with moveable covers at the top of the inner lining. The roof should be covered with waterproof felt; the edges of the felt fastened down by strips of wood, not directly by nails. The hut should be warmed by open fire-places, fixed in brick stove-stacks, or by open stoves placed in the centre of the floor, the flue being carried through the roof, with all the needful precautions to guard against ignition of the wood-work.

The *sewerage* and *scavenging* arrangements both of tents and huts demand very careful consideration. When the tents or huts are placed within the area of a public system of sewerage and water supply, no difficulty will arise; for drains may be laid into the public sewer, and water-closets may easily be adopted. But where no system of sewerage exists, the disposal of excremental matters and other refuse will require special provisions. In regard to excremental-disposal under such circumstances, the best method to adopt is the dry-earth system, or, failing this, a pail system, with careful arrangements for the disinfection and subsequent disposal of the excrementitious matter. All slops and other refuse should be deposited in metal pails, to be removed from the tents and huts at frequent intervals, and should be so disposed of as not to become a nuisance. Too much attention cannot be given to the careful scavenging of tents and huts, and to the proper disposal of the refuse from them; and the servant or servants to whom the duty is assigned (as indeed all service which concerns the cleanliness and wholesomeness of the hospital) should be under very vigilant supervision.

ON AMBULANCES.

For the conveyance of patients who are sick with infectious disease, special carriages, which are known by the name of "ambulances," are necessary. Such carriages may be provided by sanitary authorities under section 123 of the Public Health Act, 1875. The following points have to be attended to in the provision and use of such carriages:—

1. If the ambulance be intended only for journeys of not more than a mile, it may be made so as to be carried between two people, or it may be on wheels and to be drawn by hand. If the distance be above a mile, the ambulance should be drawn by a horse. Every ambulance on wheels should have easy carriage-springs.
2. In the construction of an ambulance, special regard should be had to the fact that after each use it has to be cleansed and disinfected. The entire interior, and the bed-frame and bed, should be of materials that can be washed.
3. The ambulance should be such that the patient can lie at full length in it; and the bed-frame and bed should be moveable, so that the patient can be arranged upon the bed before being taken out of his house.
4. With an ambulance there should always be a person specially in charge of the patient; and a horse-ambulance should have a seat for such person inside the carriage.
5. After every use of an ambulance for infectious disease, it should be cleansed and disinfected to the satisfaction of a medical officer.
6. Both in very populous districts, and in districts which are of very wide area, it may often happen that more than one ambulance will be wanted at one time; and, in any district, if more than one infectious disease is prevailing, there will be an evident sanitary advantage in having more than one ambulance for use.

EDWARD C. SEATON, M.D.,
Medical Officer.

Local Government Board,
December, 1876.

THE SALE OF FOOD AND DRUGS ACT, 1875.

(Section 19.)

Local Government Board, Whitehall, S.W.,
16th January, 1877.

SIR,

I am directed by the Local Government Board to call attention to the provisions of section 19 of "The Sale of Food and Drugs Act, 1875" (38 & 39 Vict. c. 63), which enacts as follows:—

"Every analyst appointed under any Act hereby repealed, or this Act, shall report quarterly to the authority appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis, and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the authority appointing such analyst; and every such authority shall annually transmit to the Local Government Board, at such time and in such form as the Board shall direct, a certified copy of such quarterly report."

The Board, in pursuance of the powers conferred upon them in that behalf, have directed that certified copies of the quarterly reports made to the authorities, mentioned in paragraph 1 of section 10 of the statute referred to by the analyst duly appointed by them, shall be forwarded by the Board in the month of January in every year according to the annexed form.

I am, &c.,
JOHN LAMBERT,
Secretary.

"THE SALE OF FOOD AND DRUGS ACT, 1875."

[*No. of Authority.*] [*Official Address.*]
[*Date.*]

SIR,

I hereby, in obedience of the provisions of "The Sale of Food and Drugs Act, 1875," transmit to the Local Government Board a copy of the reports of Mr. , the analyst appointed for the during the quarters ended on the , the , the , and the in the year 18 , as laid by the analyst before such authority.

[This communication to be on paper of foolscap size, with an inner margin of one fourth of the page.]

[Here insert copies of the reports leaving an inner margin of one third of the page.]

I am, &c.
Clerk to the

To the Secretary,
Local Government Board, Whitehall, S.W.

THE RIVERS POLLUTION PREVENTION ACT, 1876 (1).

Local Government Board, Whitehall, S.W.,
6th August, 1877.

SIR,

I am directed by the Local Government Board to bring under the notice of the sanitary authority the provisions of the Rivers Pollution Prevention Act, 1876 (39 & 40 Vict. c, 75) (1), and in so doing, to point out that after the 15th instant the proceedings authorised by the Act in respect of offences arising from sewage, manufacturing, or mining pollutions may be taken.

The sanitary authority are doubtless aware that it has been competent for them to enforce the prohibition against putting solid matters into streams from the date of the passing of the Act.

Offences against the Act.

Offences against the Act are divided into four classes, according as they consist of the pollution or obstruction of streams:—

(1.) By the solid refuse of any manufactory, manufacturing process, or quarry, or any rubbish or cinders, or any other waste, or any putrid solid matter;

(2.) By solid or liquid sewage matter;

(1) *Ante*, p. 399.

(3.) By any poisonous, noxious, or polluting liquid from any factory or manufacturing process; or

(4.) By the solid matter from any mine in such quantities as to prejudicially interfere with the due flow of the stream, or by any poisonous, noxious, or polluting solid or liquid matter from any mine, other than water in the same condition as drained or raised from the mine.

In proving the pollution of the stream, or interference with its due flow, in the first class of cases, evidence may be given of repeated acts which together cause the pollution or interference, although each act, taken by itself, may not be sufficient for that purpose.

It will be an offence of the second class, except in certain exceptional cases mentioned in the Act, to cause to fall or flow, or knowingly to permit to fall or flow, or to be carried into any stream any solid or liquid sewage matter.

The Board are desirous of specially drawing the attention of the sanitary authority to the provisions in relation to sewage pollutions, inasmuch as any infringement of them will render the authority liable to hostile proceedings under the Act, on the part either of other sanitary authorities, or of any person or body of persons aggrieved by the commission of the offence.

In determining whether or not such an offence has been committed, it should be noted that a marked distinction is drawn between the cases in which the sewage is conveyed into the stream along channels, the construction of which had not been commenced at the time of the passing of the Act, and those in which it is so conveyed along channels then already existing, or in process of construction. In the former case it will be an offence against the Act for any sanitary authority to cause or permit the discharge into any stream of any solid or liquid sewage matter. In the latter an offence will not be deemed to have been committed if it can be shown to the satisfaction of the court having cognizance of the case that the best practicable and available means are used to render the sewage harmless. Moreover, in this class of cases the important power has been given to the Board of suspending, in any particular instance, for a limited period the operation of this portion of the Act beyond the twelve months allowed by the statute, provided that they are satisfied, after local inquiry, that further time ought to be granted to the sanitary authority for the purpose of enabling them to adopt the best practicable and available means for rendering the sewage harmless.

In connexion with offences of this class it should be stated that where any local authority or any rural or urban sanitary authority have been empowered or required by any Act of Parliament to carry any sewage into the sea or any tidal waters, nothing done by such authority in pursuance of such enactment will be deemed to be an offence against the Act.

As regards pollutions from factories or manufacturing processes, a distinction is drawn similar to that already referred to with respect to sewage pollutions, between the cases where the liquid finds its way into the stream along a channel used, constructed, or in process of construction at the date of the passing of the Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, and those in which it is conveyed into the stream along a channel not falling under either of the above descriptions. In the former cases an offence against the Act will not be deemed to have been committed, if it can be shown to the satisfaction of the court having cognizance of the case that the person complained of is using the best practicable and reasonably available means to render the liquid harmless.

With respect to pollutions from mines, an offence will not be deemed to have been committed if it can be shown to the satisfaction of the court that the person complained of is using the best practicable and reasonably available means to render the polluting matter harmless; and it must be observed that it is immaterial in this case whether the channel by which the discharge is effected was or was not constructed or in process of construction before the passing of the Act.

Administration of the Law.

It will be observed that the new and important powers and duties conferred upon sanitary authorities, with a view to prevent the pollution of streams, apply not only to rivers, streams, canals, lakes, and certain watercourses, but also to the sea to such extent, and tidal waters to such point, as may be determined by the Board.

Subject to certain restrictions contained in the Act, every sanitary authority will have power to enforce its provisions in relation to any stream which is within, or which passes through or by any part of their district; and for this purpose they may institute proceedings in respect of any offence against the Act which causes within their district the pollution of any stream, or an interference with its due flow. These proceedings may be taken either against any other sanitary authority or against any person or body of persons, and whether or not the offence is committed within the district of the prosecuting authority.

Any expenses incurred by a sanitary authority in the execution of the Act will be payable as if they were expenses incurred by the authority in the execution of the Public Health Act, 1875.

Restrictions on Proceedings.

As has been already stated, an interval of twelve months from the passing of the Act is required in certain cases to elapse before proceedings can be instituted. Independently of this restriction, no proceedings can be taken in any case in respect of any offence under the Act, until the expiration of two months after written notice has been given to the offender; nor may any such proceedings be taken while other proceedings under the Act are pending in relation to the offence.

No proceedings can be taken in respect of offences arising from the discharge into streams of the liquid refuse from manufactories, or the solid or liquid refuse from mines, without the consent of the Board.

In giving or withholding their consent the Board are to have regard to the industrial interests involved in the case, and to the circumstances and requirements of the locality; and they are prohibited from giving their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the liquid refuse from the processes of such manufactures are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry.

When the consent of the Board has been given to the proceedings, it will still be competent to the person against whom they are proposed to be taken, to object before the sanitary authority to their being taken; and the authority, if required in writing by such person, must thereupon allow him to be heard before them by himself, his agents and witnesses; and after inquiry they are to determine whether or not the proceedings shall be taken, having regard to the same considerations as those by which the board are to be guided in giving or withholding their consent.

Where any sanitary authority have taken proceedings under the Act, it will not be competent to other sanitary authorities to do so till the party complained of has failed to carry out, within a reasonable time, the order of any competent court under the Act.

It should here be mentioned that whereas proceedings in respect of other offences against the Act may be taken by any person aggrieved by the commission of the offence, the enforcement of the Act, so far as it relates to prosecutions in respect of mining and manufacturing pollutions has for the present devolved exclusively on sanitary authorities. It must, however, be borne in mind that if the sanitary authority, on the application of any person interested, refuse to take proceedings in respect of these pollutions, or to apply for the consent of the Board for that purpose, the person so interested may apply to the Board; and if they, on inquiry, are of opinion that the sanitary authority should take proceedings, they may give directions accordingly, in which case the authority are thereupon required by the Act to commence proceedings.

Every sanitary or other local authority having sewers under their control are required by the Act to give facilities for enabling manufacturers within their district to carry the liquids proceeding from their factories or manufacturing processes into such sewers.

It is, however, expressly provided that this enactment shall not compel the authority to admit into their sewers any liquid which would prejudicially affect the sewers, or the disposal by sale, application to land, or otherwise, of the sewage matter conveyed along them, or which would, from its temperature or otherwise, be injurious in a sanitary point of view. Nor are the authority to be required to give such facilities where their sewers are only sufficient for the requirements of their district, nor where such facilities would interfere with any order of any court of competent jurisdiction respecting the sewage of the authority.

Proceedings against Offenders.

The Act, while providing that the powers which it confers shall be cumulative, and that no act or default which would otherwise be a nuisance or contrary to law shall be legalised by it, has for the first time rendered the pollution and obstruction of streams, wherever situated, a statutory offence, in respect of which the county court having jurisdiction in the place where the offence is committed may make a summary order, requiring the offender to discontinue the pollution or obstruction. Any such order may, if the offence consists in default to perform a duty, require the offender to perform the duty, and specify the manner in which this is to be done, and may impose a penalty not exceeding £50 a day for every day during which the offender continues in default. In the event of his continuing in default for a period of not less than a month, or such other shorter period as may be prescribed by the order, the county court

is enabled, in addition to the penalty imposed, to appoint one or more persons to carry the order into effect, and to provide for the recovery from the offender of the consequent expenses.

Appeals may be made from the decision of the county court to the High Court of Justice; and any county court plaint under the Act may be removed into the High Court of Justice by leave of any judge of such court.

Certificates of Inspectors of the Board.

One of the most important provisions in the Act is that under which inspectors of proper qualifications, appointed by the Board, are authorised to grant certificates to the effect that the means used for rendering harmless any sewage, or poisonous, noxious, or polluting solid or liquid matter discharged into any stream are the best or only practicable and available means under the circumstances of the particular case. Such certificates will, in all courts and proceedings under the Act, be conclusive evidence of the fact, and they must also be taken into consideration by any court before which any legal proceedings are pending with reference to the pollution of any stream, although such proceedings may not have been instituted under the Act. If any party is aggrieved by the grant or withholding of a certificate, an appeal may be made to the Board against the decision of the inspector; and the Board may either confirm, reverse, or modify his decision, and may make such order as to the party or parties by whom the costs of the appeal are to be borne, as they may think just.

The certificate will continue in force for a period to be named therein, not exceeding two years; and at the expiration of that period it may be renewed for the like or any less period. The expense of obtaining the certificate must be paid by the applicants.

The Board may state that they have already appointed Mr. Robert Rawlinson, C.B., their chief engineering inspector, and Dr. Angus Smith, F.R.S., the chief inspector under the Alkali Acts, as inspectors for granting the certificates referred to.

The above is a summary of the more important provisions of the Act, so far as they relate to sanitary authorities. It is hoped that they may conduce in no inconsiderable degree to the mitigation of existing and the prevention of future pollutions; and that at the same time they will not be found to have imposed undue restrictions upon local authorities, or the manufacturing or mining interests of the country.

I am, &c.,
JOHN LAMBERT,
Secretary.

To
The clerk to the sanitary authority.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD BY URBAN SANITARY AUTHORITIES FOR PROVISIONAL ORDERS TO CONFIRM IMPROVEMENT SCHEMES UNDER THE ARTIZANS' AND LABOURERS' DWELLINGS IMPROVEMENT ACT, 1875.

1. The application must be made by a petition of the sanitary authority, containing the particulars required by section 6 of the Artizans' and Labourers' Dwellings Improvement Act, 1875. The petition should be under the seal of the sanitary authority. (See section 24 of the Act).

2. The petition must be presented not later than the 1st January, if the advertisements of the scheme were published in September or October; and not later than the 1st February, if they were published in November.

3. The petition should be accompanied by the following documents:—

(*a.*) A copy of the official representation.

(*b.*) Two copies of the improvement scheme.

(*c.*) Two copies of the estimate of the cost of carrying the scheme into effect.

(*d*) Particulars of the scheme, giving the acreage of the area affected by it, the number of persons of the working class who will be displaced, and the number for whom, and the place at which, accommodation is to be provided. Where this accommodation is not intended to be provided within the limits of the area included in the scheme, or in the vicinity thereof, the special reasons for this course must be stated, and the distance by the nearest public thoroughfare from the area affected must be given.

It must be clearly stated in what way it is proposed to deal with the area

included in the scheme, and with the area on which dwellings for the artizan class are to be erected, and also what sanitary arrangements are to be provided. Particulars should also be given showing by reference to the numbers of the properties on the maps (1) the area included in the official representation; (2) any lands excluded from such area by the sanitary authority; (3) any lands included in it by the sanitary authority, as falling under the description of property named in section 3 of the Act; (4) any lands so included for widening existing approaches to the unhealthy area or otherwise for opening out the same for purposes of ventilation or health; and (5) lands proposed to be taken compulsorily.

e.) Maps showing the area included in the official representation and the improvement scheme. The several properties should be numbered consecutively on the maps, so as to correspond with a book of reference which should be forwarded in duplicate.

f.) A statutory declaration, properly stamped, and showing that the requirements of section 6 of the Act with respect to advertisements and notices have been complied with, and that the petition states the names of the owners or reputed owners, and lessees or reputed lessees, who have dissented in respect of the taking of their lands. Copies of the newspapers containing the advertisements, and also of the form of notice served on the owners, lessees, and occupiers, should be annexed to the declaration as exhibits. The declaration should specify in which of the modes mentioned in section 6 of the Act the notices have been served, and so far as relates to such notices, it should be made by the persons who served them.

Copies of the forms for advertisements, and notices, which the Board have prescribed under section 26 of the Act, are annexed to these instructions. The adoption of these forms is not obligatory, but when adopted, they are to be deemed sufficient for all the purposes of the Act.

t. The Standing Orders of both Houses of Parliament require that at the same time as the ns and book of reference are deposited with the Board, duplicates thereof shall be deposited h the clerk of the Parliaments, and at the private bill office, unless the deposit with the ard is made after the prorogation of Parliament and before the 30th November, in which case deposit with the clerk of the Parliaments, and at the private bill office must be made on the y last mentioned.

In order that compliance with these requirements may be proved before the examiners of nding Orders, the Board should be furnished with an affidavit, sworn before a justice of the ce or a commissioner for taking affidavits, by the person by whom the deposits have been de.

RMS OF ADVERTISEMENTS AND NOTICES UNDER THE ARTIZANS' AND LABOURERS' DWELLINGS ACT, PRESCRIBED BY ORDER OF THE LOCAL GOVERNMENT BOARD DATED THE 5TH NOVEMBER, 1875.

I.

Form of Advertisement.

HE URBAN SANITARY DISTRICT OF

Artizans' and Labourers' Dwellings Improvement Act, 1875—
38 & 39 Vict. c. 36.

Advertisement of an Improvement Scheme.

Notice is hereby given that , being the sanitary authority for the urban itary district of , acting as the local authority in pursuance of the tizans' and Labourers' Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36), have made a eme for the improvement of the area the limits of which are stated in the schedule hereunder itten, and which contains by estimation—

A copy of the said scheme, accompanied by maps distinguishing the lands proposed to be ken compulsorily, and by particulars and estimates, has been deposited at d may be seen at all reasonable hours.

The place must be within the area or the vicinity thereof. *See* sect. 6 of the Act.

(Signed)

Town clerk *or* clerk to the Board
(*as the case may be*).

Dated day of

One of these forms should be adopted.

SCHEDULE.

The area to which the scheme relates is bounded as follows:
on the north by
on the south by
on the east by
on the west by

or

The area to which the scheme relates is bounded as follows (*set out the entire linear boundary*):

or

The area to which the scheme relates consists of the following streets and other places or parts thereof:

II.

FORM OF NOTICE TO OWNERS AND LESSEES.

THE URBAN SANITARY DISTRICT OF

ARTIZANS' AND LABOURERS' DWELLINGS IMPROVEMENT ACT, 1875—
38 & 39 VICT. c. 36.

Notice to Owner or reputed Owner, Lessee or reputed Lessee, of intention to take Land compulsorily under an Improvement Scheme.

To

I hereby inform you that a petition is about to be presented by the , being the sanitary authority for the urban sanitary district of , to the Local Government Board in pursuance of the Artizans' and Labourers' Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36), praying that an order may be made confirming an improvement scheme, whereby it is proposed to take compulsorily certain lands included in the area referred to in the public advertisement, of which a copy is hereto annexed* [*or* printed hereunder].

You are believed to be interested, as owner or reputed owner, or lessee or reputed lessee, in the property described in the schedule hereunder, which forms part of the said lands proposed to be taken compulsorily.

You are, therefore, hereby required to return to me on or before the day of next, an answer in writing whether you dissent or not to the taking of the property described in the said schedule.

(Signed)

Town clerk *or* clerk to the Board
(*as the case may be*)

Dated day of

SCHEDULE referred to in the foregoing notice.

Name of Street, Court, Alley, or other place.	Description of Property proposed to be taken.	Owner or reputed Owner.	Lessee or reputed Lessee.	Present or recent Occupier.

Copy of the Advertisement.

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* Substitute one of these terms, according to the fact.

III.

FORM OF NOTICE TO OCCUPIERS.

THE URBAN SANITARY DISTRICT OF

ARTIZANS' AND LABOURERS' DWELLINGS IMPROVEMENT ACT, 1875—
38 & 39 VICT. c. 36.

Notice to Occupier or Occupiers (not being Owners or reputed Owners, or Lessees or reputed Lessees) of an intention to take Lands compulsorily under an Improvement Scheme.

To *A. B.*, the occupier of the

or

[To the occupier or occupiers of the house
which in the schednle hereunder is described as the property proposed to be taken.]

The alternative address within these brackets is available only where the property to be taken is a *house.*

I hereby inform you that a petition is about to be presented by the
, being the sanitary authority for the urban sanitary district of , to the Local Government Board in pursuance of the Artizans' and Labourers' Dwellings Improvement Act, 1875 (38 & 39 Vict. c. 36), praying that an order may be made confirming an improvement scheme, whereby it is proposed to take compulsorily certain lands included in the area referred to in the public advertisement, of which a copy is hereto annexed* [*or* printed hereunder]; and I hereby give you notice that the property described in the schedule hereunder forms part of the said lands proposed to be taken compulsorily.

(Signed)

Town clerk *or* clerk to the Board.
(*as the case may be*).

Dated day of

SCHEDULE referred to in the foregoing Notice.

Name of Street, Court, Alley, or other place.	Description of Property proposed to be taken.

Copy of the Advertisement.

* Substitute one of these terms, according to the fact.

N.B.—It is particularly requested that the petition, declaration, and other documents may be written on foolscap paper of the usual size.

JOHN LAMBERT,
Secretary.

Local Government Board, Whitehall,
22nd August, 1877.

THE SALE OF FOOD AND DRUGS ACT, 1875.

(Section 19) [1].

Local Government Board, Whitehall, S. W.,
8th January, 1878.

SIR,

I am directed by the Local Government Board to call your attention to their circular letter of the 16th January last, with reference to the quarterly reports required to be made by public analysts under the 19th section of "The Sale of Food and Drugs Act, 1875;" [1] and I am to remind you that a copy of the reports for the several quarters of the year 1877 should be forwarded to the Board in the course of the present month [2].

I am at the same time to state that in some instances the public analysts reports, of which copies have been received by the Board, have not appeared to be in strict compliance with the requirements of the section above referred to. The Board, therefore, think it desirable to suggest that in future such reports should either be made in a tabular form, or should be accompanied by a tabular statement, showing—

(1.) The description of article submitted for analysis;
(2.) Whether or not the sample was submitted to the analyst by an officer acting under direction of a local authority, under section 13 of the Act;
(3.) Whether the sample was genuine or adulterated, and, if adulterated, what were the nature and extent of the adulteration;
(4.) The sum paid in respect of the analysis;
(5.) The observations, if any, which the analyst may wish to make in reference to the analysis.

A specimen form is enclosed herewith for the information of the public analyst.

I am, &c.,
JOHN LAMBERT,
Secretary.

[Specimen Form.]

SALE OF FOOD AND DRUGS ACT, 1875.

Report of the public analyst appointed for the
of upon the articles analysed by him under
the above Act during the quarter ending the .

Article submitted for Analysis.	State whether the Sample was submitted to the Analyst by an Officer acting under direction of a Local Authority, under section 13 of Act, and if so, the name of such Authority.	Result of Analysis showing whether the sample was Genuine or Adulterated, and, if adulterated, what were the nature and extent of the Adulteration.	The sum paid in respect of the Analysis.	Observations.

Total number of samples analysed during the quarter .
Signed *Public Analyst.*
Date .

[1] *Ante,* p. 636.
[2] See also the Circulars, *ante,* pp. 1480 and 1495.

PORT SANITARY AUTHORITIES.

APPOINTMENT OF OFFICERS.

Local Government Board, Whitehall, S.W.
26th September, 1878.

SIR,

I am directed by the Local Government Board, with respect to the letter which they some time since addressed to you on the subject hereinafter referred to, to forward herewith two copies of an order which they have issued reconstituting
the port sanitary authority for the port of

The Board on the present occasion have adopted a different mode of providing for the appointments of medical officer of health and inspector of nuisances, and for the duties to be discharged by those officers. Instead of inserting in the order reconstructing the authority, a substantive provision requiring the appointments to be made, and instead of dealing with the duties by way of reference to the general orders of the 11th November, 1872, the Board have in the order assigned to the authority the powers and obligations contained in section 189 of the Public Health Act, 1875, so far as regards a medical officer of health and an inspector of nuisances, and assistants to those officers. The Board have also issued two general orders to port sanitary authorities which have been temporarily constituted, containing regulations with respect to the duties of their officers, as well as with respect to the mode of their appointment, their tenure of office and remuneration. Six copies of each of those orders are herewith enclosed for the use of the port sanitary authority and their officers.

It will be observed that the general orders only apply in the cases of the officers of the authority when a portion of their salaries is repaid out of money voted by Parliament.

The Board have taken the opportunity of adding to the article assigning to the authority powers and obligations under the Public Health Act, 1875, a few additional sections of that Act which it appeared to them desirable to introduce.

As the qualification of the medical officer of health, which is dealt with in the existing orders by a substantive provision, is provided for by section 191 of the Act, the Board have not reinserted that provision in the present order.

I am, &c.,
JOHN LAMBERT,
Secretary.

To
The Clerk to the Port Sanitary Authority.

PORT SANITARY AUTHORITIES (TEMPORARY):

REGULATIONS WITH RESPECT TO MEDICAL OFFICERS OF HEALTH.

GENERAL ORDER.

To the several urban and rural sanitary authorities named in the second columns of the Schedules A. and B. to this order, being respectively the port sanitary authorities for the ports named in the first columns of those schedules;—

To the joints boards constituting the port sanitary authorities named in the second column of the Schedule C. to this order;

And to all others whom it may concern.

Whereas by certain orders of the Local Government Board, the several urban and rural sanitary authorities named in the second columns of Schedules A. and B. to this order have been constituted, until the dates specified in the third columns of those schedules, port sanitary authorities for the respective ports named in the first columns of such schedules, or for parts of such ports.

And whereas by certain orders of the Local Government Board, joint boards have been constituted, under the names mentioned in the second column of the Schedule C. to this order, port sanitary authorities, until the dates specified in the third column of that schedule, for the respective ports named in the first column of such schedule, or for parts of such ports.

And whereas by the said orders the Local Government Board have assigned to the said port sanitary authorities certain powers, rights, duties, capacities, liabilities, and obligations created by or arising out of certain sections of the above-cited Act, including the following:—

Section 189, so far as relates to medical officers of health and assistants to those officers; and Section 191.

And whereas by the last-named section it is enacted as follows:—

"A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner, and the Local Government Board shall have the

same powers as it has in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority, any portion of whose salary is paid out of moneys voted by Parliament." . . . . . .

Now therefore, we, the Local Government Board, in pursuance of the powers given by the several statutes in that behalf, hereby order as follows, with respect to the mode of appointment, tenure of office, duties, and salary of medical officers of health to be appointed by the port sanitary authorities referred to in the Schedules A., B., and C. to this order, in all cases where any portion of the salary of any such officer is paid out of moneys voted by Parliament.

SECTION I.—*Mode of Appointment.*

Art. 1.—No appointment of a medical officer of health shall be made, unless an advertisement giving notice of the day when such appointment will be made shall have appeared in some public newspaper circulating in the district of the port sanitary authority, at least seven days before the day on which the appointment is to be made.

Provided that no such advertisement shall be necessary for the renewal of an appointment already made, or for the appointment of a temporary substitute.

Art. 2.—Every such appointment shall, within seven days after it is made or renewed, be reported to the Local Government Board by the clerk to the port sanitary authority.

SECTION II.—*Tenure of Office.*

Art. 3. Every medical officer of health appointed under this order shall continue to hold office for such period as the port sanitary authority may, with the approval of the Local Government Board, determine, or until he die, or resign, or be removed by such authority with the assent of the Local Government Board, or by the Local Government Board.

Provided that no medical officer of health shall be appointed for a period extending beyond the date until which the port sanitary authority making the appointment shall have been constituted.

Art. 4. No person shall be appointed a medical officer of health who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

SECTION III.—*Duties.*

Art. 5. The following shall be the duties of the medical officer of health in respect of the port sanitary district for which he is appointed.

(1.) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the health of crews and other persons on ship-board within the district.

(2.) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases in the ships and other vessels within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.

(3.) He shall by inspection of the shipping in the district keep himself informed of the conditions injurious to health existing therein.

(4.) He shall be prepared to advise the port sanitary authority on all matters affecting the health of the crews and other persons on ship-board in the district, and on all sanitary points involved in the action of the port sanitary authority; and in cases requiring it, he shall certify, for the guidance of the port sanitary authority, or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.

(5.) He shall advise the port sanitary authority on any question relating to health involved in the framing and subsequent working of such byelaws and regulations as they may have power to make.

(6.) On receiving information of the arrival within the district of any ship or other vessel having any infectious or epidemic disease of a dangerous character on board, or of the outbreak of any such disease on board any ship or other vessel within the district, he shall visit the vessel without delay and inquire into the causes and circumstances of such outbreak, and advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and, so far as he may be lawfully authorised, assist in the execution of the same.

(7.) On receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a ship or other vessel, he shall, as early as practicable, take such steps

authorised by the Public Health Act, 1875, in that behalf, as the circumstances of the case may justify and require.

(8.) He shall perform all the duties imposed upon him by any byelaws and regulations of the port sanitary authority, duly confirmed, in respect of any matter affecting the public health, and touching which they are authorised to frame byelaws and regulations.

(9.) He shall attend at the office of the port sanitary authority, or at some other appointed place, at such stated times as they may direct.

(10.) He shall from time to time report, in writing, to the port sanitary authority, his proceedings and the measures which may require to be adopted for the improvement or protection of the health of crews or other persons on ship-board in the district. He shall in like manner report with respect to the sickness and mortality of persons on ship-board within the district, so far as he has been enabled to ascertain the same.

(11.) He shall keep a book or books, to be provided by the port sanitary authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon, and of any action taken on previous reports, and shall produce such book or books, whenever required, to the port sanitary authority.

(12.) He shall also prepare an annual report, to be made to the end of December in each year, comprising tabular statements of the sickness and mortality of persons on ship-board within the district, classified according to diseases, ages, and vessels, and a summary of the action taken during the year for preventing the spread of disease. The report shall also contain an account of the proceedings in which he has taken part or advised under the Public Health Act, 1875, so far as such proceedings relate to conditions dangerous or injurious to health, and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and vessels that the port sanitary authority has power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year [1].

(13.) He shall give immediate information to the Local Government Board of any vessel having arrived within the district with infectious or epidemic disease of a dangerous character on board, and of any outbreak of infectious or epidemic disease of a dangerous character on ship-board within the district, and shall transmit to the Board a copy of each annual and of any special report [1].

(14.) In matters not specifically provided for in this order, he shall observe and execute, so far as the circumstances of the district may require, the instructions of the Local Government Board on the duties of medical officers of health, and all the lawful orders and directions of the port sanitary authority applicable to his office.

(15.) Whenever the Local Government Board shall make regulations for all or any of the purposes specified in section 134 of the Public Health Act, 1875, and shall declare the regulations so made to be in force within any area comprising the whole or any part of the district, he shall observe such regulations so far as the same relate to or concern his office.

SECTION IV.—*Remuneration.*

Art. 6.—The port sanitary authority shall pay to any medical officer of health appointed under this order such salary or remuneration as may be approved by the Local Government Board.

Provided that the port sanitary authority, with the approval of the Local Government Board, may pay to any such officer a reasonable compensation on account of extraordinary services, or other unforeseen circumstances connected with his duties or the necessities of the district for which he is appointed.

Art. 7.—The salary or remuneration of every such officer shall be payable up to the day on which he ceases to hold office, and no longer, subject to any deduction which the port sanitary authority may be entitled to make in respect of Art. 4 of this order; and in case he shall die whilst holding office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Art. 8.—The salary or remuneration assigned to such officer shall be payable quarterly, according to the usual feast days in the year, namely, Christmas-day, Lady-day, Midsummer-day, and Michaelmas-day; but the port sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit on account of the salary or remuneration to which he may become entitled at the termination of the quarter.

[1] See the Circular of the 16th of December, 1880, *post.*

SCHEDULE A.

(URBAN.)

Name of Port.	Urban Authority constituted the Port Sanitary Authority.	Period until which constituted.
BOSTON . . .	Mayor, Aldermen, and Burgesses of the Borough of Boston.	29th Sept. 1879.
BRIDGWATER . .	Mayor, Aldermen, and Burgesses, of the the Borough of Bridgwater.	29th Sept. 1879.
BRISTOL . . .	Mayor, Aldermen, and Burgesses of the City and County of Bristol.	29th Sept. 1879.
CARDIFF . . .	Mayor, Aldermen, and Burgesses of the Borough of Cardiff.	29th Sept. 1879.
CARDIGAN . .	Mayor, Aldermen, and Burgesses of the Borough of Cardigan.	29th Sept. 1879.
CARNARVON . .	Mayor, Aldermen, and Burgesses of the Borough of Carnarvon.	29th Sept. 1879.
CHEPSTOW . . .	Chepstow Local Board	29th Sept. 1879.
CHESTER . . .	Mayor, Aldermen, and Citizens of the City of Chester.	29th Sept. 1879.
COLCHESTER . .	Mayor, Aldermen, and Burgesses of the Borough of Colchester.	29th Sept. 1879.
COWES . . .	West Cowes Local Board	29th Sept. 1879.
DARTMOUTH . .	Mayor, Aldermen, and Burgesses of the Borough of Dartmouth	29th Sept. 1879.
DEAL . . .	Mayor, Aldermen, and Burgesses of the Borough of Deal.	29th Sept. 1879.
EXETER . . .	Mayor, Aldermen, and Citizens of the City and County of Exeter.	29th Sept. 1879.
FAVERSHAM . .	Faversham Improvement Commissioners .	29th Sept. 1879.
FLEETWOOD . .	Fleetwood Local Board	29th Sept. 1879.
GLOUCESTER . .	Mayor, Aldermen, and Citizens of the City of Gloucester.	29th Sept. 1879.
HAYLE . . .	Hayle Local Board	29th Sept. 1879.
HULL . . .	Mayor, Aldermen, and Burgesses of the Borough of Kingston-upon-Hull.	29th Sept. 1879.
IPSWICH . . .	Mayor, Aldermen, and Burgesses of the Borough of Ipswich.	29th Sept. 1879.
KING'S LYNN . .	Mayor, Aldermen, and Burgesses of the Borough of King's Lynn.	29th Sept. 1879.
LANCASTER . .	Mayor, Aldermen, and Burgesses of the Borough of Lancaster.	29th Sept. 1879.
LITTLEHAMPTON .	Littlehampton Local Board	25th Mar. 1879.
LOWESTOFT . .	Lowestoft Improvement Commissioners .	29th Sept. 1879.
MALDON . . .	Mayor, Aldermen, and Burgesses of the Borough of Maldon.	29th Sept. 1879.
NEWPORT (MONMOUTH)	Mayor, Aldermen, and Burgesses of the Borough of Newport.	29th Sept. 1879.
NEW SHOREHAM .	New Shoreham Local Board	29th Sept. 1879.
PENZANCE . .	Mayor, Aldermen, and Burgesses of the Borough of Penzance.	29th Sept. 1879.
PLYMOUTH . .	Mayor, Aldermen, and Burgesses of the Borough of Plymouth.	29th Sept. 1879.
POOLE . . .	Mayor, Aldermen, and Burgesses of the Borough of Poole.	29th Sept. 1879.
PORTSMOUTH . .	Mayor, Aldermen, and Burgesses of the Borough of Portsmouth.	29th Sept. 1879.
PRESTON . . .	Lytham Improvement Commissioners . .	29th Sept. 1879.
ROCHESTER . .	Mayor, Aldermen, and Burgesses of the Borough of Rochester.	29th Sept. 1879.
SOUTHAMPTON . .	Mayor, Aldermen, and Burgesses of the Borough of Southampton.	29th Sept. 1879.
SWANSEA . . .	Mayor, Aldermen, and Burgesses of the Borough of Swansea.	29th Sept. 1879.
TEIGNMOUTH . .	Teignmouth Local Board	29th Sept. 1879.
WELLS (NORFOLK) .	Wells Improvement Commissioners . .	29th Sept. 1879.
WISBECH . . .	Mayor, Aldermen, and Burgesses of the Borough of Wisbech.	29th Sept. 1879.

SCHEDULE B.

(RURAL.)

Name of Port.	Rural Authority constituted the Port Sanitary Authority.	Period until which constituted.
WORKINGTON . .	The Guardians of the Poor, being the Sanitary Authority for the Rural Sanitary District of the Cockermouth Union.	29th Sept. 1879.

SCHEDULE C.

(JOINT BOARDS.)

Name of Port.	Name of Port Sanitary Authority.	Period until which constituted.
FALMOUTH AND TRURO	The Falmouth and Truro Port Sanitary Authority.	25th Mar. 1879.
HARTLEPOOL . .	The Hartlepool Port Sanitary Authority .	29th Sept. 1879.

Given under the seal of office of the Local Government Board this twenty-fifth day of September in the year one thousand eight hundred and seventy-eight.

(L. S.) G. SCLATER-BOOTH, *President.*

J. F. ROTTON, *Assistant Secretary.*

PORT SANITARY AUTHORITIES (TEMPORARY):

REGULATIONS WITH RESPECT TO INSPECTORS OF NUISANCES.

GENERAL ORDER.

To the several urban and rural sanitary authorities named in the second columns of the Schedules A. and B. to this order, being respectively the port sanitary authorities for the ports named in the first columns of those schedules;—

To the joint boards constituting the port sanitary authorities named in the second column of the Schedule C. in this order;—

And to all others whom it may concern.

Whereas by certain orders of the Local Government Board, the several urban and rural sanitary authorities named in the second columns of Schedules A. and B. to this order have been constituted, until the dates specified in the third columns of those schedules, port sanitary authorities for the respective ports named in the first columns of such schedules, or for parts of such ports.

And whereas by certain orders of the Local Government Board, joint boards have been constituted, under the names mentioned in the second column in the Schedule C. to this order, port sanitary authorities, until the dates specified in the third column of that schedule, for the respective ports named in the first column of that schedule, or for parts of such ports.

And whereas by the said orders the Local Government Board have assigned to the said port sanitary authorities certain powers, rights, duties, capacities, liabilities, and obligations created by or arising out of certain sections of the above cited Act, including the following:—

Section 189, so far as relates to inspectors of nuisances and assistants to those officers; and Section 191.

And whereas by the last named-section it is enacted as follows:—

. . . . . .

"The Local Government Board shall have the same powers as it has in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority, any portion of whose salary is paid of moneys voted by Parliament." . . .

Now, therefore, we, the Local Government Board, in pursuance of the powers given by the several statutes in that behalf, hereby order as follows, with respect to the mode of appointment, tenure of office, duties, and salary of inspectors of nuisances to be appointed by the port sanitary authorities referred to in the Schedules A., B., and C. to this order, in all cases where any portion of the salary of any such officer is paid out of moneys voted by Parliament.

SECTION I.—*Mode of Appointment.*

Art. 1.—No appointment of an inspector of nuisances shall be made, unless an advertisement giving notice of the day when such appointment will be made shall have appeared in some public newspaper circulating in the district of the port sanitary authority, at least seven days before the day on which the appointment is to be made.

Provided that no such advertisement shall be necessary for the renewal of an appointment already made for the appointment of a temporary substitute.

Art. 2.—Every such appointment shall, within seven days after it is made or renewed be reported to the Local Government Board by the clerk to the port sanitary authority.

Art. 3.—In case of illness or incapacity of any inspector of nuisances appointed under this order, the port sanitary authority may appoint and pay a deputy inspector of nuisances, subject to the approval of the Local Government Board.

SECTION II.—*Tenure of Office.*

Art. 4.—Every inspector of nuisances appointed under this order shall continue to hold office for such period as the port sanitary authority may, with the approval of the Local Government Board, determine, or until he die, resign, or be removed by such authority with the assent of the Local Government Board, or by the Local Government Board.

Provided that no inspector of nuisances shall be appointed for a period extending beyond the date until which the port sanitary authority making the appointment shall have been constituted.

Art. 5.—No person shall be appointed an inspector of nuisances who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

SECTION III.—*Duties.*

Art. 6.—The following shall be the duties of the inspector of nuisances in respect of the port sanitary district for which he is appointed:—

(1.) He shall perform, either under the special directions of the port sanitary authority, or (so far as authorised by the port sanitary authority) under the directions of the medical officer of health, or in cases where no such directions are required, without such directions, all the duties specially imposed upon an inspector of nuisances by the sections of the Public Health Act, 1875, which shall apply to the port sanitary authority, or by the orders of the Local Government Board, so far as the same apply to his office.

(2.) He shall attend all meetings of the port sanitary authority when so required.

(3.) He shall, by inspection of the shipping in the district, keep himself informed in respect of the nuisances existing therein that require abatement under the Public Health Act, 1875.

(4.) On receiving notice of the existence of a nuisance on board of any ship or other vessel within the district, or of the breach of any bye-laws or regulations made by the sanitary authority for the suppression of nuisances, he shall, as early as practicable, visit the vessel, and inquire into such alleged nuisance or breach of bye-laws or regulations.

(5.) He shall give immediate notice to the medical officer of health of the occurrence within his district of any contagious, infectious, or epidemic disease of a dangerous character, or of the arrival within the district of any ship or other vessel having such disease on board; and whenever it appears to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a vessel, he shall forthwith inform the medical officer thereof.

(6.) He shall, subject in all respects to the directions of the port sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by him under the Public Health Act, 1875, for preventing the spread of any infectious or epidemic disease of a dangerous character.

(7.) He shall enter from day to day, in a book to be provided by the port sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the port sanitary

authority, so arranged as to form, as far as possible, a record of the sanitary condition of each of the ships or other vessels in respect of which any action has been taken under the Sanitary Acts, and shall keep any other systematic records that the sanitary authority may require.

(8.) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.

(9.) In matters not specifically provided for in this order, he shall observe and execute all the lawful orders and directions of the port sanitary authority, and the orders of the Local Government Board which may be hereafter issued, applicable to his office.

SECTION IV.—*Remuneration.*

Art. 7.—The port sanitary authority shall pay to any inspector of nuisances appointed under this order such salary or remuneration as may be approved by the Local Government Board.

Provided that the port sanitary authority, with the approval of the Local Government Board, may pay to any such officer a reasonable compensation on account of extraordinary services, or other unforeseen circumstances connected with his duties or the necessities of the district for which he is appointed.

Art. 8.—The salary or remuneration of every such officer shall be payable up to the day on which he ceases to hold office, and no longer, subject to any deduction which the port sanitary authority may be entitled to make in respect of Art. 5 of this order; and in case he shall die whilst holding office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Art. 9.—The salary or remuneration assigned to such officer shall be payable quarterly, according to the usual feast days in the year, namely, Christmas-day, Lady-day, Midsummer-day, and Michaelmas-day; but the port sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit on account of the salary or remuneration to which he may become entitled at the termination of the quarter.

SCHEDULE A.

(URBAN.)

Name of Port.	Urban Authority constituted the Port Sanitary Authority.	Period until which constituted.
BOSTON . . .	Mayor, Aldermen, and Burgesses of the Borough of Boston.	29th Sept. 1879.
BRIDGWATER . .	Mayor, Aldermen, and Burgesses of the Borough of Bridgwater.	29th Sept. 1879.
BRISTOL . . .	Mayor, Aldermen, and Burgesses of the City and County of Bristol.	29th Sept. 1879.
CARDIFF . . .	Mayor, Aldermen, and Burgesses of the Borough of Cardiff.	29th Sept. 1879.
CARDIGAN . . .	Mayor, Aldermen, and Burgesses of the Borough of Cardigan.	29th Sept. 1879.
CARNARVON . .	Mayor, Aldermen, and Burgesses of the Borough of Carnarvon.	29th Sept. 1879.
CHEPSTOW . .	Chepstow Local Board	29th Sept. 1879.
CHESTER . . .	Mayor, Aldermen, and Citizens of the City of Chester.	29th Sept. 1879.
COLCHESTER . .	Mayor, Aldermen, and Burgesses of the Borough of Colchester.	29th Sept. 1879.
COWES . . .	West Cowes Local Board	29th Sept. 1879.
DARTMOUTH . .	Mayor, Aldermen, and Burgesses of the Borough of Dartmouth.	29th Sept. 1879.
DEAL . . .	Mayor, Aldermen, and Burgesses of the Borough of Deal.	29th Sept. 1879.
EXETER . . .	Mayor, Aldermen, and Citizens of the City and County of Exeter.	29th Sept. 1879.
FAVERSHAM . .	Faversham Improvement Commissioners .	29th Sept. 1879.
FLEETWOOD . .	Fleetwood Local Board	29th Sept. 1879.
GLOUCESTER . .	Mayor, Aldermen, and Citizens of the City of Gloucester.	29th Sept. 1879.

Name of Port.	Urban Authority constituted the Port Sanitary Authority.	Period until which constituted.
HAYLE . . .	Hayle Local Board	29th Sept. 1879.
HULL . . .	Mayor, Aldermen, and Burgesses of the Borough of Kingston-upon-Hull.	29th Sept. 1879.
IPSWICH . . .	Mayor, Aldermen, and Burgesses of the Borough of Ipswich.	29th Sept. 1879.
KING'S LYNN . .	Mayor, Aldermen, and Burgesses of the Borough of King's Lynn.	29th Sept. 1879.
LANCASTER . .	Mayor, Aldermen, and Burgesses of the Borough of Lancaster.	29th Sept. 1879.
LITTLEHAMPTON .	Littlehampton Local Board	25th Mar. 1879.
LOWESTOFT . .	Lowestoft Improvement Commissioners .	29th Sept. 1879.
MALDON . . .	Mayor, Aldermen, and Burgesses of the Borough of Maldon.	29th Sept. 1879.
NEWPORT (MONMOUTH)	Mayor, Aldermen, and Burgesses of the Borough of Newport.	29th Sept. 1879.
NEW SHOREHAM .	New Shoreham Local Board.	29th Sept. 1879.
PENZANCE . .	Mayor, Aldermen, and Burgesses of the Borough of Penzance.	29th Sept. 1879.
PLYMOUTH . .	Mayor, Aldermen, and Burgesses of the Borough of Plymouth.	29th Sept. 1879.
POOLE . . .	Mayor, Aldermen, and Burgesses of the Borough of Poole.	29th Sept. 1879.
PORTSMOUTH . .	Mayor, Aldermen, and Burgesses of the Borough of Portsmouth.	29th Sept. 1879.
PRESTON . . .	Lytham Improvement Commissioners . .	29th Sept. 1879.
ROCHESTER . .	Mayor, Aldermen, and Burgesses of the Borough of Rochester.	29th Sept. 1879.
SOUTHAMPTON . .	Mayor, Aldermen, and Burgesses of the Borough of Southampton.	29th Sept. 1879.
SWANSEA . . .	Mayor, Aldermen, and Burgesses of the Borough of Swansea.	29th Sept. 1879.
TEIGNMOUTH . .	Teignmouth Local Board	29th Sept. 1879.
WELLS (NORFOLK) .	Wells Improvement Commissioners . .	29th Sept. 1879.
WISBECH . . .	Mayor, Aldermen, and Burgesses of the Borough of Wisbech.	29th Sept. 1879.

SCHEDULE B.

(RURAL.)

Name of Port.	Rural Authority constituted the Port Sanitary Authority.	Period until which constituted.
WORKINGTON . .	The Guardians of the Poor, being the Sanitary Authority for the Rural Sanitary District of the Cockermouth Union.	29th Sept. 1879.

SCHEDULE C.

(JOINT BOARDS.)

Name of Port.	Name of Port Sanitary Authority.	Period until which constituted.
FALMOUTH AND TRURO	The Falmouth and Truro Port Sanitary Authority.	25th Mar. 1879.
HARTLEPOOL . .	The Hartlepool Port Sanitary Authority .	29th Sept. 1879.

Given under the seal of office of the Local Government Board, this twenty-fifth day of September in the year one thousand eight hundred and seventy-eight.

(L. S.) G. SCLATER-BOOTH, *President.*

J. F. ROTTON, *Assistant Secretary.*

THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878 (1).

URBAN SANITARY AUTHORITIES (ENGLAND AND NORTH WALES).

Local Government Board, Whitehall, S.W.,
30th September, 1878.

SIR,

The President of the Local Government Board has directed me to bring under the notice of the urban sanitary authority the Highways and Locomotives (Amendment) Act of the last session (41st and 42nd Vict. c. 77) (1), which received the Royal assent on the 16th of August last.

The following statement will explain the chief provisions of the Act which affect the urban sanitary authority.

Main Roads.

One half of all expenses incurred by the urban sanitary authority after the 29th of September, 1878, in the maintenance of any main road, will be repaid to them out of the county rate, provided the county surveyor, or some other person appointed in that behalf by the county authority, who by the Act are defined to be "the justices of a county in general or quarter sessions assembled," certifies that the road has been maintained to his satisfaction.

The moiety thus repayable will, however, be confined to repairs defrayed out of the current rates, and will not include any repayment of moneys borrowed by the urban sanitary authority, or any interest thereon.

The following are constituted main roads for the purposes of the Act, viz.:

(1.) Roads which have ceased to be turnpike roads between the 31st of December, 1870, and the 16th of August, 1878, the date of the passing of the Act; and

(2.) Roads which, being turnpike roads at the time of the passing of the Act, afterwards become disturnpiked.

The urban sanitary authority will not fail to observe that a highway, although it is not within either of the above descriptions, may become a main road if, by reason of its being a medium of communication between great towns or a thoroughfare to a railway station, or otherwise it is subject to extraordinary traffic of a public and general character.

Where the urban sanitary authority consider that for either of the reasons mentioned, any ordinary highway in their district ought to become a main road, application should be made by them to the county authority, to make an order for this purpose. If that authority are satisfied, after causing the road to be inspected, that the application ought to be complied with, it will be incumbent on them to make an order declaring the highway to be a main road; but the order will not come into force unless confirmed by a subsequent order made within six months.

Accounts of Expenses of Main Roads.

It will be obligatory on the urban sanitary authority to keep, in such form as may be directed by the county authority, a separate account of the expenses of the maintenance of the main roads within their district, and to forward copies of such account to the county authority at such times as may be required by them. The accounts so kept must be audited in the same manner as the other accounts of the urban sanitary authority, unless such authority are the council of a borough, in which case the accounts will be subject to such audit, as the county authority may direct.

Special attention should be paid to the requirements of the Act relating to the separate account referred to, for, if default is made in complying with these requirements, or with any directions given pursuant to them by the county authority, that authority may withhold the contribution payable under the Act towards the maintenance of main roads by the urban sanitary authority for the year in which such default occurs.

Extraordinary Traffic.

If it should appear to the urban sanitary authority upon the certificate of their surveyor, that by reason of damage done to their roads by excessive weight or extraordinary traffic they have incurred extraordinary expenses in repairs, regard being had to the average expense of repairing highways in the neighbourhood, the authority may recover in a summary manner from the person responsible for the conveyance of the excessive weight or extraordinary traffic, the amount of such extraordinary expenses as may be proved to the satisfaction of the court having cognizance of the case to have been so incurred. It is important, however, to observe that any person from whom such expenses may be recoverable may enter into an agreement with the urban sanitary

(1) See the Act, *ante*, p. 877.

authority for the payment of a composition in respect of the damage done by him. These provisions will doubtless prove serviceable in enabling highway authorities to recoup the excessive expenditure not unfrequently occasioned by extraordinary and exceptionally heavy traffic arising from building and similar operations of a temporary character and from other causes by which the road accommodation provided for all alike at the public expense is sometimes abused by individuals for private purposes.

Saving for Minerals.

It should be noted that section 27 of the Act contains a provision by which all mines and minerals of every description under any disturnpiked road or highway vested in the urban sanitary authority by virtue of section 68 of the Public Health Act, 1848, or section 149 of the Public Health Act, 1875, will belong to and may be worked by the person who would be entitled thereto if the road or highway had not become so vested. This section removes a doubt with respect to the ownership of minerals under highways transferred to urban sanitary authorities upon the formation of Local Government Districts, and which has been occasioned by the decision of the High Court of Judicature in the case of *Coverdale* v. *Charlton*, L. R. 3 Q. B. D. 376; 47 L. J. N. S. 446.

Defaulting Authorities.

Some provisions of much importance are contained in the Act, enabling the county authority to enforce the repairs of highways in cases where that duty has been neglected by the urban sanitary authority.

By these provisions the county authority, if satisfied after due inquiry and report by their surveyor that the urban sanitary authority have made default in the maintenance or repair of any highway, are required to make an order limiting a time for the performance of the neglected duty, and if the urban sanitary authority fail to show sufficient cause for their noncompliance with the order, the county authority may appoint some person to perform the duty, and direct the expenses of performing the same, together with the reasonable remuneration of the person so appointed, to be paid by the urban sanitary authority.

If, however, the urban sanitary authority dispute their liability to repair, and notify that they decline to comply with the order until that question is determined by a jury, the county authority must either satisfy the urban sanitary authority by cancelling or modifying the order, or else proceed to submit to a jury the question of liability.

It should be added that the Act so far as it relates to main roads and highways, does not apply to any urban sanitary district consisting of a borough with a separate court of quarter sessions; but at the same time it will be observed that when part of a parish is included in any urban sanitary district as defined by section 38 for the purpose only of the repairs of the highways, such part will be deemed to be included in the district for the purposes of the Act.

The President trusts that the foregoing description of the more material provisions of the Act relating to urban sanitary authorities may be of service to the urban sanitary authority in the discharge of their duties.

I am, &c.
JOHN LAMBERT,
Secretary.

To the Clerk to the
Urban Sanitary Authority.

THE HIGHWAYS AND LOCOMOTIVES (AMENDMENT) ACT, 1878 (1).

RURAL SANITARY AUTHORITIES.

Local Government Board, Whitehall,
5th October, 1878.

SIR,

The President of the Local Government Board has directed me to draw the attention of the rural sanitary authority to the important provisions contained in sections 3 to 5, *both inclusive*, of the Highways and Locomotives (Amendment) Act of the last session (41st and 42nd Vict. c. 77.) (1).

By the first of these sections, the county authority, who are defined by the Act to be "the justices of a county in general or quarter sessions assembled," are required in forming new highway districts, or in altering the boundaries of existing ones, to have regard to the boundaries of the rural sanitary districts in their county, and, so far as may be found practicable, to form highway districts so as to be coincident in area with rural sanitary districts or wholly contained within those districts.

The intention of this direction is shown by the following section which provides that where a highway district, whether formed before or after the passing of the Act, is or becomes coincident in area with a rural sanitary district, the rural sanitary authority may apply to the county authority stating that they are desirous to exercise the powers of a highway board under the Highway Acts within their district, and on such application the county authority may, if they see fit, by their order declare that from and after a day to be named in the order the rural sanitary authority shall exercise all the powers of a highway board, and as from the commencement of the order the existing highway board (if any) will be dissolved, and waywardens or surveyors will not hold office, or be elected for any parish in the district.

An order so made may be amended, altered, or executed by a subsequent order of the county authority.

Where a highway district, coincident in area with a rural sanitary district, is situate in more than one county, the order may be made by the county authority of any one of such counties; but the order will not be of any force or effect until approved by the county authority or authorities of the remainder of such counties.

After the commencement of an order enabling the rural sanitary authority to exercise the powers of a highway board, the property which would otherwise belong to the highway board or the surveyor of any separate highway parish forming part of the district will become vested in the rural sanitary authority, subject to all debts and liabilities affecting the same.

The expenses incurred by the rural sanitary authority in the performance of their duties as a highway board will be deemed to be general expenses within the meaning of the Public Health Act, 1875; and this arrangement is in harmony with the provisions contained in the present Act, under which all expenses of highway boards, after the 25th of March, 1879, will be chargeable on the district fund.

If at any time after a rural sanitary authority has become invested with the powers of a highway board in pursuance of the foregoing provisions, the boundaries of the rural sanitary district are altered, the powers and jurisdiction of the authority will be exercised within such altered district; and on the application of any authority or person interested, the Local Government Board may by order provide for the adjustment of any accounts or the settlement of any doubt or difference, so far as relates to highways, consequent on the alteration of the boundaries of the altered district.

The intention of the Legislature in making these provisions has evidently been to guard against the confusion occasioned by the further overlapping of highway districts with rural sanitary areas, and to facilitate the transfer to the rural sanitary authorities of the management of the highways within their respective districts, where circumstances point to such an arrangement as tending to economical and efficient administration.

At the present time the duty devolves upon the rural sanitary authorities of providing works of sewerage and water supply for the areas under their jurisdiction; and as these works necessitate frequent and serious interference with the public roads, it is obviously desirable, looking at the advantages experienced in urban districts from having all matters affecting the roads under the direction of one body, that there should be means readily available for placing the highways in rural districts also under the control and management of the sanitary authority.

(1) See the Act, *ante*, p. 877.

In corroboration of this view, reference may be made to the report of the select committee appointed by the House of Commons during the last session to inquire into the system under which guardians of the poor and members of local boards are elected, in which the committee recommend that wherever practicable the powers of highway boards in rural sanitary districts shall be transferred to the rural sanitary authority.

In those counties where highway districts have already been formed, there are doubtless instances in which some of the districts are coincident with the areas under the jurisdiction of the rural sanitary authorities; and in those cases it will be for the rural sanitary authorities to consider whether they should not apply to the county authority for an order authorising them to exercise the powers of a highway board, so that the roads may be entirely under their jurisdiction.

In those counties, however, where the district system has not yet been carried into effect, the facilities for accomplishing this object will be much greater, and the President cannot but suppose that any expression of a desire on the part of the rural sanitary authority to be invested with the management of the roads within their respective districts would have much influence with the county authority in determining the course to be adopted by them with respect to the formation of new districts under the Act.

It remains to be added, that the provisions of the Act to which the attention of the rural sanitary authority has been directed do not extend to the Isle of Wight or to South Wales.

I am, &c.,

The Clerk to the Rural Sanitary Authority.

JOHN LAMBERT, *Secretary.*

THE LOCAL LOANS ACT, 1875.

RETURN AS TO SINKING FUND. (ORDER).

To the several Local Authorities in England and Wales, as defined by "The Local Loans Act, 1875" (1);—

And to all others whom it may concern.

Whereas "The Local Loans Act, 1875," (2), by section 13, requires that every loan borrowed in manner provided by that Act shall be discharged within the prescribed period from the date thereof, and that such discharge shall be secured, where a sinking fund is prescribed, but not otherwise, by the establishment of a sinking fund, and the application thereof in manner by that Act provided;

And whereas by section 16 of the said Act it is enacted that "where a sinking fund is created for the purpose of discharging any loan or part of a loan the local authority shall, until such loan or part of a loan is discharged, within twenty-one days after the expiration of each year, transmit to the Local Government Board a return in such form, and verified in such manner, as the Board from time to time directs, showing the amount which has been invested or applied for the purpose of such sinking fund during the year next preceding the making of such return, and the description of the securities upon which any investment has been made, and the purposes to which any portion of the sinking fund has been applied during the same period, and the total amount (if any) remaining invested at the end of the year:"

Now, therefore, we, the Local Government Board, in pursuance of the powers given to us by the statutes in that behalf, hereby order that, until we shall otherwise direct, the returns relating to a sinking fund required to be transmitted to us in pursuance of section 16 above recited, shall be in the form set forth in the schedule to this order, and shall be verified by statutory declaration.

SCHEDULE.

RETURN AS TO SINKING FUND.

Name of local authority,
Act by which the sinking fund is prescribed,
Period prescribed for discharge of the loan,
Prescribed mode of investment, if any,
Amount of loan in respect of which the return is made,
Date of loan,

(1) *I.c.*, 38 & 39 Vict. c. 83, *ante*, p. 1209.

Rate of accumulation, on which the payments into the fund are based,
Whether payments are made yearly or half-yearly,
Period for which the return is made, viz., year ending
Date of commencement of sinking fund,

Amount paid into the Sinking Fund during the year.			Description of Securities on which invested.	Nominal value of Securities purchased.			Rate of Interest payable thereon.			Amount of Loan discharged during the year.			Rate of Interest payable on amount so discharged.			Total amount remaining invested at the end of the year.			Description of Securities in which invested.
£	s.	d.		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	

Dated day of 18 .

Signed *Clerk.*
[*or other Officer acting for the Local Authority in this behalf.*]

Given under the seal of office of the Local Government Board, this fourteenth day of November in the year one thousand eight hundred and seventy-eight.

(L.S.) G. SCLATER-BOOTH, *President.*

HUGH OWEN, junr., *Assistant Secretary.*

THE DISTRICT AUDITORS ACT, 1879.

FINANCIAL STATEMENT (STATUTORY). (POOR LAW, PUBLIC HEALTH, AND EDUCATION).—GENERAL ORDER (UNIONS).

To the guardians of the poor of the several unions in England and Wales ;—
To the several district auditors in England and Wales ;—
And to all others whom it may concern.

Whereas by section 3 of "The District Auditors Act, 1879," it is enacted as follows :—

"Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit, held in pursuance of section 6 of the Poor Law Amendment Act, 1866), a financial statement in duplicate in the prescribed form and containing the prescribed particulars ; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement."

And whereas guardians of the poor are a local authority within the terms of the said section :

Now therefore, we, the Local Government Board hereby order with respect to each union in England and Wales as follows :

Art. 1. The financial statement to be prepared and submitted to the district auditor in duplicate by the guardians of the poor as a local authority, in accordance with the provisions of the section above recited, shall be in the Form (A.) in the schedule to this order, so far as the same is applicable to the circumstances of each case, and shall contain the particulars therein set forth ; and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.

And whereas it is expedient that certain information should from time to time be furnished to the Local Government Board with reference to loans obtained by guardians of the poor under the several statutes in that behalf:

Now therefore, we, the Local Government Board, in pursuance of the powers given to us, hereby further order, with respect to each union in England and Wales, as follows:

Art. 2. The clerk to the guardians shall prepare at the close of each year ending at Lady-day a loan account, which shall be in the Form (B.) in the schedule to this order, so far as the same is applicable to the circumstances of each case, and shall be submitted to the district auditor at the audit of the accounts for the half-year ending at that date.

Art. 3. The district auditor shall transmit to the Local Government Board the said loan account, duly examined and signed by him, together with the stamped duplicate of the financial statement certified at the same audit as required by Article 1 of this order.

Art. 4. In this order—

The word "union" includes any union of parishes incorporated or united for the relief or maintenance of the poor under any Act of Parliament.

The expression "guardians of the poor" includes any governors, directors, acting guardians, vestrymen, or other officers appointed or entitled to act in the distribution or ordering of relief to the poor from the poor rates under any Act of Parliament.

Given under the seal of office of the Local Government Board, this twenty-fifth day of April, in the year one thousand eight hundred and seventy-nine.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

SCHEDULE.

FORM (A.)

FINANCIAL STATEMENT (Statutory.)

"The District Auditors Act, 1879" (42 Vict. c. 6.)

STATEMENT of receipts and expenditure by the guardians of the poor of the Union, under the Poor Law, Public Health, and Education Acts, for the half-year ended the day of 18 .

RECEIPTS.

——	Amounts.			Totals.		
	£	s.	d.	£	s.	d.
POOR LAW:						
From Poor Rates (under Contribution Orders) . .						
From Parliamentary Grant . { Salaries of Officers . Registrars . . Lunatics . . .						
From all other sources						
PUBLIC HEALTH:						
From Rates under Precepts for—						
General Expenses						
Special Expenses						
From Owners and Occupiers for Private Improvement Expenses						
From Water Rates and Rents						
From Parliamentary Grant { Salaries of Medical Officers of Health . . . Salaries of Inspectors of Nuisances . . .						
From all other sources						
EDUCATION (*School Attendance*):						
From Rates for expenses of School Attendance Committee						
From all other sources						
Gross Rec ipts .						

_____ Clerk to the Guardians,

_____ day of _____ 18____.

FORM (A.)—Financial Statement (Statutory)—*continued.*

EXPENDITURE.

	£	s.	d.
POOR LAW.			
COMMON CHARGES:			
In-maintenance			
Out-relief (including Non-resident Relief and Relief in School Fees for Pauper Children)			
Paupers in Hospitals and Schools			
Lunatics in Asylums, Registered Hospitals, or Licensed Houses (less amount* borne by the Parliamentary Grant)			
Criminal Lunatics (less amount* borne by the Parliamentary Grant)			
Salaries or other remuneration of Officers (less amount* borne by the Parliamentary Grant)			
Officer's Rations			
Superannuation Allowances			
Extra Medical Fees			
Emigration			
Vaccination			
Registration (less amount* borne by Parliamentary Grant)			
Legal Expenses			
Repayments of Workhouse Loans (with interest) chargeable on the Common Fund			
Other Common Charges, excluding amounts paid to other Local Authorities in pursuance of Precepts †			
SEPARATE CHARGES:			
School Fees for Non-pauper Children			
Repayments of Workhouse Loans, with interest, still chargeable on the several Parishes in the Union according to the averages			
Amount of Poor Law Expenditure			

* The Expenditure borne by the Parliamentary Grant is as follows:

	£	s.	d.
Lunatics in Asylums, &c.			
Criminal Lunatics			
Salaries of Officers, viz.:			
Medical Officers and Medicines			
Teachers			
Registration			

† The following amounts have been paid to other Local Authorities in pursuance of Precepts:

	£	s.	d.
County Rates			

FORM (A.)—Financial Statement (Statutory)—*continued.*

EXPENDITURE—*continued.*

———	Amounts. £	s.	d.	Totals. £	s.	d.
PUBLIC HEALTH.						
GENERAL EXPENSES:						
Salaries (less amount* borne by the Parliamentary Grant)						
Hospitals (not paid for out of Loan)						
Repayments of Loans, with Interest						
Other Expenses						
* Amount borne by Parliamentary Grant: £ s. d.						
Medical Officers of Health						
Inspectors of Nuisances .						
SPECIAL EXPENSES:						
Sewerage (not paid for out of Loan)						
Water Supply (not paid for out of Loan) . . .						
Lighting (not paid for out of Loan)						
Repayments of Loans, with Interest						
Other expenses						
Amount of Public Health Expenditure . .						
EDUCATION (SCHOOL ATTENDANCE).						
Salaries						
Other Expenses (if any)						
Amount of Poor Law Expenditure brought forward . . .						
Total Expenditure included in this Statement .						

_____ Clerk to the Guardians,

_____ day of _____ 18____.

I hereby certify that I have compared the entries in the above Statement with the Vouchers and other documents relating thereto, and that the regulations with respect to such Statement have been duly complied with.

I hereby further certify that I have ascertained by Audit the correctness of such Statement, and that the amount expended by the Guardians during the half year ended the day of 18 , under the Poor Law, Public Health, and Education Acts, as included in such Statement and allowed by me at the Audit, is [*here insert the amount in words at length.*]

As witness my hand this day of , 18 .

_____ Stamp. _____ *District Auditor.*

FORM (B.)

LOAN

Statement with reference to Loans obtained by the Guardians of the Poor of the
Year ended the Twenty-fifth

POOR

Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what object.
£			

PUBLIC

LOANS CHARGEABLE IN RESPECT

Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what object.	For what Period.	Rate of Interest.	Mode of repayment whether by annuity or otherwise.
£						

LOANS CHARGEABLE IN RESPECT

Name of Contributory Place.	Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what object.	For what Period.	Rate of Interest.	Mode of repayment whether by annuity or otherwise.
	£						

* If by a Company, insert the name.

_____ Clerk to the Guardians,

Examined by me in connection with the Financial Statement (Statutory)

NOTE.—It is only required that money be entered in the Form above to the nearest £; or more than 10*s*. they are to be taken as equal to £1; if less than 10*s*., they are to be

FORM (B.)

ACCOUNT.

Union, under the Poor Law and Public Health Acts.

day of March, 18 .

LAW.

For what Period.	Rate of Interest.	Mode of Repayment, whether by annuity or otherwise.	Amounts paid this Year.		Amount of Principal still owing.
			Principal.	Interest.	
			£	£	£

HEALTH.

OF GENERAL EXPENSES.			SINKING FUND.			
Amounts paid this Year.		Amount of Principal still owing.	Amount annually set apart.	Rate of Interest on which Fund is based.	Total sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
Principal.	Interest.					
£	£	£	£		£	

OF SPECIAL EXPENSES.			SINKING FUND.			
Amounts paid this Year.		Amount of Principal still owing.	Amount annually set apart.	Rate of Interest on which Fund is based.	Total sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
Principal.	Interest.					
£	£	£	£		£	

day of 18 .

for the half-year ended the 25th day of March 18 , and found correct.

District Auditor.

day of 18 .

whenever the fractional parts, in abstracting from the Books, amount in their total to 10*s.*, rejected. Thus £175 10*s.* should be entered as £176, but £175 9*s.* 11*d.* as £175 only.

THE DISTRICT AUDITORS ACT, 1879.

FINANCIAL STATEMENT (STATUTORY). POOR LAW, PUBLIC HEALTH, AND EDUCATION.—GENERAL ORDER (SEPARATE PARISHES).

To the guardians of the poor of the several separate parishes in England and Wales ;—

To the district auditors for the time being, authorised to audit the accounts of the said separate parishes respectively ;—

And to all others whom it may concern.

Whereas by section 3 of "The District Auditors Act, 1879," it is enacted as follows:

"Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit, held in pursuance of section 6 of the Poor Law Amendment Act, 1866), a financial statement in duplicate, in the prescribed form, and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor, at the conclusion of the audit, shall cancel that stamp, and certify on each duplicate in the prescribed form the amount in words at length of the expenditure so audited and allowed, and further that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement."

And whereas guardians of the poor are a local authority within the terms of the said section:

Now therefore, we, the Local Government Board, hereby order with respect to each of the separate parishes in England and Wales, as follows:

Art. 1. The financial statement to be prepared and submitted to the district auditor in duplicate by the guardians of the poor as a local authority, in accordance with the provisions of the section above recited, shall be in the Form (A.) in the schedule to this order, so far as the same is applicable to the circumstances of each case, and shall contain the particulars therein set forth; and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.

And whereas it is expedient that certain information should from time to time be furnished to the Local Government Board with reference to loans obtained by guardians of the poor under the several statutes in that behalf.

Now therefore, we, the Local Government Board, in pursuance of the powers given to us, hereby further order with respect to each of the separate parishes in England and Wales, as follows:

Art. 2. The clerk to the guardians shall prepare at the close of each year ending at Lady-day a loan account, which shall be in the Form (B.) in the schedule to this order, so far as the same is applicable to the circumstances of each case, and shall be submitted to the district auditor at the audit of the accounts for the half-year ending at that date.

Art. 3. The district auditor shall transmit to the Local Government Board the said loan account, duly examined and signed by him, together with the stamped duplicate of the financial statement certified at the same audit as required by Article 1 of this order.

Art. 4. In this order—

The term "separate parish" means a parish or place which is under a separate board of guardians;

The expression "guardians of the poor" includes any governors, directors, acting guardians, vestrymen, or other officers appointed or entitled to act in the distribution or ordering of relief to the poor from the poor rates under any Act of Parliament.

Given under the seal of office of the Local Government Board this twenty-sixth day of April, in th year one thousand eight hundred and seventy-nine.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

SCHEDULE.

FORM (A.)

PARISH OF _____.

FINANCIAL STATEMENT (STATUTORY).

"The District Auditors Act, 1879" (42 Vict. c. 6.)

STATEMENT of Receipts and Expenditure by the Guardians of the Poor of the above-named Parish, under the Poor Law, Public Health, and Education Acts, for the half year ended the day of 18 .

RECEIPTS.

———	Amounts.			Totals.		
	£	s.	d.	£	s.	d.
POOR LAW:						
From Poor Rates (under Contribution Orders) . .						
From Parliamentary Grant . { Salaries of Officers . / Registrars . . / Lunatics . . .						
From all other sources						
PUBLIC HEALTH:						
From Rates under Precepts for—						
General Expenses						
Special Expenses						
From Owners and Occupiers for Private Improvement Expenses						
From Water Rates and Rents						
From Parliamentary Grant . . . { Salaries of Medical Officers of Health . . . . . / Salaries of Inspectors of Nuisances						
From all other sources						
EDUCATION (*School Attendance*):						
From Rates for expenses of School Attendance Committee						
From all other sources						
Gross Receipts . .						

_____ *Clerk*, _____ *day of* _____ 18 .

FORM (A.)—Financial Statement (Statutory)—*continued.*

EXPENDITURE.

	£	s.	d.
POOR LAW.			
In-maintenance			
Out-relief (including Non-resident Relief and Relief in School Fees for Pauper Children)			
Paupers in Hospitals and Schools			
Lunatics in Asylums, Registered Hospitals, or Licensed Houses (less amount* borne by the Parliamentary Grant)			
Criminal Lunatics (less amount* borne by the Parliamentary Grant) . .			
Salaries or other Remuneration of Officers (less amount* borne by the Parliamentary Grant)			
Officers' Rations			
Superannuation Allowances			
Extra Medical Fees			
Emigration			
Vaccination			
Registration (less amount* borne by the Parliamentary Grant) . . .			
Legal Expenses			
School Fees for Non-pauper Children			
Repayments of Workhouse Loans, with interest			
Other charges, excluding amounts paid to other Local Authorities in pursuance of Precepts†			
Amount of Poor Law Expenditure . .			

* The expenditure borne by the Parliamentary Grant is as follows:

	£	s.	d.
Lunatics in Asylums, &c.			
Criminal Lunatics			
Salaries of Officers; viz.:			
Medical Officers and Medicines . .			
Teachers			
Registration			
Total . .			

† The following amounts have been paid to other Local Authorities in pursuance of Precepts:

	£	s.	d.
County Rates _____			
_____			
_____			
_____			
_____			
Total . .			

FORM (A.)—Financial Statement (Statutory)—*continued.*

EXPENDITURE—*continued.*

———	Amounts. £	s.	d.	Totals. £	s.	d.
PUBLIC HEALTH.						
GENERAL EXPENSES:						
Salaries (less amount* borne by the Parliamentary Grant)						
Hospitals (not paid out of Loan)						
Repayments of Loans, with Interest						
Other Expenses						
* Amount borne by Parliamentary Grant: Medical Officers of Health Inspectors of Nuisances . (£ s. d.)						
SPECIAL EXPENSES:						
Sewerage (not paid for out of Loan)						
Water Supply (not paid for out of Loan) . . .						
Lighting (not paid for out of Loan)						
Repayments of Loans, with Interest						
Other Expenses						
Amount of Public Health Expenditure . .						
EDUCATION (SCHOOL ATTENDANCE).						
Salaries						
Other Expenses (if any)						
Amount of Poor Law Expenditure brought forward . . .						
Total Expenditure included in this Statement .						

_____ Clerk to the Guardians,

day of , 18 .

I hereby certify that I have compared the entries in the above Statement with the Vouchers and other documents relating thereto, and that the regulations with respect to such Statement have been duly complied with.

I hereby further certify that I have ascertained by Audit the correctness of such Statement, and that the amount expended by the Guardians during the half year ending the day of , 18 , under the Poor Law, Public Health, and Education Acts, as included in such Statement and allowed by me at the Audit, is [*here insert the amount in words at length*].

As witness my hand this day of , 18 .

_____ Stamp. _____ *District Auditor.*

PARISH OF _____.

LOAN

FORM (B.)

Statement with reference to Loans obtained by the Guardians of the Poor of
Year ended the Twenty-fifth

_____

POOR

Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what object.
£			

PUBLIC

LOANS CHARGEABLE IN RESPECT

Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what object.	For what Period.	Rate of Interest.	Mode of repayment whether by annuity or otherwise.
£						

LOANS CHARGEABLE IN RESPECT

Name of Contributory Place.	Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what object.	For what Period.	Rate of Interest.	Mode of repayment whether by annuity or otherwise.
	£						

_____ Clerk to the Guardians,

Examined by me in connection with the Financial Statement (Statutory)

* If a Company, insert the name.

NOTE.—It is only required that money be entered in the Form above to the nearest £; when more than 10*s*, they are to be taken as equal to £1; if less than 10*s*., they are to be

ACCOUNT.

FORM (B.)

the above-named Parish, under the Poor Law and Public Health Acts,
day of March, 18 .

LAW.

For what Period.	Rate of Interest.	Mode of Repayment, whether by annuity or otherwise.	Amounts paid this Year.		Amount of Principal still owing.
			Principal.	Interest.	
			£	£	£

HEALTH.

OF GENERAL EXPENSES.			SINKING FUND.			
Amounts paid this Year.		Amount of Principal still owing.	Amount annually set apart.	Rate of Interest on which Fund is based.	Total Sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
Principal.	Interest.					
£	£	£	£		£	

OF SPECIAL EXPENSES.			SINKING FUND.			
Amounts paid this Year.		Amount of Principal still owing.	Amount annually set apart.	Rate of Interest on which Fund is based.	Total Sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
Principal.	Interest.					
£	£	£	£		£	

day of , 18 .
for the half-year ended the 25th day of March, 18 , and found correct.

District Auditor.

day of , 18 .

ever the fractional parts, in abstracting from the Books, amount in their total to 10*s.*, or rejected. Thus, £175 10*s.* should be entered as £176, and £175 9*s.* 11*d.* as £175 only.

HIGHWAY DISTRICTS.

GENERAL ORDER FOR ACCOUNTS.

To the highway boards of the several highway districts for the time being, constituted in pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts;—

To the clerks, treasurers, and district surveyors for the time being appointed by the said highway boards respectively;—

To the several district auditors authorised for the time being to audit the accounts of the said highway boards respectively;—

And to all others whom it may concern.

Whereas by section 9 of "The Highways and Locomotives (Amendment) Act, 1878," it is enacted that the accounts of the highway authority of every highway district shall be made up in such form as the Local Government Board shall from time to time prescribe, and shall be balanced to the twenty-fifth day of March in each year;

And whereas by section 5 of "The District Auditors Act, 1879," it is enacted as follows:—

"Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834."

Now, therefore, we, the Local Government Board, hereby order as follows:—

Art. 1.—The several regulations in this order contained shall henceforth be observed in regard to the accounts of every highway board, and of their officers, and to the audit of such accounts, except in so far as the Local Government Board may from time to time assent to any departure from such regulations.

Accounts to be kept by the Clerk.

Art. 2.—The clerk shall enter from time to time at proper dates in the minute book of the highway board a statement of the books and accounts inspected and examined by him, and of all orders drawn on the treasurer, and of all moneys paid or received, and of all minutes relating to the allocation or division of charges, or any other pecuniary transaction of the highway board, and shall insert marginal notes of reference to the folios of the respective ledgers in which the items relating to any such orders, payments, receipts, or other pecuniary transactions are entered.

Art. 3.—The clerk shall also punctually enter up and accurately keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this order and in the schedule thereto, namely:—

(1.) A ledger (Form A.), in which the items contained in the minute book of the various transactions relating to the receipt or payment of moneys by the highway board, and the receipt and disposal of goods or materials, or the execution of works, or performance of services, on behalf of the district, or of any highway parish therein, shall be entered and posted up according to their proper dates, under the following heads of account (or as many thereof as may be requisite), and such additional heads as may be or may from to time become necessary:

District surveyor's cash account.
Manual labour account.
Team labour account.
Materials account.
Tradesmen's bills account.
Improvements account.
Law charges account.
Salaries account.
Clerk's petty cash account.
Main roads account.

County authority's account.
Turnpike roads account.
Loan account (principal).
Loan account (interest).
Sinking fund account.
District fund account.
Treasurer's account.
General balance account.

An account shall also be kept in the same ledger, or in a separate ledger in a similar form, with every highway parish in the district.

And in connection with the several items in each of the said accounts, the respective dates of the transactions shall be inserted, together with references to the folios of the minute book in which the entries relating to such transactions are contained, and to the folios of the corresponding credits and debits respectively.

(2.) An order check book, in the Form (B.), which shall contain all orders given by the highway board for stores or other articles or for work, and counterfoils of such orders, and forms of the invoices to accompany commodities supplied, or to be delivered when work is done. Such orders, when signed by the clerk, together with the forms of invoice, shall be detached from the said book, and issued to the tradesmen or other persons dealt with or employed, to be returned and disposed of in the manner described thereon; and the counterfoils, certified by the clerk's initials, shall be retained in the said book.

(3.) A petty cash book, in which shall be entered promptly, and in order of date, an account of the sums received and paid by the clerk for petty disbursements, which account shall be balanced quarterly, and laid before the highway board at their ordinary meetings.

Treasurer's Book.

Art. 4.—The treasurer of the highway board shall keep a book according to the Form (C.) in the said schedule, in which shall be entered punctually and accurately an account of all moneys received and paid by him on account of the highway board. He shall balance and sign this account quarterly, and shall cause the book to be laid before the highway board when required by them.

District Surveyor's Accounts.

Art. 5.—The district surveyor shall punctually enter up and accurately keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this order and in the schedule thereto, namely:

(1.) A cash book, Form (D.), in which shall be entered in order of date under the several headings indicated in the form, all sums received or paid by him on behalf of the highway board (excepting those entered in his petty cash book, which may be transferred in gross sums), with the date of receipt or payment, and a reference as regards items of expenditure to the folios of the wages book or contract book in which the detailed particulars are entered: and as regards "Tradesmen's bills and Miscellaneous" expenses of repairs, a reference to the number of the invoice in each case. This book shall be balanced at the end of each quarter, and at such other times as the highway board may direct.

(2.) A contract book, Form (E.), the pages of which shall be arranged so as to form divisions under the four following headings, viz.,

1. Manual labour,
2. Team labour,
3. Materials,
4. Improvements,

and under those several headings the particulars of the work performed under contract, as well as the amounts payable in respect thereof and the payments (if any) made to contractors by the district surveyor, shall be entered from time to time according to the arrangements of the columns in each division, the particulars as respects main roads, district roads, and existing turnpike roads being shown separately in the columns provided for that purpose. The date of payment and the folio of the cash book to which the payments are transferred shall also be inserted in connection with each entry.

There shall also be entered under the heading of materials the particulars indicated in the form as to materials supplied by contractors.

The sums entered under each of the four headings above named in the columns

headed "Amounts payable under contract," shall be cast up at the foot of each page and the totals, as brought forward, cast up at the end of each quarter.

(3.) A wages book, Form (F.), in which shall be entered in respect of each parish in the district the names of the labourers employed and paid by the district surveyor, the days on and places at which they were so employed, the rate of pay and the amount of wages earned, together with the date of payment and a reference to the folio in the cash book to which the payments are transferred.

The district surveyor, or other person making the payments on his behalf, shall, at the time of payment, obtain the signatures of the labourers in the column provided for that purpose, or if any of them are unable to write, their marks shall be affixed, attested by the initials of the district surveyor or of such other person.

At the end of each month, or of such shorter period as the highway board may direct, the Wages Book, as regards each parish in which labourers have been employed by the district surveyor during that period, shall be submitted by him to the waywarden of that parish, or to one of such waywardens, if there be more than one.

(4.) A receipt check book, Form (G.), containing receipts and counterfoils in the form prescribed, each receipt and counterfoil bearing a corresponding number, and the numbers being printed thereon in consecutive order. Whenever money is received by the district surveyor from any other source than the highway board, he shall duly fill up one of the receipts and counterfoils, and shall deliver the receipt (stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary) to the person making the payment, and shall retain the counterfoil in the book.

(5.) A stock and stores account, in the Form (H.), in which the district surveyor shall keep an account of all materials, tools, or other articles intrusted to his charge, and shall show how the same shall have been disposed of and what remains in store. This book shall be balanced yearly and laid before the highway board from time to time as required by them.

(6.) A petty cash book, in which shall be entered promptly and in order of date, an account of the sums received and paid by the district surveyor for petty disbursements, which account shall be balanced quarterly, and laid before the highway board at their ordinary meetings.

Closing and Examination of Accounts.

Art. 6. All the accounts of the highway board and their officers shall be made up and balanced to the twenty-fifth day of March in every year, and shall be submitted to the highway board at their first meeting after that day.

Financial Statement.

And whereas by section 3 of "The District Auditors Act, 1879," it is enacted as follows:

"Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit, held in pursuance of section 6 of the Poor Law Amendment Act, 1866), a financial statement in duplicate in the prescribed form and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement."

Now, therefore, we, the Local Government Board, hereby further order as follows:

Art. 7. The financial statement to be prepared and submitted to the district auditor in duplicate by the highway board as a local authority under section 3 above recited shall, from and after the 25th day of March, 1880, be in the Form (I.) in the schedule to this order, and shall contain the particulars therein specified or referred to, and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.

Parochial Statement.

Art. 8. The statement which, by section 9 of "The Highways and Locomotives (Amendment) Act, 1878," the highway board are required, within thirty days after the completion of the audit, to furnish to each member of the board and to the overseers of the parishes in the highway district, shall, from and after the 25th day of March, 1880, be in the Form (L.) in the schedule to this order.

Notice of Audit: Production of Books.

Art. 9. The district auditor shall audit the accounts of the highway board and their officers once in every year; that is to say, as soon as may be after the twenty-fifth day of March: Provided always, that if the district auditor shall be required by the Local Government Board to hold an extraordinary audit, either of the whole or any portion of the accounts, in addition to the ordinary audit, all the provisions herein contained, with reference to the ordinary audit, shall so far as they may be applicable, apply to such extraordinary audit.

Art. 10. The district auditor, in respect of every ordinary audit, shall give to the clerk, the treasurer, and the district surveyor fourteen days' notice in writing of the time and place on and at which he intends to commence the audit of the accounts. The district auditor shall also give the like notice to the waywarden or waywardens for each of the highway parishes in the district.

Art. 11. The clerk and the other officers of the highway board who by law are liable to account to the district auditor shall attend at the time and place appointed by him for the audit of their accounts, and shall submit to him all books, documents, and vouchers containing or relating to their accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer having an interest in such accounts, but to such extent and in such manner only as will not, in the judgment of the said district auditor, interfere with the audit.

Mode of Audit.

Art. 12. In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form, that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority. He shall ascertain whether all sums received, or which ought to have been received, are brought into account, and shall examine whether the expenditure is in all cases such as might lawfully be made. He shall also reduce such payments and charges as are exorbitant; shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss; and shall disallow and strike out such payments as are not authorised by law.

Art. 13. When the district auditor disallows any payment or surcharges any sum upon any person, he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit, and shall report such disallowance or surcharge to the Local Government Board.

Art. 14. The district auditor shall examine and collate the several books and papers of account; and shall ascertain that the several entries correspond with and balance each other, where such balance may be required; but in case of any error caused by inadvertence or accident in any account, he may require the officer rendering it to correct the same, and the officer shall make the necessary correction, and the district auditor shall then deal with the account so corrected. But if the officer shall refuse to do so, the district auditor shall himself make the correction, and report the circumstances of the case to the Local Government Board.

Art. 15. The district auditor shall compute the several accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time to which the audit relates; and he shall state the balance in words at length, and certify the same by his signature or initials, and add the date of the audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificate and his reasons for the same (when they are required) in some part of the book of account which shall be free from other writing.

Art. 16. The district auditor shall receive any objection made by a ratepayer, or any person aggrieved, against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same; and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge.

Art. 17. If he shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels relating to the highway district to appear before him, and shall call upon such person to produce any accounts, books, or papers which he may lawfully require; and he shall examine such officer or person as may then appear, and such accounts, books, and papers as may be produced before him, respecting such account, item, or charge.

Art. 18. If the auditor find that any money, goods, or chattels belonging to the highway board, have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any officer or other person accounting, and shall surcharge such officer or person with such amount or value in his account, he shall submit a statement of such surcharge to the highway board as soon as he conveniently can do so.

Art. 19. The personal representatives of an officer accountable under this order, dying before the audit of his accounts, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer, and all regulations affecting the accounts of such officer shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

Art. 20. The district auditor shall, at the close of such audit, transmit to the Local Government Board a statement in the Form (M.) in the said schedule, showing which of the books directed by this order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Local Government Board.

INTERPRETATION OF TERMS.

Art. 21. In this order and in the forms set forth in the schedule thereto,—

"Highway district" means a district constituted in pursuance of the Highway Act, 1862, and the Highway Act, 1864, or one of such Acts.

"Highway board" means the highway board having jurisdiction within a highway district.

"Clerk" means the clerk to the highway board.

"District surveyor" includes an assistant surveyor, where such an assistant is appointed, and where he may be required by the highway board, under the direction of the district surveyor, to perform any of the duties prescribed herein.

"Main roads" means roads so constituted under "The Highways and Locomotives (Amendment) Act, 1878."

"Manual labour" means manual labour employed in the actual execution of repairs, as distinct from such labour employed in obtaining, delivering, or preparing materials for repairs, and includes contract work for repairs where such repairs are let by contract under section 52 of "The Highway Act, 1864," and where the contract is not made exclusively for the purposes hereinafter described under either of the heads of "team labour" or "materials."

"Team labour" means labour of that kind employed in the collection, delivery, or distributions of materials for the purpose of executing repairs, or in the actual execution thereof, and includes such labour employed under any contract entered into for those purposes exclusively, under the section last above mentioned.

"Materials" means stone or other materials for repairs, and includes the cost of purchasing, getting, carrying, or preparing such materials, and of delivering the same other than by means of team labour. It also includes any such cost incurred under any contract entered into for those purposes exclusively under the section last above mentioned, as well as damage to land in getting materials for the purpose of repairs, and royalty or rent of pits or quarries for that purpose.

"Tradesmen's bills" includes the cost of tools, implements, and other stock supplied by tradesmen for repairs, and not hereinbefore included in the term "materials," and the cost incurred in repairs of drains, bridges, and fences, executed by tradesmen; and when used in connection with "main roads" means tradesmen's bills for repairs incurred for main roads exclusively.

"Improvements" means—

(1.) The conversion of any road that has not been stoned into a stoned road:

(2.) The widening of any road, the cutting off the corners in any road where land is required to be purchased for that purpose, the levelling roads, the making any new road, and the building or enlarging bridges:

(3.) The doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair:

(4.) The abolition of tolls, where effected under section 15 of the Act, 35 & 36 Vict. c. 85.

Given under the seal of office of the Local Government Board this twenty-ninth day of April, in the year one thousand eight hundred and seventy-nine.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

SCHEDULE.

FORM (A.)

The Ledger.

_____ HIGHWAY DISTRICT.

Fo._____ *Dr.*

Date.	Folio of Minute Book.	Folio of Corre-sponding Credit.	Corresponding *Credit* and Items.	(*a*)			(*b*)			Totals. (*c*.)		
			To	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*

_____ HIGHWAY DISTRICT.

CONTRA. *Cr.* Fo._____

Date.	Folio of Minute Book.	Folio of Corre-sponding Debit.	Corresponding *Debit* and Items.	(*a*)			(*b*)			Totals. (*c*)		
			By	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*

NOTE.—As regards manual labour, team labour, and other heads of account in the ledger embracing items for maintenance or repairs, which in the case of main roads will be partly repayable by the county authority, under sect. 13 of the 41 & 42 Vict. c. 77, it will be necessary to show in a separate column, in the pages devoted to such headings, the items relating to main roads, as distinct from those relating to district roads and existing turnpike roads. An additional column is accordingly introduced into this Form for that purpose, the column (*a*) being intended for the main roads, and the column (*b*) for district roads and existing turnpike roads. In cases where a highway district is situated in more than one county, column (*a*) must be sub-divided, and the amount shown separately as regards each county.

(*a*) (*b*) (*c*) When to any account any sum is debited, part of which is credited to one account and the remainder to another or others, the several sums so credited are to be entered separately in columns (*a*) or (*b*), as the case may be, and their total in the column (*c*). The several accounts to which such parts are credited are to be written against them respectively, together with the requisite explanation in the column for 'Corresponding Credit and Items."

(*a*) (*b*) (*c*) When to any account any sum is credited, part of which is debited to one account and the remainder to another or others, the several sums so debited are to be entered separately in columns (*a*) or (*b*), as the case may be, and their total in the column (*c*). The several accounts to which such parts are debited are to be written against them respectively, together with the requisite explanation in the column for "Corresponding Debit and Items."

FORM (B.)

The Order Check Book.

_____ HIGHWAY DISTRICT.

No.*_____ 18 .

Mr.†_____

†

(*Signature*)

No.*_____ 18 .

Mr.†_____

Please to †

(*Signature*)

The particulars and price of the goods or work are to be inserted, and the invoice or account returned when the order is executed.

No.*_____ 18 .

The_____ HIGHWAY BOARD.

Drs. To†

Date.	Articles supplied or work done.		£	s.	d.
	Total - £				

No._____ §

Examined and Entered - } _____

District Surveyor.

_____18 .

Correct,_____*Clerk.*

* This No. may be consecutive for a quarter of the year, or for the half-year, or for the year, as the Highway Board shall direct. Where no direction is given it shall continue for the whole year.

† Insert in these spaces the name of the tradesman, the goods to be supplied, and the place at which they are to be delivered, or the work is to be done, as the case may be.

NOTE.—This order, with the invoice or account in blank, is to be detached from the counterfoil thereof, and sent to the tradesman; the order is to be kept by the tradesman, and the invoice or account returned when the order is completely executed; a ticket being sent containing the like entries with every delivery, when there is more than one.

§ This No. must be entered by the district surveyor according to the order of the receipt, and be consecutive as in the Note* in the order check book.

FORM (C.)

The Treasurer's Book.

_____ HIGHWAY DISTRICT.

Account of Receipts and Payments on behalf of the Highway Board for the year ended the 25th day of March, 18 .

_____ *Treasurer.*

RECEIPTS.						PAYMENTS.					
Date.	From whom.	On what Account.	Amount.			Date of Payment.	Date of Order.	Name of Payee.	Amount.		
			£	s.	d.				£	s.	d.
								Balance .			
		TOTAL .						TOTAL .			

Signed this _____ day of _____ 18 . _____ *Treasurer.*

Note.—This account is to be balanced at the end of every quarter, and the balance signed by the Treasurer.

FORM (D.)

_____ HIGHWAY DISTRICT. *Cash*

RECEIPTS.																							
Date.	No in Receipt Check Book.	From whom received.	On what account.	Amount.			Date.	To whom paid.	Amount.			Manual Labour.											
												Main Roads.*			District Roads.			Existing Turnpike Roads.					
				£	s.	d.			£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.			
			Total .					Total .															

* In cases where a highway district is situated in more than one county this column must be sub-divided.

FORM (D.)

Book. ______________________ *District Surveyor.*

PAYMENTS.

Repairs.										Improvements.	Folio in Wages Book.	Folio in Contract Book.	General Expenses.		Totals.
Team Labour.			Materials.			Tradesmen's Bills and Miscellaneous.									
Main Roads.*	District Roads.	Existing Turnpike Roads.	Main Roads.*	District Roads.	Existing Turnpike Roads.	Main Roads.*	District Roads.	Existing Turnpike Roads.	No. of Invoice.				Purpose.	Amount.	
£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.		£ s. d.				£ s. d.	£ s. d.
									Total			Totals .			

* the amount shown separately as regards each county. See section 19 of the 41 & 42 Vict. c. 77.

FORM (E.)

_____ HIGHWAY DISTRICT. *Quarter ended the* *Contract day*

MANUAL LABOUR. . . . . .

Name of Contractor.	Road on which Work was performed.	Nature of Work.

TEAM LABOUR. . . . . .

Name of Contractor.	Road on which Work was performed.	Nature of Work.

MATERIALS. . . . . .

Name of Contractor.	Road where Materials were used, or where work was performed.	Description of Materials or Work.

IMPROVEMENTS. . . . . .

Name of Contractor.	Name of Road.	Nature of Improvement.

* In cases where a highway district is situated in more than one county, this column must be sub-divided

FORM (E.)

Book.
of 18 . _____ *District Surveyor.*

. . . . . MANUAL LABOUR.

Number of			Rate per			Amounts payable under Contract.												If paid by District Surveyor, Date of Payment.	Folio in Cash Book.
Yards.	Loads.	Days.	Yard.	Load.	Day.	Main Roads.*			District Roads.			Existing Turnpike Roads.			Total.				
						£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.		

. . . . . TEAM LABOUR.

Number of			Rate per			Amounts payable under Contract.												If paid by District Surveyor, Date of Payment.	Folio in Cash Book.
Yards.	Loads.	Days.	Yard.	Load.	Day.	Main Roads.*			District Roads.			Existing Turnpike Roads.			Total.				
						£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.		

. . . . . MATERIALS.

Number of			Rate per			Amounts payable under Contract.												If paid by District Surveyor, Date of Payment.	Folio in Cash Book.
Yards.	Loads.	Days	Yard.	Load.	Day.	Main Roads.*			District Roads.			Existing Turnpike Roads.			Total.				
						£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.		

. . . . . IMPROVEMENTS.

Number of			Rate per			Amounts payable under Contract.												If paid by District Surveyor, Date of Payment.	Folio in Cash Book.
Yards.	Loads.	Days.	Yard.	Load.	Day.	Main Roads.*			District Roads.			Existing Turnpike Roads.			Total.				
						£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.		

nd the amount shown separately as regards each county. See section 19 of the 41 & 42 Vict. c. 77.

FORM (F.)

Wages Book.

_____ HIGHWAY DISTRICT. _____ *Weeks ending the* *day of* , 18 , *being the* , , *and*

Parish of _____ *weeks of the quarter ending the* *day of* 18 .

Labourers' Names.	Employment. On what Road employed.	Employment. How employed.	Week, ending of 18 .						Week, ending of 18 .						Week, ending of 18 .						Week, ending of 18 .						Number of Yards.	Number of Loads.	Number of Days.	Rate per Yard.	Rate per Load.	Rate per Day.	Amounts. Main Roads.			Amounts. District Roads.			Amounts. Existing Turnpike Roads.			Amounts. Total.			When paid.	Folio in Cash Book.	Labourers' Signatures.
			M.	T.	W.	Th.	F.	S.	M.	T.	W.	Th.	F.	S.	M.	T.	W.	Th.	F.	S.	M.	T.	W.	Th.	F.	S.							£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.			
																														Totals																	

Submitted to me by the district surveyor on the day of 18.

_____

Waywarden.

I hereby certify that the above particulars with regard to the work performed and the wages earned are correct, and that the amounts due have been paid to the labourers respectively.

_____ *District Surveyor.*

The columns appropriated for the days in each week are intended to show the days on which the labourers are employed, and should be filled up thus: (1) or (½), according as the labourers are employed for the day or part of the day.

Receipt Check Book.

COUNTERFOIL.

No. .

_____ HIGHWAY DISTRICT.

_____ day of _____ 18 .

Of Mr. _____

£ _____

for _____.

RECEIPT.

No. .

_____ HIGHWAY DISTRICT.

_____ day of _____ 18 .

Received of Mr. _____

the sum of _____ pounds _____ shillings and _____ pence,

for _____

_____

District Surveyor.

£ _____

FORM (H.)

Stock and Stores Account.

Year ended at _____ 18 .

_____ HIGHWAY DISTRICT.

_____ *District Surveyor.*

ARTICLES.*	Stock brought forward.	New Stock.	No. of Invoice (if any), or Name of Contractor or Tradesman supplying.	Totals of Stock brought forward and New Stock.	Consumed.		Remaining in Store.	Totals consumed and remaining in Store.	Observations.
					Quantity.	Where used.			

* As regards flints, gravel, or other materials, a separate page of this book, or a division of a page, should be assigned to each, so as to keep together the entries under the respective heads.

FORM (I.)

_____ HIGHWAY DISTRICT.

FINANCIAL

Statement of Account showing the Receipts and

RECEIPTS.	£	s.	d.
Contributions from Parishes			
Contributions from County Authority			
Receipts from Existing Turnpike Trusts for repairs of Roads . .			
Receipts from Expired Turnpike Trusts			
Receipts (either by way of composition or otherwise, under section 23 of 41 & 42 Vict. c. 77) on account of damage caused by excessive weight or extraordinary traffic			
Other Receipts			
Note.			
Number of Highway Parishes in the District . .			
Rateable Value of District . . . £			
Mileage: Main Roads . . . . . (Miles. Furlongs.)			
Mileage: District Roads			
Mileage: Roads (if any) the repairs of which are separately chargeable to Parishes under section 7 of the 41 & 42 Vict. c. 77 . . .			
Gross Receipts . .			

FORM (I.)

STATEMENT.

Expenditure for the Year ended 25th March, 18 .

EXPENDITURE.	£	s.	d.	£	s.	d.
MAIN ROADS (Repairs):—	£	s.	d.			
Manual Labour						
Team Labour						
Materials						
Tradesmen's Bills and Miscellaneous						
Deduct amount of repairs of Main Roads borne by County Authority . .						
Net Amount						
DISTRICT ROADS (Repairs):—	£	s.	d.			
Manual Labour						
Team Labour						
Materials						
Tradesmen's Bills and Miscellaneous						
EXISTING TURNPIKE ROADS (Repairs):—	£	s.	d.			
Manual Labour						
Team Labour						
Materials						
Tradesmen's Bills and Miscellaneous						
Improvements (not paid for out of Loans)						
Law Charges						
Salaries { Clerk						
Salaries { Treasurer						
Salaries { District Surveyor (including Assistant, if any)						
Repayments of Loans, with Interest*						
Other Expenses (less Contributions to Turnpike Trusts)†						
† Contributions to Turnpike Trusts . . £ s. d.						
Total . . .						

* The particulars required with respect to Loans are to be supplied in the Form (K.) annexed.

_____ Clerk. day of 18 .

I hereby certify that I have compared the entries in the above Statement with the Vouchers and other documents relating thereto, and that the regulations with respect to such Statement have been duly complied with.

I hereby further certify that I have ascertained by Audit the correctness of such Statement, and that the amount expended by the Highway Board during the year ended the 25th day of March, 18 , as included in such Statement and allowed by me at the Audit, is [*here insert the amount in words at length*].

As witness my hand this day of 18 .

_____ Stamp. _____ *District Auditor.*

FORM (K.)

LOAN ACCOUNT.

Year ended 25th March, 18

_____ HIGHWAY DISTRICT.

LOANS CHARGEABLE UPON THE DISTRICT FUND.										SINKING FUND.			
Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what class of Improvements.	For what Period.	Rate of Interest.	Mode of repayment whether by annuity or otherwise.	Amounts paid this Year.		Amount of Principal still owing.	Amount annually set apart.	Rate of Interest on which Fund is based.	Total Sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
							Principal.	Interest.					
£							£	£	£	£		£	

LOANS REMAINING CHARGEABLE UPON SEPARATE PARISHES.											SINKING FUND.			
Name of Parish.	Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what class of Improvements.	For what Period.	Rate of Interest.	Mode of repayment, whether by annuity or otherwise.	Amounts paid this Year.		Amount of Principal still owing.	Amount annually set apart.	Rate of Interest on which Fund is based.	Total Sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
								Principal.	Interest.					
	£							£	£	£	£		£	

* If by a Company, insert the name.

Where all or any portion of the Loan has been expended during the year, state the nature of the Improvements, and the amount expended in each case.

Nature of Improvements.	Amount expended.

_____ Clerk,

day of 18 .

Examined by me in connection with the Financial Statement for the year ended the 25th day of March, 18 , and found correct.

_____ District Auditor.

NOTE.—It is only required that money be entered in the Form above to the nearest £. Whenever the fractional parts, in abstracting from the books, amount in their total to 10*s.* or more than 10*s.*, they are to be taken as equal to £1; if less than 10*s.* they are to be rejected. Thus £175 10*s.* should be entered as £176; but £175 9*s.* 11*d.* as £175 only.

PAROCHIAL STATEMENT.

Year ended 25th March, 18 .

_____ HIGHWAY DISTRICT.

	PARISHES.	Balance in favour of Parish at the Commencement of this Year.	Receipts.		Balance against Parish at the end of this Year.	Total.	Balance against Parish at the Commencement of this Year.	Expenditure.				Balance in favour of Parish at the end of this Year.	Total.	Amount of Rateable Value upon which the Precepts for Contributions were calculated.	Outstanding Loans.		
									Separate Charges (if any.)*						Repayable by Separate Parishes.		
			Contributions from Parishes to District Fund during this Year.	All other Receipts from Parishes.				Net amount of District Fund apportioned.							Amount outstanding at the end of this Year.	Rate of Interest.	Amount in Sinking Fund.
	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.		£ s. d.
1																	
2																	
3																	
4																	
5																	
6																	
7																	
8																	
9																	
10																	
11																	
12																	
13																	
14																	
15																	
16																	
17																	
18																	
19																	
20																	
	Total .																

* If any of these charges consist of a loan still separately chargeable on a Parish, the Principal and Interest or any payment to a Sinking Fund on behalf of the Parish should be entered in distinct columns.

_____ Clerk. day of 18 .

FORM (M.)

_____ *Audit District.*

A STATEMENT of the DISTRICT AUDITOR,
in reference to the Books of the HIGHWAY DISTRICT for the year
ended the 25th day of March, 18 .

As to the Books required to be kept by the CLERK,

Mr._____

By the TREASURER,

Mr._____

By the DISTRICT SURVEYOR,

Mr._____

OBSERVATIONS.

	CLERK.
Minute Book.	
Ledger.	
Order Check Book.	
Petty Cash Book.	
	TREASURER.
The Treasurer's Book.	
	DISTRICT SURVEYOR.
Cash Book.	
Petty Cash Book.	
Contract Book.	
Wages Book.	
Receipt Check Book.	
Stock and Stores Account.	

The Audit of the above Books was concluded the *day of* 18 .

_____ *District Auditor.*

*Date*_____ 18 .

Against the name of any Book contained in this Statement which is not kept at all, or is imperfectly kept, the District Auditor is to write in the former case "not kept," and in the latter "imperfectly." In case of any Book being imperfectly kept, the general nature of the imperfection is to be set forth *on the other side*, together with such observations as the District Auditor considers requisite. Where there is no defect, the District Auditor should state the fact. And where any officer has in any respect disobeyed, neglected, or departed from any of the regulations of this Order applicable to his office, the District Auditor should report the facts on the other side.

THE DISTRICT AUDITORS ACT, 1879.

FINANCIAL STATEMENT: LOCAL BOARDS.—GENERAL ORDER [1].

To the local boards, for the time being, of the several local government districts in England and Wales;—

To the several district auditors in England and Wales;—

And to all others whom it may concern.

Whereas by section 3 of "The District Auditors Act, 1879," it is enacted as follows:

"Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit, held in pursuance of section 6 of the Poor Law Amendment Act, 1866), a financial statement in duplicate in the prescribed form and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement."

And whereas local boards appointed for local government districts are local authorities within the terms of the said section:

Now therefore, we, the Local Government Board, hereby order and prescribe, with respect to each local government district in England and Wales, as follows:

The financial statement to be prepared and submitted to the district auditor in duplicate by the local board as a local authority, in accordance with the provisions of the section above recited, shall be in the Form (A.) in the schedule to this order, and shall contain the particulars therein specified or referred to; and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.

Given under the seal of office of the Local Government Board, this twenty-ninth day of April, in the year one thousand eight hundred and seventy-nine.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

[1] See the preceding Circular.

SCHEDULE.

FORM (A.)

_____ LOCAL GOVERNMENT DISTRICT.

FINANCIAL STATEMENT.

"The District Auditors Act, 1879" (42 Vict. c. 6).

STATEMENT of Receipts and Expenditure by the Local Board for the above-named Local Government District for the Year ended the twenty-fifth day of March, 18 .

RECEIPTS.

———	Amounts.			Totals.		
	£	s.	d.	£	s.	d.
PUBLIC RATES.						
From General District Rate						
From Special District Rate (if any)						
From Highway Rate						
From Water Supply Rate						
From Gas Supply Rate						
From Market Tolls or other Dues and Duties (if any) . .						
From Precepts in respect of expenses of School Attendance Committee (if any)						
PRIVATE RATES.						
From Private Improvement Rate						
From Water Supply Rates or Rents						
OTHER RECEIPTS.						
From Parliamentary Grant { Salaries of Medical Officers of Health						
From Parliamentary Grant { Salaries of Inspectors of Nuisances						
District Fund Account (if any)						
From all other sources						
Gross Receipts						

FORM (A.)—Financial Statement—*continued.*

EXPENDITURE.

——	Amounts.			Totals.		
	£	s.	d.	£	s.	d.
PUBLIC WORKS.						
(*Not paid for out of Loan.*)						
Sewerage						
Water Supply						
Gas Supply						
Highways (less amount* borne by County Authority in respect of repairs of Main Roads, if any)						
Scavenging and Watering						
Parks or Public Pleasure Grounds						
Hospitals						
Other Public Works						
£ s. d.						
* Amount borne by County Authority .						
PRIVATE IMPROVEMENT WORKS.						
(*Not paid for out of Loan.*)						
Drainage and Water Supply						
Other Private Improvement Works						
Amount of Expenditure on Public Works and Private Improvement Works						

FORM (A.)—Financial Statement—*continued.*

EXPENDITURE—*continued.*

———	Amounts. £	s.	d.	Totals. £	s.	d.
GENERAL EXPENDITURE.						
Election Expenses						
Legal Expenses						
Salaries (less amount† borne by Parliamentary Grant), viz.:— Clerk						
Treasurer						
Medical Officer of Health						
Inspector of Nuisances .						
Surveyor						
Establishment Charges, other than Salaries						
Repayment of Loans, with Interest‡						
Expenses of School Attendance Committee (if any) . .						
Other Payments (excluding contributions on Precepts of Joint Boards or Port Sanitary Authorities§) . . .						

†Amount borne by Parliamentary Grant:	£	s.	d.
Medical Officer of Health . . .			
Inspectors of Nuisances . . .			

§Amount paid on Precepts:	£	s.	d.
To Joint Boards			
To Port Sanitary Authorities . .			
——— . . .			
——— . . .			

Amount of Expenditure on Public Works and Private Improvement Works, brought forward . . .						
Total Expenditure included in this Statement . .						

‡ The particulars required with respect to loans are to be supplied in the Form (B.) annexed.

Clerk to the Local Board, day of 18 .

I hereby certify that I have compared the entries in the above Statement with the Vouchers and other documents relating thereto, and that the regulations with respect to such Statement, have been duly complied with. I hereby further certify that I have ascertained by audit the correctness of such Statement, and that the amount expended by the Local Board during the year ended the 25th day of March, 18 , as included in such Statement and allowed by me at the audit, is [*here insert the amount in words at length*].

As witness my hand this day of , 18 .

Stamp.

——— *District Auditor.*

FORM (B.)

_____ LOCAL GOVERNMENT DISTRICT.

LOAN ACCOUNT.

Statement with reference to Loans obtained by the Local Board for the above-named district. Year ended the twenty-fifth day of March, 18 .

Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,* or otherwise.	For what object.†	For what Period.	Rate of Interest.	Mode of repayment, whether by Annuity or otherwise.	Amounts paid this Year.		Amount of Principal still owing.	Sinking Fund.			
							Principal.	Interest.		Amount annually set apart.	Rate of Interest on which Fund is based.	Total Sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
£							£	£	£	£		£	

* If by a Company, insert the name.

† Where all or any portion of the loan has been expended during the year, state the nature of the works and the amount expended in each case.

Nature of Improvements.	Amount expended.

_____ Clerk to the Local Board,

day of 18 .

Examined by me in connection with the financial statement for the year ended the 25th day of March, 18 , and found correct.

_____ District Auditor,

day of 18 .

NOTE.—It is only required that money be entered in the form above to the nearest £; whenever the fractional parts, in abstracting from the books, amount in their total to 10*s.*, or more than 10*s.*, they are to be taken as equal to £1; if less than 10*s.* they are to be rejected. Thus £175 10*s.* should be entered as £176, but £175 9*s.* 11*d.* as £175 only.

PUBLIC HEALTH (INTERMENTS) ACT, 1879.

(42 & 43 Vict. c. 31) (1).

Local Government Board, Whitehall, S.W.,
19th August, 1879.

SIR,

I am directed by the President of the Local Government Board to request that you will bring under the notice of the sanitary authority the provisions of the Public Health (Interments) Act, 1879 (42 & 43 Vict. c. 31) (1), which received the royal assent and came into operation on the 21st of July last.

The object of the Act is to enable sanitary authorities, rural as well as urban, to provide cemeteries for their districts, and for this purpose all the provisions of the Public Health Act, 1875, with respect to a mortuary are extended to a cemetery.

As the sanitary authority are aware section 141 of the Public Health Act enables a sanitary authority to provide and fit up a proper place as a mortuary for the reception of dead bodies before interment, and to make bye-laws with respect to the management and charges for the use of the same, and it is moreover compulsory on a sanitary authority to provide a mortuary if they should be required by the Local Government Board to do so.

The effect, therefore, of the Act which has just been passed is, in like manner, to empower a sanitary authority to provide a cemetery, and to render it compulsory on them to do so if the Local Government Board should require one to be provided.

The legislature has not specified the cases in which it is incumbent upon the sanitary authority to give effect to the provisions of the new statute; but, seeing that it is incorporated with the Public Health Act, there can be no doubt that wherever, in the interests of the public health, it is necessary that a cemetery should be provided in any locality, the legislature contemplated that the local authority would exercise the important powers now conferred upon them.

The following may be referred to as circumstances under which it will be incumbent upon the sanitary authority to take action:

1. Where in any burial ground which remains in use there is not proper space for burial, and no other suitable burial ground has been provided;
2. Where the continuance in use of any burial ground (notwithstanding there may be such space) is by reason of its situation in relation to the water supply of the locality, or by reason of any circumstances whatsoever, injurious to the public health;
3. Where, for the protection of the public health, it is expedient to discontinue burials in a particular town, village, or place or within certain limits.

There are other circumstances which might render it necessary or expedient that a cemetery should be provided, such as inconvenience of access from the populous parts of the district to the existing burial ground, or the nature of the site, or the character of the subsoil; and instances may exist where, in deference to the wishes of the inhabitants, it may be expedient to provide, in accordance with the policy of the Burial Acts, a cemetery in which persons of different creeds may be buried with their own religious rites. On all or any of the foregoing grounds the authority of the Local Government Board may be invoked, and if the application should prove well founded a compulsory order would necessarily follow.

The question, however, whether a cemetery should be provided for a particular locality will be one for the determination of the sanitary authority in the first instance; and it is only in the event of their default to establish a proper cemetery where one is required, or in consequence of a loan being needed to carry out the undertaking, or, if they should determine to construct a cemetery outside their district, of objection being taken to such a proceeding, that the Local Government Board have any authority to interfere.

The President has reason to believe that in numerous localities considerations of public health require that a cemetery should be provided, and with a view of enabling the authority to determine whether on sanitary grounds it is necessary or desirable that a cemetery should be provided for all or any part of their district the medical officers of health should be instructed to report upon the state of the several burial grounds within the area subject to their jurisdiction.

The statute enables a sanitary authority to acquire, construct, and maintain a cemetery either within or without their district. In the latter case, however, at least three months before the cemetery is commenced, public notice must be given, and in the event of any objection, the work cannot proceed without the sanction of the Local Government Board after local inquiry.

(1) See this Act, *ante*, p. 1145.

It will be seen, therefore, that a sanitary authority are empowered not only to establish a cemetery, but also to purchase an existing one; and it will be competent for the sanitary authority, in the event of their failure to acquire a suitable site by agreement, to apply for a Provisional Order enabling them to take lands for the purpose compulsorily.

Moreover, with the sanction of the central authority, they will be enabled to borrow money to pay for the purchase of the requisite land, for draining and inclosing the site, and for rendering it otherwise suitable for the object intended.

At the same time I am to point out that, if the sanitary authority should deem it expedient to provide a cemetery without resorting to a loan for the purpose, it is competent for them to do so, and to charge the cost upon the local rates.

In the case of an urban sanitary authority the rate liable for this cost will be the general district rate, or other rate applicable to the general purposes of the Public Health Act within the district. In the case of a rural sanitary authority the amount would come under the head of general expenses, and be defrayed out of the rate applicable to the payment of such expenses.

If, however, the cemetery were provided for a separate contributory place, by which is meant a parish or special drainage district, or so much of a parish as is not within an urban sanitary district or a special drainage district, it would be competent for the Local Government Board to order the amount to be special expenses, in which event the charge would be borne by the particular contributory place, but with this distinction in the incidence of the rate, that whereas in the case of general expenses the amount is either paid out of the poor rate or levied by a rate of an equal sum in the pound, in the case of special expenses the amonnt is raised by a separate rate to which lands are assessable at only one fourth. It may be useful to add here that the rates referred to would in like manner be applicable to the maintenance of the cemetery after it is established, and also that a rural sanitary authority may depute to a parochial committee the exercise of their powers in connection with the management of any cemetery which may be required for any contributory place.

In addition to the powers conferred upon sanitary authorities of purchasing land for a cemetery the recent Act authorises them to accept a donation of land for the purpose, and also a donation of money or other property for enabling them to acquire, construct, or maintain a cemetery.

With regard to the regulation of the cemetery after it has been established, I am to state that the application to a cemetery of section 141 of the Public Health Act, 1875, will enable the sanitary authority to make bye-laws with respect to the management and charges for the use of any cemetery established by them, and in this manner to provide for the orderly conduct of all persons within its limits, for the regulation of graves, and for the payment of reasonable fees for interments therein.

It should be borne in mind, however, that such bye-laws must be made in conformity with the Public Health Act, and be confirmed by the central authority; and the President contemplates that the department should hereafter frame a series of model bye-laws to be recommended for adoption.

In order to make further provision for the due maintenance and management of a cemetery the recent statute incorporates the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65).

That Act forms one of a series of statutes passed in 1847, the object being in each case to comprise in one general Act the provisions usually contained in Acts of Parliament relating to matters of local improvement or administration. Several of these Acts, as well as other Consolidation Acts, were incorporated, either wholly or partly, with the Public Health Act, 1875, and the particular Act referred to has previously been incorporated with some General and several Local Improvement Acts. Its provisions will now form part of the Public Health Act, 1875, and will apply, subject to the necessary qualifications, to all cemeteries acquired, constructed, or maintained by a sanitary authority under the new Act.

The President, therefore, thinks it right to direct the attention of the sanitary authority to the following obligations and powers imposed upon and exercisable by them under the incorporated enactments.

With respect to the making of the Cemetery.

The cemetery is not to be constructed nearer to any dwelling-house than 200 yards, except with the consent of the owner and occupier.

The sanitary authority may build such chapels in the cemetery for the performance of burial services as they may think fit, and lay out and embellish the grounds of the cemetery.

The cemetery must be inclosed by substantial walls, or iron railings, of the height of eight feet at least.

The sanitary authority must keep the cemetery and the buildings and fences thereof, in complete repair and in good order and condition.

With respect to Burials.

The sanitary authority may set apart a portion of the cemetery for burials according to the rites of the Established Church, and the bishop of the diocese, may, on the application of the sanitary authority, consecrate the portion so set apart.

A chapel, to be approved by the bishop, must be built on the consecrated part for the performance of the burial service of the Established Church.

A salaried chaplain is to be appointed to officiate in the consecrated part of the cemetery, the appointment and salary to be subject to the approval of the bishop.

The sanitary authority may set apart the whole or a portion of the unconsecrated part of the cemetery as a place of burial for persons not being members of the Established Church, and may allow in any chapel built in such unconsecrated part a burial service to be performed according to the rites of any church or congregation other than the Established Church.

With respect to exclusive Rights of Burial and Monumental Inscriptions.

The sanitary authority may set apart portions of the cemetery for the purpose of granting exclusive rights of burial therein, and may sell the exclusive right of burial in such portions, and the right of placing any monument or gravestone in the cemetery or any tablet or monumental inscription on the walls of any chapel or other building in the cemetery.

It should be observed that the Act under consideration does not extend to the metropolis, and it is scarcely necessary to point out that in other parts of the country where suitable cemeteries are in existence there can rarely be need for resorting to its provisions.

The President trusts, however, that in other localities the sanitary authorities will not hesitate to avail themselves of the important powers conferred by the Act, having regard to their serious obligations in the interest of the public health and to the responsibilities imposed upon them by the Legislature.

I am, &c.
JOHN LAMBERT,
Secretary.

To the
Clerk to the Sanitary Authority.

THE PUBLIC WORKS LOANS ACT, 1875, SECTION 13.

Local Government Board, Whitehall, S.W.,
1st November, 1879.

SIR,

. . . . . .

The Board may take this opportunity of stating that the Lords Commissioners of Her Majesty's Treasury have issued a minute with respect to the rate of interest to be charged by the Public Works Loan Commissioners when making advances to local authorities under any special enactments empowering them to lend money at a low rate of interest. This minute, which has been made in consequence of the passing of the Public Works Loans Act of the last session (42 & 43 Vict. c. 77) (1), applies to advances made by the Commissioners to sanitary authorities under section 243 of the Public Health Act, 1875 (2), or section 22 of the Artizans' and Labourers' Dwellings Improvement Act (3) of that year.

The rates of interest which will now be charged by the Commissioners when lending money under those sections will be as follows:

When the loan is repayable within a period—

Not exceeding	20 years	. . . .	$3\frac{1}{2}$ per cent.
,,	30 ,,	. . . .	$3\frac{3}{4}$,,
,,	40 ,,	. . . .	4 ,,
Exceeding	40 ,,	and not exceeding 50 years	$4\frac{1}{4}$,,

It will be observed that the rates charged become higher according as the loan is repayable within a longer term, and it will be a question for consideration in many cases whether the sanitary authority may not find it desirable to raise the loan for a shorter period than that which the Board have hitherto usually allowed under similar circumstances, in order that the sanitary authority may secure the advantage of obtaining the money at a lower rate of interest.

(1) *Ante*, p. 1234. (2) *Ante*, p. 176. (3) *Ante*, p. 600.

It must be borne in mind that the Commissioners do not make advances, under section 243 of the Public Health Act, for all the purposes of that Act for which money may be borrowed. It is only where the sanitary authority are raising a loan for works of primary sanitary importance, such, *e.g.*, as sewerage, water supply, hospitals and public baths, that the Commissioners are willing to lend money under the section referred to. If a loan is obtained from them for any purpose of the Act which is not of primary sanitary importance, the rate of interest charged will be 5 per cent., and the term for repayment will not exceed 20 years.

It should be added that the section 3 of the Public Works Loans Act, 1879, will preclude the Commissioners in future from advancing more than £100,000, in any financial year, to any one sanitary authority.

I am, &c.,
JOHN LAMBERT,
Secretary.

The Clerk
To the Sanitary Authority.

[Sent to urban sanitary authorities of districts having a population of 25,000 and upwards (according to census, 1871).]

THE ARTIZANS' AND LABOURERS' DWELLINGS IMPROVEMENT ACT 1879 (1).

(42 & 43 Vict. c. 63.)

Local Government Board, Whitehall, S. W.,
19th November, 1879.

SIR,

I am directed by the Local Government Board to draw the attention of the urban sanitary authority to the Artizans' and Labourers' Dwellings Improvement Act, 1879 (42 & 43 Vict. c. 63) (1), and to point out that the Act confers important facilities for the carrying out of improvement schemes under the principal Act, viz., the Artizans' and Labourers' Dwellings Improvement Act, 1875.

By the 3rd section of the Act of the last session the amount of compensation, payable under any scheme, will be considerably diminished in cases where the houses or premises proposed to be taken can be proved to the arbitrator to have been, at any time between the date of the official representation and that of the confirming Act, a nuisance within the meaning of the Public Health Act, 1875, and any local Act which contains any provisions with respect to nuisances in the district.

The 4th section enables the confirming authority to relax the restrictions imposed by the principal Act, which required that the accommodation for persons of the working classes should be provided within the area affected by the scheme, or in its immediate vicinity, unless there were special reasons to the contrary.

It will be observed that the schedule to the Act contains a provision requiring additional notices to be given of the appointment of the arbitrator, and also confers upon him powers with regard to the apportionment of certain charges, the severance of buildings, and the awarding of compensation for omitted interests.

The Board trust that the sanitary authority will take advantage of the facilities referred to by promoting schemes under the principal Act, so that the serious injury to the public health in large towns, caused by the existence of unhealthy areas, in which large numbers of the working classes are now compelled to dwell, may be removed with the least possible delay.

I am, &c.,
JOHN LAMBERT,
Secretary.

The Clerk
To the Urban Sanitary Authority.

SALE OF FOOD AND DRUGS ACT.

Local Government Board,
31st December, 1879.

SIR,

I am directed by the Local Government Board to call your attention to section 19 of the Sale of Food and Drugs Act, 1875, and to remind you that a copy of the reports made by

(1) The Act will be found *ante*, p. 618.

public analysts for the several quarters of the year 1879, should be forwarded to the Board in the course of the month of January next.

A copy of so much of the Board's Annual Report for 1878-79, as relates to the reports of public analysts for the year 1878, with a numerical abstract of those reports, is enclosed for the information of the authority.

The Board takes this opportunity of referring to the provisions of the Sale of Food and Drugs Act Amendment Act of last session (42 & 43 Vict. c. 30), which has made several amendments in the law, the most important of which are as follows:—

Section 2 explains and amends the language of the 6th section of the principal Act with regard to articles purchased for analysis by expressly declaring that, although an article may have been purchased solely for analysis, it shall be no defence to allege that the purchaser was not prejudiced thereby. Moreover it enacts that it shall not be a good defence to prove that the article though defective in nature or in substance or in quality, was not defective in all three respects.

By sections 3 and 4 special provision is made for procuring samples of milk in course of delivery, under contract, to the purchaser or consignee. This enactment, by making the consignor liable to a penalty, will afford to dairymen protection against the consignment to them of adulterated milk.

By section 6 it is provided that the sale of spirits to which only water has been added shall not of itself constitute an offence under the 6th section of the principal Act if such admixture has not reduced brandy, whisky, or rum more than 25°, or gin more than 35° under proof.

Section 10 makes special provision as to the time within which any summons for violating the provisions of the principal Act must be served, and also as to the period to be allowed before such summons is returnable.

I am, &c.,
JOHN LAMBERT,
Secretary.

GENERAL ORDER (URBAN SANITARY AUTHORITIES).

REGULATIONS AS TO MEDICAL OFFICERS OF HEALTH, WHOSE SALARIES ARE PARTLY REPAID OUT OF MONEYS VOTED BY PARLIAMENT [1].

To the several urban sanitary authorities, for the time being, in England and Wales;—

And to all others whom it may concern.

Whereas by a General Order dated the 11th day of November, 1872, addressed to "The several urban sanitary authorities in England and Wales constituted by the Public Health Act, 1872" [2], the Local Government Board, acting under the authority conferred upon them by section 10 of that Act, prescribed regulations with respect to the qualification, appointment, duties, salary, and tenure of office of medical officers of health appointed by urban sanitary authorities, in all cases where any portion of the salary of any such officer was paid out of moneys voted by Parliament.

And whereas it is required by section 189 of the Public Health Act, 1875 [3], that every urban sanitary authority shall from time to time appoint a medical officer of health, and by section 191 of that Act it is enacted that a person shall not be appointed medical officer of health under that Act unless he is a legally qualified medical practitioner; and that the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health of a local authority, any portion of whose salary is paid out of moneys voted by Parliament:

And whereas urban sanitary authorities are local authorities within the meaning of the last-named section.

Now therefore, we, the Local Government Board, hereby order that the above cited order shall not apply to any medical officer of health appointed or re-appointed by any urban sanitary authority after the twenty-fifth day of March, one thousand eight hundred and eighty.

(1) As to medical officers of health, no portion of whose salaries is repaid out of moneys, voted by Parliament, see *post*, p. 1561.

(2) See *ante*, p. 1488.

(3) *Ante*, p. 150. As to rural authorities, see section 190, *ante*, p. 151.

And we hereby order as follows with respect to the qualification, appointment, duties, salary, and tenure of office of every medical officer of health, any portion of whose salary is paid out of moneys voted by Parliament, and who may be appointed by any urban sanitary authority after the twenty-fifth day of March, one thousand eight hundred and eighty, or who, having been appointed by such authority under the provisions of the above cited order, may be re-appointed by them after that date.

Qualification.

Art. 1. A person shall not be qualified to be appointed unless he shall be registered under "The Medical Act" of 1858, and qualified by law to practise both medicine and surgery in England and Wales, such qualification being established by the production to the sanitary authority of a diploma, certificate of a degree, licence, or other instrument granted or issued by competent legal authority in Great Britain or Ireland, testifying to the medical or surgical, or medical and surgical, qualification or qualifications of the candidate for such office.

Provided that the Local Government Board may, upon the application of the sanitary authority, dispense with so much of this regulation as requires that the medical officer of health shall be qualified to practise both medicine and surgery, if he is duly registered under the said Act to practise either medicine or surgery.

Appointment.

Art. 2. A statement shall be submitted to the Local Government Board, in a form to be supplied by them, showing the population and area of the district of the sanitary authority, together with the salary intended to be assigned to the officer, and such other particulars as may be prescribed by such form.

Provided that where any such statement has been submitted to the said Board under the said order of the eleventh day of November, one thousand eight hundred and seventy-two, or under this order, no further statement under this article shall be necessary, unless required by the said Board.

Art. 3. When the approval of the Local Government Board has been given to the proposals contained in the statement so submitted to them, the sanitary authority shall proceed to the appointment of a medical officer of health accordingly.

Art. 4. An appointment of a medical officer of health shall not be made unless an advertisement specifying the amount of salary proposed to be assigned, and the day fixed for such appointment, shall have appeared in some public newspaper circulating in the district at least seven days before the day so fixed.

Art. 5. Every such officer shall be appointed by a majority of the members present at a meeting of the sanitary authority, and voting on the question.

Art. 6. Every appointment shall, within seven days after it is made, be reported to the Local Government Board by the clerk to the sanitary authority.

Art. 7. Upon the occurrence of a vacancy in the office of medical officer of health, the sanitary authority shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by Art. 6 of this order.

Provided always as follows :—

(1.) If the sanitary authority desire to make any fresh arrangement with respect to the terms of the appointment, they shall, before filling up the vacancy, supply the particulars of the arrangement of the Local Government Board in the manner prescribed by Art. 2 of this order in regard to the first appointment, and if the approval of the Local Government Board be given, absolutely or with modifications, the sanitary authority shall then proceed to fill up the vacancy according to the terms of the approval so given.

(2.) If the vacancy arise from notice given by an officer of an intended resignation to take effect on a future day, the sanitary authority may elect a successor to such officer in conformity with the above regulations, at any time subsequent to such notice.

(3.) If the sanitary authority deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to the approval of the Local Government Board.

(4.) In the case of an officer who holds his office for a specified term, the sanitary authority may provide for the continuance of such officer, or appoint his successor, within three calendar months next before the expiration of such term.

Art. 8. If in the case of an officer who may have been appointed for a specified term, the sanitary authority should desire to renew his appointment for a further term or otherwise in conformity with the provisions of this order, and no fresh arrangement should be proposed with

respect to the terms of the appointment, it shall not be necessary for that purpose that Articles 2, 3, and 4 of this order should be complied with, but it shall be sufficient if the sanitary authority, at a meeting held after notice given at one of their two ordinary meetings next preceding such meeting, pass a resolution renewing the appointment accordingly on the expiration of the term for which it was made, and the Local Government Board sanction such resolution.

Art. 9. If any officer be at any time prevented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority may appoint a person qualified as aforesaid to act as his temporary substitute, and may pay him a reasonable compensation for his services; and it shall not be necessary in any such case that Arts. 2, 3, and 4 of this order shall be complied with, but Arts. 5 and 6 of this order shall apply in every such case.

Tenure of Office.

Art. 10. Every officer shall continue to hold office for such period as the sanitary authority may, with the approval of the Local Government Board, determine, or until he die, or resign, or be removed by such authority with the assent of the Local Government Board, or by the Local Government Board, or be proved to be insane by evidence which that Board shall deem sufficient.

Art. 11. The sanitary authority may at their discretion suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the Local Government Board; and if the Local Government Board remove the suspension of such officer by the sanitary authority, he shall forthwith resume the performance of his duties.

Art. 12. Where any change in the duties or salary of any officer may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority may, with the consent of the Local Government Board, but not otherwise, and after six months' notice in writing, signed by their clerk, given to such officer, determine his office.

Art. 13. A person shall not be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

Art. 14. The sanitary authority shall pay to every officer such salary as may be approved by the Local Government Board.

Provided always that the sanitary authority, with the approval of the Local Government Board, may pay to any officer a reasonable compensation on account of extraordinary services, or other unforeseen or special circumstances connected with his duties or the necessities of the district.

Art. 15. The salary of every officer shall be payable up to the day on which he ceases to hold the office, and no longer, subject to any deduction which the sanitary authority may be entitled to make in respect of Art. 13 of this order; and in case he shall die whilst holding such office, the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Provided that an officer who may be suspended, and who may, without the previous removal of such suspension, resign or be removed under Art. 10 of this order, shall not be entitled to any salary from the date of such suspension.

Art. 16. The salary assigned to every officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day; but the sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary to which he may become entitled at the termination of the quarter.

Art. 17. All salary shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of "The Apportionment Act, 1870."

Duties.

Art. 18. The following shall be the duties of the medical officer of health in respect of the district for which he is appointed.

(1.) He shall inform himself as far as practicable respecting all influences affecting or threatening to affect injuriously the public health within the district.

(2.) He shall inquire into and ascertain by such means as are at his disposal the causes, origin, and distribution of diseases within the district, and ascertain to what extent the same have depended on conditions capable of removal or mitigation.

(3.) He shall by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.

(4.) He shall be prepared to advise the sanitary authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the sanitary authority; and in cases requiring it, he shall certify, for the guidance of the sanitary authority or of the justices, as to any matter in respect of which the certificate of a medical officer of health or a medical practitioner is required as the basis or in aid of sanitary action.

(5.) He shall advise the sanitary authority on any question relating to health involved in the framing and subsequent working of such byelaws and regulations as they may have power to make.

(6.) On receiving information of the outbreak of any contagious, infectious, or epidemic disease of a dangerous character within the district, he shall visit the spot without delay and inquire into the causes and circumstances of such outbreak, and in case he is not satisfied that all due precautions are being taken, he shall advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and, so far as he may be lawfully authorised, assist in the execution of the same.

(7.) Subject to the instructions of the sanitary authority, he shall direct or superintend the work of the inspector of nuisances in the way and to the extent that the sanitary authority shall approve, and on receiving information from the inspector of nuisances that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall, as early as practicable, take such steps authorised by The Public Health Act, 1875, in that behalf as the circumstances of the case may justify and require.

(8.) In any case in which it may appear to him to be necessary or advisable, or in which he shall be so directed by the sanitary authority, he shall himself inspect and examine any animal carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk exposed for sale, or deposited for the purpose of sale or of preparation for sale, and intended for the food of man, which is deemed to be diseased, or unsound, or unwholesome, or nnfit for the food of man; and if he finds that such animal or article is diseased, or nnsound, or unwholesome, or unfit for the food of man, he shall give such directions as may be necessary for causing the same to be seized, taken, and carried away, in order to be dealt with by a justice according to the provisions of the statutes applicable to the case.

(9.) He shall perform all the duties imposed npon him by any byelaws and regulations of the sanitary authority, duly confirmed, in respect of any matter affecting the public health, and touching which they are authorised to frame byelaws and regulations.

(10.) He shall inquire into any offensive process of trade carried on within the district, and report on the appropriate means for the prevention of any nuisance or injury to health therefrom.

(11.) He shall attend at the office of the sanitary authority or at some other appointed place, at such stated times as they may direct.

(12.) He shall from time to time report in writing to the sanitary authority his proceedings, and the measures which may require to be adopted for the improvement or protection of the public health in the district. He shall in like manner report with respect to the sickness and mortality within the district, so far as he has been enabled to ascertain the same.

(13.) He shall keep a book or books, to be provided by the sanitary authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon and of any action taken on previous reports; and shall produce such book or books, whenever required, to the sanitary authority.

(14.) He shall also prepare an annual report, to be made to the end of December in each year, comprising a summary of the action taken during the year for preventing the spread of disease, and an account of the sanitary state of his district generally at the end of the year. The report shall also contain an account of the inquiries which he has made as to conditions injurious to health existing in his district, and of the proceedings in which he has taken part or advised under the Public Health Act, 1875, so far as such proceedings relate to those conditions; and also an account of the supervision exercised by him, or on his advice, for sanitary purposes over places and houses that the sanitary

authority have power to regulate, with the nature and results of any proceedings which may have been so required and taken in respect of the same during the year. It shall also record the action taken by him, or on his advice, during the year, in regard to offensive trades, and to factories and workshops. The report shall also contain tabular statements (on forms to be supplied by the Local Government Board, or to the like effect), of the sickness and mortality within the district, classified according to diseases, ages, and localities.

(15.) He shall give immediate information to the Local Government Board of any outbreak of dangerous epidemic disease within the district, and shall transmit to the Board a copy of each annual and of any special report.

(16.) In matters not specifically provided for in this order, he shall observe and execute the instructions of the Local Government Board on the duties of the medical officers of health, and all the lawful orders and directions of the sanitary authority applicable to his office.

(17.) Whenever the Local Government Board shall make regulations for all or any of the purposes specified in section 134 of The Public Health Act, 1875 (1), and shall declare the regulations so made to be in force within any area comprising the whole or any part of the district, he shall observe such regulations, so far as the same relate to or concern his office.

Given under the seal of office of the Local Government Board this eighth day of March, in the year one thousand eight hundred and eighty.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

Date of publication in the *London Gazette.*
16th March, 1880.

GENERAL ORDER (RURAL SANITARY AUTHORITIES).

REGULATIONS AS TO MEDICAL OFFICERS OF HEALTH, WHOSE SALARIES ARE PARTLY REPAID OUT OF MONEYS VOTED BY PARLIAMENT(2).

To the several rural sanitary authorities, for the time being, in England and Wales;—

And to all others whom it may concern.

[The order is similar to that addressed to urban sanitary authorities, *ante*, p. 1556, with the exception of Arts. 4, 5 and 7, which are given below, and which take the place of Arts. 4, 5 and 7 in the order addressed to urban authorities, and except that in certain articles the words "district or districts" occur instead of the word "district."]

Art. 4. An appointment of a medical officer of health shall not be made unless notice has been given at one of the two ordinary meetings next preceding the meeting at which the appointment is to be made by the sanitary authority, such notice being duly entered on the minutes, or unless an advertisement specifying the district or districts for which such appointment is to be made, together with the amount of salary proposed to be assigned, and the day fixed for such appointment, shall have appeared in some public newspaper circulating in the district of the sanitary authority at least seven days before the day so fixed.

Art. 5. Every such officer shall be appointed by a majority of the members present at a meeting of the sanitary authority consisting of more than three members, or by three members, if no more be present.

Art. 7. Upon the occurrence of vacancy in the office of medical officer of health, the sanitary authority shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by Art. 6 of this order.

Provided always as follows:—

(1.) If the sanitary authority desire to make any fresh arrangement with respect to the district or districts, or the terms of the appointment, they shall, before filling up the vacancy, supply the particulars of the arrangement to the Local Government Board in the manner prescribed by Art. 2 of this order in regard to the first appointment, and if the

(1) *Ante*, p. 109.

(2) As to medical officers no portion of whose salaries is repaid out of moneys voted by Parliament, see, *post*, p. 1562.

a proval of the Local Government Board be given, absolutely or with modifications, the sanitary authority shall then proceed to fill up the vacancy according to the terms of the approval so given.

(2.) If the vacancy arise from notice given by an officer of an intended resignation to take effect on a future day, the sanitary authority may elect a successor to such officer in conformity with the above regulations, at any time subsequent to such notice.

(3.) If the sanitary authority deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to the approval of the Local Government Board.

(4.) In the case of an officer who holds his office for a specified term, the sanitary authority may provide for the continuance of such officer, or appoint his successor, within three calendar months next before the expiration of such term.

Given under the seal of office of the Local Government Board, this eleventh day of March, in the year one thousand eight hundred and eighty.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

Date of publication in the *London Gazette.*
16th March, 1880.

GENERAL ORDER (URBAN SANITARY AUTHORITIES.)

REGULATIONS AS TO MEDICAL OFFICERS OF HEALTH, NO PORTION OF WHOSE SALARIES IS REPAID OUT OF MONEYS VOTED BY PARLIAMENT[1].

To the several urban sanitary authorities, for the time being, in England and Wales;—

And to all others whom it may concern.

Whereas by section 189 of the Public Health Act, 1875[2], it is enacted that every urban sanitary authority shall from time to time appoint a medical officer of health, and by section 191 of that Act it is enacted as follows:—

"A person shall not be appointed medical officer of health under this Act unless he is a legally qualified medical practitioner; and the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary, and tenure of office of a medical officer of health or other officer of a local authority, any portion of whose salary is paid out of moneys voted by Parliament, and may by order prescribe the qualification and duties of other medical officers of health appointed under this Act."

Now therefore, we, the Local Government Board, hereby order as follows with respect to the qualification and duties of every medical officer of health, no portion of whose salary is paid out of moneys voted by Parliament, and who may be appointed or re-appointed by any urban sanitary authority after the twenty-fifth day of March, one thousand eight hundred and eighty.

Qualification.

Art. 1. [The same as Art. 1, *ante*, p. 1557.]

Duties.

Art. 2. The following shall be the duties of the medical officer of health in respect of the district for which he is appointed:—

(1.) He shall, within seven days after his appointment, report the same in writing to the Local Government Board.

[The other duties are identical with those of medical officers, whose salaries are partly repaid out of moneys voted by Parliament.]

Given under the seal of office of the Local Government Board, this ninth day of March, in the year one thousand eight hundred and eighty.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

Date of publication in the *London Gazette.*
16th March, 1880.

(1) As to medical officers whose salaries are partly repaid out of moneys voted by Parliament, see, *ante*, p. 1556.

(2) *Ante*, p. 150. As to officers of rural authority, see section 190, *ante*, p. 151.

GENERAL ORDER (RURAL SANITARY AUTHORITIES).

REGULATIONS AS TO MEDICAL OFFICERS OF HEALTH, NO PORTION OF WHOSE SALARIES IS REPAID OUT OF MONEYS VOTED BY PARLIAMENT.

To the several rural sanitary authorities, for the time being, in England and Wales;—

[The Circular is similar to that addressed to urban sanitary authorities, *ante*, p. 1561.]

Given under the seal of office of the Local Government Board, this twelfth day of March, in the year one thousand eight hundred and eighty.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

Date of publication in the *London Gazette*,
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GENERAL ORDER (URBAN SANITARY AUTHORITIES).

REGULATIONS AS TO INSPECTORS OF NUISANCES, WHOSE SALARIES ARE PARTLY REPAID OUT OF MONEYS VOTED BY PARLIAMENT.

To the several urban sanitary authorities, for the time being, in England and Wales;—

And to all others whom it may concern.

Whereas by a General Order dated the 11th day of November, 1872, addressed to "The several urban sanitary authorities in England and Wales constituted by the Public Health Act, 1872," the Local Government Board, acting under the authority conferred upon them by section 10 of that Act, prescribed regulations with respect to the appointment, duties, salary, and tenure of office of inspectors of nuisances appointed by such authorities, in all cases where any portion of the salary of any such officer was paid out of moneys voted by Parliament:

And whereas it is required by section 189 (1) of the Public Health Act, 1875, that every urban sanitary authority shall from time to time appoint an inspector of nuisances, and by section 191 (2) of that Act it is enacted that the Local Government Board shall have the same powers as it has in the case of a district medical officer of a union, with regard to the qualification, appointment, duties, salary, and tenure of office of any officer of a local authority, any portion of whose salary is paid out of moneys voted by Parliament;

And whereas urban sanitary authorities are local authorities within the meaning of the last-named section:

Now therefore, we, the Local Government Board, hereby order that the above cited order shall not apply to any inspector of nuisances appointed or re-appointed by any rural sanitary authority after the twenty-fifth day of March, one thousand eight hundred and eighty.

And we hereby order as follows with respect to the appointment, duties, salary, and tenure of office of every inspector of nuisances, any portion of whose salary is paid out of moneys voted by Parliament, and who may be appointed by any urban sanitary authority after the twenty-fifth day of March one thousand eight hundred and eighty, or who, having been appointed by such authority under the provisions of the above cited order, may be re-appointed by them after that date.

Appointment.

Art. 1. A statement shall be submitted to the Local Government Board, in a form to be supplied by them, showing the population and area of the district of the sanitary authority, together with the salary intended to be assigned to the officer, and such other particulars as may be prescribed by such form.

(1) *Ante*, p. 150. As to rural sanitary authorities, see section 190, *ante*, p. 151.
(2) *Ante*, p. 152.

Provided that where any such statement has been snbmitted to the said Board under the said order of the eleventh day of November, one thousand eight hundred and seventy-two, or under this order, no further statement nnder this article shall be necessary, unless required by the said Board.

Art. 2. When the approval of the Local Government Board has been given to the proposals contained in the statement submitted to them, the sanitary authority shall proceed to the appointment of an inspector of nnisances accordingly.

Art. 3. An appointment of an inspector of nuisances shall not be made nnless an advertisement specifying the amount of salary proposed to be assigned, and the day fixed for such appointment, shall have appeared in some public newspaper circulating in the district at least seven days before the day so fixed.

Art. 4. Every officer shall be appointed by a majority of the members present at a meeting of the sanitary anthority, and voting on the question.

Art. 5. Every appointment shall, within seven days after it is made, be reported to the Local Government Board by the clerk to the sanitary authority.

Art. 6. Upon the occurrence of a vacancy in the office of inspector of nuisances, the sanitary authority shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by Art. 5 of this order:

Provided always as follows:—

(1.) If the sanitary anthority desire to make any fresh arrangement with respect to the terms of the appointment, they shall before filling up the vacancy, supply the particulars of the arrangement to the Local Government Board in the manner prescribed by Art. 1 of this order in regard to the first appointment, and if the approval of the Local Government Board be given, absolutely or with modifications, the sanitary authority shall then proceed to fill up the vacancy according to the terms of the approval so given.

(2.) If the vacancy arise from notice given by an officer of an intended resignation to take effect on a future day, the sanitary authority may elect a successor to such officer in conformity with the above regulations, at any time subseqnent to such notice.

(3.) If the sanitary authority deem it advisable that the vacancy should not be filled up forthwith, they may appoint a person to act temporarily, subject to the approval of the Local Government Board.

(4.) In the case of any officer who holds his office for a specified term the sanitary authority may provide for the continuance of such officer, or appoint his successor, within three calendar months next before the expiration of snch term.

Art. 7. If in the case of an officer who may have been appointed for a specified term, the sanitary authority shonld desire to renew his appointment for a further term or otherwise in conformity with the provisions of this order, and no fresh arrangement should be proposed with respect to the terms of the appointment, it shall not be necessary for that purpose that Articles 1, 2, and 3 of this order should be complied with, but it shall be sufficient if the sanitary authority, at a meeting held after notice given at one of their two ordinary meetings next preceding such meeting, pass a resolution renewing the appointment accordingly on the expiration of the term for which it was made, and the Local Government Board sanction such resolution.

Art. 8. If any officer be at any time prevented by sickness or accident, or other sufficient reason, from performing his duties, the sanitary authority may appoint a person qualified as aforesaid to act as his temporary substitute, and may pay him a reasonable compensation for his services; and it shall not be necessary in any such case that Arts. 1, 2, and 3 of this order shall be complied with, but Arts. 4 and 5 of this order shall apply in every such case.

Tenure of Office.

Art. 9. Every officer shall continue to hold office for such period as the sanitary anthority may, with the approval of the Local Government Board, determine, or until he die, or resign, or be removed by such authority with the assent of the Local Government Board, or by the Local Government Board, or be proved to be insane by evidence which that Board shall deem sufficient.

Art. 10. The sanitary authority may at their discretion suspend any officer from the discharge of his duties, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the Local Government Board; and if the Local Government Board remove the suspension of such officer by the sanitary authority, he shall forthwith resume the performance of his duties.

Art. 11. Where any change in the duties or salary of any officer may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority may, with the consent of the Local Government Board, but not otherwise, and after six months' notice in writing signed by their clerk, given to such officer, determine his office.

Art. 12. A person shall not be appointed who does not agree to give one month's notice previous to resigning the office, or to forfeit such sum as may be agreed upon as liquidated damages.

Salary.

Art. 13. The sanitary authority shall pay to every officer such salary as may be approved by the Local Government Board.

Provided always, that the sanitary authority, with the approval of the Local Government Board, may pay to any officer a reasonable compensation on account of extraordinary services, or other unforseen or special circumstances connected with his duties or the necessities of the district.

Art. 14. The salary of every officer shall be payable up to the day on which he ceases to hold the office, and no longer, subject to any deduction which the sanitary authority may be entitled to make in respect of Art. 12 of this order; and in case he shall die whilst holding such office the proportion of salary (if any) remaining unpaid at his death shall be paid to his personal representatives.

Provided that an officer who may be suspended, and who may, without the previous removal of such suspension, resign or be removed under Article 9 of this order, shall not be entitled to any salary from the date of such suspension.

Art. 15. The salary assigned to every officer shall be payable quarterly, according to the usual feast days in the year, namely, Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day; but the sanitary authority may pay to him at the expiration of every calendar month such proportion as they may think fit, on account of the salary to which he may become entitled at the termination of the quarter.

Art. 16. All salaries shall be considered as accruing from day to day, and be apportionable in respect of time accordingly, in pursuance of the provisions of "The Apportionment Act 1870."

Duties.

Art. 17. The following shall be the duties of the inspector of nuisances in respect of the district for which he is appointed:—

(1.) He shall perform, either under the special directions of the sanitary authority, or (so far as authorised by the sanitary authority) under the directions of the medical officer of health, or in cases where no such directions are required, without such directions, all the duties specially imposed upon an inspector of nuisances by the Public Health Act 1875, or by the orders of the Local Government Board, so far as the same apply to his office.

(2.) He shall attend all meetings of the sanitary authority when so required.

(3.) He shall, by inspection of the district, both systematically at certain periods, and at intervals as occasion may require, keep himself informed in respect of the nuisances existing therein that require abatement under the Public Health Act, 1875.

(4.) On receiving notice of the existence of any nuisance within the district, or of the breach of any bye-laws or regulations made by the sanitary authority for the suppression of nuisances, he shall, as early as practicable, visit the spot, and inquire into such alleged nuisance or breach of bye-laws or regulations.

(5.) He shall report to the sanitary authority any noxious or offensive businesses, trades, or manufactories established within the district, and the breach or non-observance of any bye-laws or regulations made in respect of the same.

(6.) He shall report to the sanitary authority any damage done to any works of water supply or other works belonging to them, and also any case of wilful or negligent waste of water supplied by them, or any fouling by gas, filth, or otherwise, of water used for domestic purposes.

(7.) He shall from time to time, and forthwith upon complaint, visit and inspect the shops and places kept or used for the sale of butchers' meat, poultry, fish, fruit, vegetables, corn, bread, flour, or milk, or as a slaughter-house, and examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk which may be therein; and in case any such article appear to him to be intended for the food of

man, and to be unfit for such food, he shall cause the same to be seized, and take such other proceedings as may be necessary in order to have the same dealt with by a justice: Provided that in any case of doubt arising under this clause, he shall report the matter to the medical officer of health, with the view of obtaining his advice thereon.

(8.) He shall, when and as directed by the sanitary authority, procure and submit samples of food, drink, or drugs suspected to be adulterated, to be analysed by the analyst appointed under "The Sale of Food and Drugs Act, 1875" (1), and upon receiving a certificate stating that the articles of food, drink, or drugs are adulterated, cause a complaint to be made, and take the other proceedings prescribed by that Act.

(9.) He shall give immediate notice to the medical officer of health of the occurrence within the district of any contagious, infectious, or epidemic disease; and whenever it appears to him that the intervention of such officer is necessary in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, he shall forthwith inform the medical officer thereof.

(10.) He shall, subject to the directions of the sanitary authority, attend to the instructions of the medical officer of health with respect to any measures which can be lawfully taken by an inspector of nuisances under the Public Health Act, 1875, for preventing the spread of any contagious, infectious, or epidemic disease of a dangerous character.

(11.) He shall enter from day to day, in a book to be provided by the sanitary authority, particulars of his inspections and of the action taken by him in the execution of his duties. He shall also keep a book or books, to be provided by the sanitary authority, so arranged as to form, as far as possible, a continuous record of the sanitary condition of each of the premises in respect of which any action has been taken under the Public Health Act, 1875, and shall keep any other systematic records that the sanitary authority may require.

(12.) He shall at all reasonable times, when applied to by the medical officer of health, produce to him his books, or any of them, and render to him such information as he may be able to furnish with respect to any matter to which the duties of inspector of nuisances relate.

(13.) He shall, if directed by the sanitary authority to do so, superintend and see to the due execution of all works which may be undertaken under their direction for the suppression or removal of nuisances within the district.

(14.) In matters not specifically provided for in this order, he shall observe and execute all the lawful orders and directions of the sanitary authority, and the orders of the Local Government Board which may be hereafter issued, applicable to his office.

Given under the seal of office of the Local Government Board, this tenth day of March, in in the year one thousand eight hundred and eighty.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

Date of publication in the *London Gazette*,
16th March, 1880.

GENERAL ORDER (RURAL SANITARY AUTHORITIES).

REGULATIONS AS TO INSPECTORS OF NUISANCES, WHOSE SALARIES ARE PARTLY REPAID OUT OF MONEYS VOTED BY PARLIAMENT.

To the several rural sanitary authorities, for the time being, in England and Wales;—

And to all others whom it may concern.

[The order is similar to that addressed to urban sanitary authorities, *ante*, p. 1562, with the exception of Arts. 3, 4, 6, 7, and 11, which are given below, and which take the place of Arts. 3, 4, 6, 7, and 11, in the order addressed to urban authorities.]

Inspectors of Nuisances.

Art. 3. An appointment of an inspector of nuisances shall not be made unless notice has been given at one of the two ordinary meetings next preceding the meeting at which the appointment

(1) The Act will be found, *ante*, p. 632.

is to be made by the sanitary authority, such notice being duly entered on the minutes, or unless an advertisement specifying the district or districts for which such appointment is to be made, together with the amount of salary proposed to be assigned, and the day fixed for such appointment shall have appeared in some public newspaper circulating in the district of the sanitary authority at least seven days before the day so fixed.

Art. 4. Every such officer shall be appointed by a majority of the members present at a meeting of the sanitary authority consisting of more than three members, or by three members, if no more be present.

Art. 6. Upon the occurrence of a vacancy in the office of inspector of nuisances, the sanitary authority shall proceed to make a fresh appointment, which shall be reported to the Local Government Board as required by Art. 5 of this order.

Art. 7. If in the case of an officer who may have been appointed for a specified term, the sanitary authority should desire to renew his appointment for a further term or otherwise in conformity with the provisions of this order, and no fresh arrangement should be proposed with respect to the district or districts, or the terms of the appointment, it shall not be necessary for that purpose that Articles 1, 2, and 3 of this order should be complied with, but it shall be sufficient if the sanitary authority, at a meeting held after notice given at one of their two ordinary meetings next preceding such meeting, pass a resolution renewing the appointment accordingly on the expiration of the term for which it was made, and the Local Government Board sanction such resolution.

Art. 11. Where any change in the extent of the district or districts of any officer, or in his duties or salary, may be deemed necessary, and he shall decline to acquiesce therein, the sanitary authority may, with the consent of the Local Government Board, but not otherwise, and after six month's notice in writing, signed by their clerk, given to such officer, determine his office.

Given under the seal of office of the Local Government Board, this thirteenth day of March, in the year one thousand eight hundred and eighty.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

Date of publication in the *London Gazette*,
16th March, 1880.

LOCAL BOARDS ACCOUNTS ORDER 1880 (1).

To the local boards, for the time being, of the several Local Government Districts in England and Wales;—

To the district auditors within whose districts the said Local Government Districts are for the time being, respectively included;—

And to all others whom it may concern.

Whereas by section 245 of the Public Health Act, 1875, it is enacted that the accounts of the receipts and expenditure under that Act of every local authority shall be made up in such form and to such day in every year as the Local Government Board may appoint.

And whereas by section 5 of the District Auditors Act, 1879, it is enacted as follows:—

"Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section 98 of the Poor Law Amendment Act, 1834."

And whereas local boards for Local Government Districts are local authorities within the meaning of the sections above-cited.

Now, therefore, we, the Local Government Board, in pursuance of the powers given to us by the statute in that behalf, hereby order as follows:—

Art. 1. The several regulations in this order contained shall, from and after the twenty-fifth

(1) See the two preceding Circulars, and as to the Accounts of Improvement Commissioners, see the preceding Circular.

day of March, one thousand eight hundred and eighty, be observed in regard to the accounts of the local board, for the time being, of every Local Government District in England and Wales, and of their officers, and in regard to the audit of such accounts, except in so far as the Local Government Board may from time to time assent to any departure from such regulations.

Closing of Accounts.

Art. 2. All the accounts of the local board and their officers shall be made up and balanced to the twenty-fifth day of March in every year.

Local Board's Accounts.

Art. 3. The clerk or other officer duly authorised by the local board shall enter from time to time at proper dates in the *Minute Book* of the local board, according to the Form (A.) in the schedule to this order, a statement of all orders drawn on the treasurer and of all moneys paid or received on behalf of the local board, and of all minutes relating to the allocation or division of charges, or any other pecuniary transaction of the local board, and shall insert marginal notes of reference to the respective folios of the ledger in which the items relating to any of such orders, payments, receipts or other pecuniary transactions are entered.

Art. 4. The clerk or other officer duly authorised by the local board shall accurately and punctually enter up and keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this order and in the schedule thereto, namely:—

(1.) *A ledger*, in the Form (B.), in which the items contained in the minute book of the various transactions relating to the receipt or payment of moneys in respect of the district, or of any part thereof, shall be entered and posted up according to their proper dates, under the following heads of subordinate accounts (or as many thereof as may be necessary), and such additional heads as may be or may from time to time become necessary, viz.;

Subordinate Accounts of Public Works :—

Sewerage.
Water supply.
Gas supply.
Repairs of highways (main roads).
Repairs of highways (other roads).
Scavenging.
Watering.
Street works and improvements.
Baths and washhouses.
Market places.
Slaughter-houses.
Pleasure grounds.
Hospitals.
Sale of surplus lands.

Subordinate Accounts of Private Works :—

Drainage.
Water supply.
Street works.

Subordinate Accounts of a General Character :—

Salaries of officers.
Establishment charges, other than salaries.
Elections.
Surveys and plans.
Legal expenses.
Compensations.
Collector's account.
Surveyor's account.
Treasurer's account.
School attendance committee account.
Invoice account, or tradesmen's account.

And with reference to every loan obtained by the local board, there shall be kept in the ledger, separate accounts under the following heads ; so far as the same are applicable to the loan :—

The treasurer, in respect of his receipts and payments on account of the loan.

The lender, in respect of the advance and repayment of the loan, and of the payment of the interest thereon.
The permanent works for which the loan is obtained.
The instalments.
The interest on the loan.
The sinking fund.

At the end of every year, or oftener, if directed by the local board, the expenditure so entered under the foregoing subordinate accounts shall be allocated or divided under the direction of the local board amongst the following chief accounts, or such others as may be deemed necessary, viz.:—

District fund account.
General district rate account.
Private improvement rate or expenses account.
Water rate account.
Highway rate account.

At the end of every half year a balance sheet or general balance account shall be duly entered in the ledger.

In connection with the several items in each of the accounts mentioned in No. (1.) of this article, the respective dates of the transactions shall be inserted, together with references to the folios of the minute book in which the entries relating to such transactions are contained, and to the folios of the corresponding debits and credits respectively.

(2.) *A highway repairs expenditure account*, in the Form (C.), in which shall be entered weekly (or at such other period as the local board may direct), under the four following headings:—

1. Manual labour;
2. Team labour;
3. Materials;
4. Tradesmen's bills and miscellaneous;

the particulars of the payments made for the repairs of the highways, according to the arrangement of the columns under each of those headings, the payments being shown separately as regards main roads and other roads in the columns provided for that purpose.

(3.) *An order check book*, in the Form (D.) which shall contain all orders given by the local board for stores, or other articles, for repairs, or for work, and counterfoils of such orders, and forms of the invoices to accompany commodities supplied, or to be delivered when work is done. Such orders, when duly signed by the clerk or other officers duly authorised, together with the forms of invoice, shall be detached from the said book, and issued to the tradesmen or other persons dealt with or employed, to be returned and disposed of in the manner directed in the form; and the counterfoils, duly signed, shall be retained in the said book.

Treasurer's Account.

Art. 5. The treasurer of the local board shall keep an account according to the Form (E.) in the said schedule, in which shall be entered punctually and accurately all moneys received and paid by him on behalf of the local board. He shall balance and sign this account quarterly, or at such other times as may be directed by the local board.

Surveyor's Accounts.

Art. 6. The surveyor shall accurately and punctually enter up the following accounts, according to the forms and directions relating to such accounts respectively in this order and in the schedule thereto, namely:

(1.) *A wages account* in the Form (F.), in which shall be entered the names of the labourers employed by the local board, the days on which, as well as the places at and the work on which they were so employed, the rate of pay, and the amount of wages earned, together with the date of payment.

This account shall also distinguish, as regards repairs of the highways, the amounts in respect of main roads from those in respect of other roads, under the following divisions:—

1. Manual labour.
2. Team labour.
3. Materials.

If the local board deem it more convenient, this form may be kept in separate sheets, instead

of in a book, and each sheet may, if the local board so direct, be arranged so as to contain such particulars only as relate to a specific description of work, whether in respect of highways or otherwise.

The surveyor shall, at the time of payment, obtain the signatures of the labourers in the column provided for that purpose, or if any of them are unable to write, they shall affix their marks, which shall be duly attested in acknowledgment of the receipt of the money.

The surveyor shall also sign his name in the place provided for that purpose at the foot of the form.

Provided that where, under the directions of the local board, the wages of the labourers are paid by the clerk or other officer, instead of the surveyor, the above requirements in regard to entering the date of payment and obtaining the labourers' signatures or marks, shall not apply to the surveyor, but shall apply to the clerk or other officer as aforesaid.

(2.) *A stores account*, in the Form (G.), in which, under separate divisions, according to the directions appended to the form, shall be entered on one side, in order of date, the quantities, prices, and cost of stores received, and on the other side the quantities, prices, and cost of stores expended, as well as the places where and the purposes for which they were expended.

The stores account shall be balanced as required by Art. 2, and at such other times as the local board may direct.

(3.) If the surveyor, under the directions of the local board, receives any money, or makes any payments on their behalf, he shall enter such receipts and payments in a *cash account*, according to the Form (M.), and use a *general receipt check book*, according to the Form (L.)

Accounts of Collectors and other Officers.

Art. 7. In the case of every rate which may be levied by the local board, there shall be kept, either in the same book with the rate, or in a separate book, a *rate collection account*, which account shall be in the Form (H.) in the schedule to this order, or in a form to the like effect, and shall be accurately and punctually entered up every week by the collector, in accordance with the directions appended to the said form, and shall be duly signed by him when balanced.

Provided that where the said *rate collection account* is kept in the same book as the rate, the columns headed "Number of Assessment" and "Amount of rate at in the Pound" may be omitted from the form.

Provided also, that if the local board deem it advisable that the *rate collection account* should be kept by their clerk, such account may be kept and signed by the clerk accordingly, instead of by the collector.

The *rate collection account* shall be balanced as required by Art. 2, and if the rate to which it relates is closed at any other time than the 25th day of March, then also at such closing of the rate.

Art. 8. The collector shall keep a *collecting and deposit account*, in the Form (I.), in which shall be entered accurately, and under their true dates, all sums received by him as such collector or paid over by him to the treasurer of the local board.

Art. 9. The collector shall, in the collection of every rate, use a *rate receipt check book*, in the Form (K.) in the said schedule, or in such other form as the local board may direct, applicable to one or to several rates as they may think fit. The receipts and counterfoils in this book shall be numbered consecutively according to the numbers or assessments in the rate book.

When the amount of the rate shall be received from any person assessed, the receipt applicable to such person's assessment shall, at that time and not before, be signed by the collector and detached from the rate receipt check book, and shall be delivered, stamped with an adhesive stamp, where the amount of the payment shall render such stamp necessary, to the person making the payment, and the counterfoil, duly filled up, shall be retained in the book. In the receipt so delivered, and in the counterfoil so retained, the true date of the payment shall be inserted.

If upon the closing of any rate not fully collected there shall remain in the rate receipt check book any receipts made out for such rate unused, the collector shall enter upon each of such receipts the reason for not using it, and date and sign such entry.

Art. 10. Whenever money is received by the collector otherwise than in respect of rates, or by the clerk or other officer, on behalf of the local board, he shall duly fill up one of the receipts and counterfoils in the *general receipt check book*, Form (L.), and shall deliver the receipt (stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary) to the person making the payment, and shall retain the counterfoil in the book. Such receipts and counterfoils shall bear corresponding numbers in consecutive order.

Art. 11. If the clerk, or any other officer except the treasurer and collector, shall, under the directions of the local board, receive or pay moneys on their behalf, he shall keep a *cash account* according to the Form (M.) in the schedule to this order, and such account shall be balanced at such times as the local board may direct.

Audit.

Art 12. The district auditor shall audit the accounts of the local board and their officers once in every year, that is to say, as soon as may be after the twenty-fifth day of March. Provided always, that if the district auditor shall be required by the Local Government Board to hold an extraordinary audit, either of the whole or of any portion of the accounts, in addition to the ordinary audit, all the provisions herein contained with reference to the ordinary audit shall, so far as they may be applicable, apply to such extraordinary audit.

Art. 13. The clerk and the other officers of the local board who by law are liable to account to the district auditor shall attend at the time and place appointed by him for the audit of their accounts, and shall submit to him all books and accounts which they are respectively required to keep by this or any other order of the Local Government Board, or by the local board, together with all documents and vouchers containing or relating to such books or accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer interested in such accounts, but to such extent and in such manner only as will not, in the judgment of the said district auditor, interfere with the audit.

Art. 14. In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form, that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority. He shall ascertain whether all sums received, or which ought to have been received, are brought into account, and shall examine whether the expenditure is in all cases such as might lawfully be made. He shall also reduce such payments and charges as are exorbitant; shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss; and shall disallow and strike out such payments as are not authorised by law.

Art. 15. When the district auditor disallows any payment or surcharges any sum upon any person he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit, and shall report such disallowance or surcharge to the Local Government Board.

Art. 16. The district auditor shall examine and collate the several books and papers of account; and shall ascertain that the several entries correspond with and balance each other where such balance may be required; but in case of any error caused by inadvertence or accident in any account he may require the officer rendering it to correct the same, and the officer shall make the necessary correction, and the district auditor shall then deal with the account so corrected. But if the officer shall refuse to do so, the district auditor shall himself make the correction and report the circumstances of the case to the Local Government Board.

Art. 17. The district auditor shall compute the several accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time to which the audit relates; and he shall state the balance in words at length and certify the same by his signature or initials, and add the date of the audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificate and his reasons for the same (when they are required) in some part of the book of account which shall be free from other writing.

Art. 18. The district auditor shall receive any objection made by a ratepayer, or any person aggrieved, against the accounts undergoing audit, or any item or charge therein, or any voucher or authority for the same; and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge.

Art. 19. If the district auditor shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels, relating to the Local Government District, to appear before him, and shall call upon such person to produce any accounts, books, or papers which he may lawfully require; and he shall examine such officer or person

may then appear, and such accounts, books, and papers as may be produced before him respecting such account, item, or charge.

Art. 20. If the district auditor find that any money, goods, or chattels belonging to the local board have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any officer or other person accounting, and shall surcharge such officer or person with such amount or value in his account, he shall submit a statement of such surcharge to the local board as soon as he conveniently can do so.

Art. 21. The personal representatives of an officer accountable under this order, dying before the audit of his accounts, shall, so far as they may be by law required, account in conformity with the provisions herein contained in the place of such deceased officer, and all regulations affecting the accounts of such officer shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

Art. 22. The district auditor having audited the several accounts in the ledger, shall sign a certificate at the foot of the balance sheet therein, to the following effect:—

"I have examined the several accounts of which the foregoing is the balance sheet, and I have compared the several payments credited to the treasurer with the vouchers, and I hereby certify that the entries appear to be correct and legal. And that [when the balance in the account kept by the treasurer does not agree with the balance in the ledger], subject to the explanation below [the difference to be explained at the foot of the certificate], the balance of the treasurer's account herein, viz., £ , agrees with the balance which by his own account appears to have been in his hands at the time of closing such account.

"Dated——————(Signed)——————
District Auditor."

And in the other books the district auditor shall enter a certificate of his having audited the same, and sign and date the same.

Art. 23. The district auditor shall, at the close of each audit, transmit to the Local Government Board a statement in the Form (R.) in the said schedule, showing which of the books and accounts directed by this order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Local Government Board.

Financial Statement.

Art. 24. The financial statement required to be prepared and submitted to the district auditor in duplicate by the local board, in accordance with the provisions of section 3 of "The District Auditors Act, 1879," shall be in the Form (O.) in the schedule to this order, and shall contain the particulars therein specified or referred to; and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.

Interpretation of Terms.

Art. 25. In this order and in the forms set forth in the schedule thereto, the term—

"Clerk" means the clerk to the local board.

"District auditor" means the auditor for the time being in whose district the Local Government District is included.

"Rate," unless otherwise expressed, means any rate or assessment which may be made by the local board under the provisions of "The Public Health Act, 1875."

"Surveyor" means a surveyor appointed by the local board under the provisions of section 189 of "The Public Health Act, 1875" (1), and includes an assistant surveyor, where such an assistant is appointed under those provisions, and where he may be required by the local board to perform any of the duties herein prescribed.

"Main roads" means roads so constituted under "The Highways and Locomotives (Amendment) Act, 1878" (2).

"Manual labour" means manual labour employed in the actual execution of repairs, as distinct from such labour employed in obtaining, delivering, or preparing materials for repairs, and includes contract work for repairs, where such repairs are let by contract, and where the contract is not made exclusively for the purposes hereinafter described under either of the heads of "team labour" or "materials."

(1) *Ante*, p. 150. (2) *Ante*, p. 879.

"Team labour" means labour of that kind employed in the collection, delivery, or distribution of materials for the purpose of executing repairs, and includes such labour employed under any contract entered into for those purposes exclusively.

"Materials" means stone or other materials for repairs, and includes the cost of purchasing, getting, carrying, or preparing such materials, and of delivering the same other than by means of team labour. It also includes any such cost incurred under any contract entered into for those purposes exclusively, as well as damage to land in getting materials for the purpose of repairs, and royalty or rent of pits or quarries for that purpose.

"Tradesmen's bills" includes the cost of tools, implements, and other stock supplied by tradesmen for repairs and not hereinbefore included in the term "materials," and the cost incurred in repairs of drains, bridges, and fences executed by tradesmen; and when used in connection with "main roads" means tradesmen's bills for repairs incurred for main roads exclusively.

Given under the seal of office of the Local Government Board, this twenty-second day of March, in the year one thousand eight hundred and eighty.

(L.S.) G. SCLATER-BOOTH, *President.*

JOHN LAMBERT, *Secretary.*

SCHEDULE.

FORM (A.)

Minute Book.

Dr. *Cr.*

£	s.	d.	Debit Folio Ledger.	MINUTES.	Credit Folio Ledger.	£	s.	d.

FORM (B.)

The Ledger.

_____ LOCAL GOVERNMENT DISTRICT.

Fo. . *Dr.*

_____ LOCAL GOVERNMENT DISTRICT.

CONTRA. *Cr.* Fo.

Date.	Folio of Minute Book.	Folio of corres-ponding Credit.	Corresponding *Credit* and Items.	(1)			Totals.			Date.	Folio of Minute Book.	Folio of corres-ponding Debit.	Corresponding *Debit* and Items.	(2)			Totals.		
			To	£	*s.*	*d.*	£	*s.*	*d.*				*By*	£	*s.*	*d.*	£	*s.*	*d.*

(1.) When to any account any sum is debited, part of which is credited to one account and the remainder to another or others, the several sums so credited are to be written in this column, and their total in the next column. The several accounts to which such parts are credited are to be written against them respectively, together with the requisite explanation in the column for "Corresponding *Credit* and Items."

(2.) When to any account any sum is credited, part of which is debited to one account and the remainder to another or others, the several sums so debited are to be written in this column, and their total in the next column. The several accounts to which such parts are debited are to be written against them respectively, together with the requisite explanation in the column for "Corresponding *Debit* and Items."

FORM (C.)

Highway Repairs

Year ending the

_____ LOCAL GOVERNMENT DISTRICT.

Manual Labour.																Team Labour.													
No of Week.*	Date on which each Week* ends.	Amounts paid.												When paid.	Folio of Ledger.	Amounts paid.												When paid.	Folio of Ledger.
		To Labourers.						To Contractors.								To Labourers.						To Contractors.							
		Main Roads.			Other Roads.			Main Roads.			Other Roads.					Main Roads.			Other Roads.			Main Roads.			Other Roads.				
		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.			£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.		
1																													
2																													
3																													
4																													
5																													
6																													
Totals																												Totals	

* If the Local Board direct the entries in this Account to be made

FORM (C.)

Expenditure Account.

Twenty-fifth day of March, 18 .

_____ *Clerk.*

Materials.																				Tradesmen's Bills and Miscellaneous.								Gross Total.		
Amounts paid.																		When paid.	Folio of Ledger.	Amounts paid.						When paid.	Folio of Ledger.			
To Labourers.						To Contractors.						For Materials supplied otherwise than by Contract.																		
Main Roads			Other Roads.			Main Roads.			Other Roads.			Main Roads.			Other Roads.					Main Roads.			Other Roads.							
£	s.	d.	£	s.	d	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.			£	s.	d.	£	s.	d.			£	s.	d.

otherwise than weekly this heading must be altered accordingly.

FORM (D).

The Order Check Book.

_____ LOCAL GOVERNMENT DISTRICT.

COUNTERFOIL.

_____ day of _____,

No.* _____ 18

Mr.† _____

†

(*Signature*)

ORDER.

_____ day of _____,

No.* _____ 18 .

Mr.† _____

Please to†

(*Signature*)

The particulars and price of the goods or work are to be inserted, and the invoice returned when the order is executed.

INVOICE.

_____ day of _____,

No.* _____ 18 .

The _____ Local Board.

Drs. To†

Date.	Articles supplied or work done . .		£	s.	d.
	Total . .	£			

No. _____ §

Examined and Entered } _____

Surveyor.

_____ 18 .

Correct, _____ *Clerk.*

* This No. may be consecutive for a quarter of the year, or for the half-year, or for the year, as the Local Board shall direct. Where no direction is given it shall continue for the whole year.

† Insert in these spaces the name of the tradesman, the goods to be supplied, and the place at which they are to be delivered, or the work is to be done, as the case may be.

NOTE.—The order, with the invoice in blank, is to be detached from the counterfoil, and sent to the tradesman; the order is to be kept by the tradesman and the invoice returned when the order is completely executed; a ticket being sent containing the like entries with every delivery, when there is more than one. The invoice, after being entered by the surveyor in the *Stores Account*, should be kept by the clerk or other officer duly authorised by the Local Board, for reference and for production at the Audit.

§ This No. must be entered by the Surveyor according to the order of the receipt, and be consecutive as in the Note* in the Order Check Book.

FORM (E.)

Treasurer's Account.

_____ LOCAL GOVERNMENT DISTRICT.

Account of Receipts and Payments on behalf of the Local Board for the Year ended_____ day of_____18 .

RECEIPTS.						PAYMENTS.					
Date.	From whom.	On what account.	Amount.			Date of Payment.	Date of Order.	Name of Payee.	Amount.		
			£	s.	d.				£	s.	d.
								Balance .			
		Total .						Total .			

Signed this_____day of_____ _____*Treasurer.*

NOTE.—This account is to be balanced at the end of every quarter, or at such other times as may be directed by the Local Board, and signed by the Treasurer.

FORM (F.)

Wages Account.

Week ending ________ *the day of* __________ 18 , *being the* __________ *Week of the year ending the twenty-fifth day of March*, 18 .

__________ LOCAL GOVERNMENT DISTRICT. __________ *Surveyor.*

Labourers' Names.	Employment.		Week ending of 18 .						Number of			Rate per			Amounts due otherwise than in respect of Repairs of Highways.				Amounts due in respect of Repairs of Highways.							Labourers' Receipts.		
																			Manual Labour.		Team Labour.		Materials.					
	Where employed.	How employed.							Yards.	Loads.	Days.	Yard.	Load.	Day.	Sewerage.	Street Works and Improvements.	—	Total. (*a*).	Main Roads.	Other Roads.	Main Roads.	Other Roads.	Main Roads.	Other Roads.	Total. (*b*.)	Amount due according to Columns (*a*.) and (*b*.)	When Paid.	Labourers' Signatures.
			M.	T.	W.	Th.	F.	S.							£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*	£ *s.* *d.*		
														TOTALS														

The columns appropriated for the days in each week are intended to show on what days the labourers were employed, and should be filled up thus: (1) or (½), according as the labourers were employed for the day or part of the day.

This Account may extend over a longer period than one week, if the Local Board so direct, and in such case the column "Week ending, &c.," must be repeated, and the heading of the Form altered accordingly.

The sums set opposite to the names of the several labourers in the column headed "When paid" were paid by me to such labourers respectively on the dates specified in that column.

__________ *Surveyor* [*or Clerk or other Officer*.]

FORM (G.)

Stores Account.

_____ LOCAL GOVERNMENT DISTRICT. *Year ended the 25th day of March,* 18 . _____ *Surveyor.*

_____* STORES RECEIVED.															STORES EXPENDED.													
Date.	No. of Invoice in Order Check Book.†	No. of Invoice according to order of receipt.	From whom received.	Number of					Rate per					Cost.	Date.	Where expended.	For what purpose.	Number of					Rate per					Cost.
				Tons.	Yards.	Cwts.			Ton.	Yard.	Cwt.							Tons.	Yards.	Cwts.			Ton.	Yard.	Cwt.			
			Balance brought forward.											£ s. d.														£ s. d.
																Balance remaining .												

* One or more pages of this Account should be appropriated to each description of Stores, *e.g.*, Flints, Gravel, Coals. The word "Stores," as here used, includes Highway "Materials."

† The Invoices, after being entered by the Surveyor in this Account, should be kept by the Clerk for reference, and for production at the Audit.

FORM (H.)

Rate Collection Account.

* General District Rate made on the _____ day of _____ 18 .

_____ LOCAL GOVERNMENT DISTRICT.

Number of Assessment.	Amount of Rate at in the Pound.	Recoverable Arrears of former Rates, if any.	Amount to be collected according to Columns 2 and 3.	Amount added under Sect. 221 of the Public Health Act, 1875.	Amount deducted or allowed under Public Health Act, 1875.				Amount payable according to preceding Columns.	Amount actually collected.	Date of Collection (Day, Month, and Year).	Uncollected at first balancing this Book.	Irrecoverable at finally balancing this Book.		Recoverable Arrears at finally balancing this Book.
					Under Sect. 221.	Sewerage under Sect. 224.	On account of Poverty, under Sect. 225.	On Appeal under Sect. 269.					Amount.	Causes.	
1	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.
	£ s. d	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.		£ s. d.
† TOTALS															

_____
Collector for the above-named District,
or

_____
Clerk to the Local Board.

* If this Form is used for any other Rate than the "General District Rate," the title, and the headings of the columns, when necessary, should be altered accordingly.

† The sub-division of totals is introduced in columns 11 and 13 to meet a case where it may be found desirable to balance the Rate before closing it. In such a case the upper division is intended for the amount collected at the first balancing, and the lower one for the amount collected since the first balancing.

Columns 1 and 2 may be omitted when the *Rate Collection Account* is kept in the same Book with the Rate.

FORM (I.)

Collecting and Deposit Account.

____________ LOCAL GOVERNMENT DISTRICT. ____________ *Collector.*

RECEIPTS.																																				
From Rates.												From other sources.																		Total.*			Deposits with Treasurer.			
General District Rate.						______ Rate.						Water.						Gas.						______												
When received.	No. of Rate Receipt.	Date of Rate.	Amount.			When received.	No. of Rate Receipt.	Date of Rate.	Amount.			When received.	No. of Receipt.	From whom received.	Amount.			When received.	No. of receipt.	From whom received.	Amount.			When received.	No. of Receipt.	From whom received.	Amount.						Date.	Amount.		
			£	s.	d.				£	s.	d.				£	s.	d.				£	s.	d.				£	s.	d.	£	s.	d.		£	s.	d.

* When the Collector pays any sum he shall carry out the Total in this column against the entry of the sum in the Deposits.

FORM (K.)

_____ *Rate Receipt Check Book.*

This part is to be retained in the Book.

COUNTERFOIL.

No._____.

_____

LOCAL GOVERNMENT DISTRICT.

_____*day of*_____18 .

*Mr.*_____

Occupier [or *Owner*].

_____*Rate made on the*

_____*day of*_____

18 , *on Land* [or *Property other than Land.*]

_____

£

(*Signed*)_____

_____

RECEIPT.

No._____.

_____LOCAL GOVERNMENT DISTRICT.

*day of*_____18 .

*Received of*_____

Occupier [or *Owner*] *the Sum of*_____

*in respect of the*_____*Rate, viz.:—*

£ *s.* *d.*

*Rate made the*_____*day of*_____

18 , *at* *in the Pound on*

£_____*Rateable Value of Land*

[or *Property other than Land.*] . .

_____

Total . .

(*Signed*)_____

_____

Where the Rate is levied in different proportions on different descriptions of property, the Receipt and Counterfoil should show the description of property in respect of which the amount due is assessed. Hence, the word *Land*, or the words *Property other than Land*, should be struck out, as the case may require. In like manner, the word *Owner*, or the word *Occupier* should be struck out according to circumstances.

FORM (L.)

General Receipt Check Book.

COUNTERFOIL.

No._____.

_____LOCAL GOVERNMENT DISTRICT.

_____day of_____18 .

*of Mr.*_____

£_____

*for*_____.

_____

Clerk [or *Surveyor* or *Collector*].

RECEIPT.

No._____.

_____LOCAL GOVERNMENT DISTRICT.

_____day of_____18 .

*Received of Mr.*_____

*the sum of*_____*pounds*_____*shillings and*_____*pence*

*for*_____

_____

Clerk [or *Surveyor* or *Collector*].

_____

£

FORM (M.)

Cash Account.

Week ending the _____ *day of* _____ 18 ,

being the _____ *week of the Quarter ending*

the _____ *day of* _____ 18 .

_____ LOCAL GOVERNMENT DISTRICT.

_____ *Clerk* [or *Surveyor* or *other Officer*].

Dr.								*Cr.*									
Date.	BALANCE BROUGHT FORWARD :	£	s.	d.	£	s.	d.	Date.		No. of Voucher.	£	s.	d.	£	s.	d.
									BALANCE IN HAND :							

FORM (O.)

——————————Local Government District.

Financial Statement.

"The District Auditor's Act, 1879" (42 Vict. c. 6.)

Statement of Receipts and Expenditure by the Local Board for the above-named Local Government District, for the Year ended the twenty-fifth day of March, 18 .

RECEIPTS OTHER THAN FROM LOANS.

——	Amounts.			Totals.		
	£	s.	d.	£	s.	d.
Public Rates.						
From General District Rate						
From Special District Rate (if any)						
From Highway Rate						
From Water Supply Rate						
From Gas Supply Rate						
From Market Tolls or other Dues and Duties (if any). .						
From Precepts in respect of expenses of School Attendance Committee (if any)						
Private Rates.						
From Private Improvement Rates						
From Water Supply Rates or Rents						
Other Receipts.						
From Parliamentary Grant . { Salary of Medical Officer of Health . . . / Salary of Inspector of Nuisances . . . }						
District Fund Account (if any)						
From all other sources						
Burial Board Receipts.						
Amount of the Expenditure by the Local Board as a Burial Board, where acting in the latter capacity						
Gross Receipts . . .						

FORM (O.)—Financial Statement—*continued.*

EXPENDITURE OTHER THAN FROM LOANS.

	Amounts.			Totals.		
	£	s.	d.	£	s.	d.
PUBLIC WORKS.						
Sewerage						
Water Supply						
Gas Supply						
Highways (less amount* borne by County Authority in respect of repairs of Main Roads, if any)						
Scavenging and Watering						
Parks or Public Pleasure Grounds						
Hospitals						
Other Public Works						
£ s. d.						
* Amount borne by County Authority .						
PRIVATE IMPROVEMENT WORKS.						
Drainage and Water Supply						
Other Private Improvement Works						
Amount of Expenditure on Public Works and Private Improvement Works . . .						

I I I I I

FORM (O.)—Financial Statement—*continued.*

EXPENDITURE OTHER THAN FROM LOANS—*continued.*

	Amounts.			Totals.		
GENERAL EXPENDITURE.	£	s.	d.	£	s.	d.
Election Expenses						
Legal Expenses						
Salaries (less amount† borne by Parliamentary Grant), viz.— Clerk						
Treasurer						
Medical Officer of Health						
Inspector of Nuisances						
Surveyor						
Establishment Charges, other than Salaries						
Repayment of Loans, with Interest‡						
Expenses of School Attendance Committee (if any)						
Other Payments (excluding contributions on Precepts of Joint Boards or Port Sanitary Authorities) §						

† Amount borne by Parliamentary Grant:	£	s.	d.
Medical Officer of Health			
Inspector of Nuisances			

§ Amount paid on Precepts:	£	s.	d.
To Joint Boards			
To Port Sanitary Authorities			
_____			
_____			

BURIAL BOARD EXPENDITURE.	£	s.	d.
Amount of Expenditure by the Local Board as a Burial Board, where acting in the latter capacity **			
Amount of Expenditure on Public Works and Private Improvement Works, brought forward			
Total Expenditure included in this Statement			

‡ The particulars required with respect to loans are to be supplied in the Form (Q.) annexed.

** The amount to be inserted here will be the total expenditure shown in the Form (P.) annexed.

_____ Clerk [*or* _____] to the Local Board,

_____ day of _____ 18 .

I hereby certify that I have compared the entries in the above statement with the vouchers and other documents relating thereto, and that the regulations with respect to such statement have been duly complied with.

I hereby further certify that I have ascertained by audit the correctness of such statement, and that the amount expended by the Local Board during the year ended the 25th day of March, 18 , as included in such statement and allowed by me at the audit, is [*here insert the amount in words at length*].

As witness my hand this day of , 18 .

_____ Stamp. _____ *District Auditor.*

FORM (P.)

_____ LOCAL GOVERNMENT DISTRICT (BURIAL BOARD).

Statement of Receipts and Expenditure by the Local Board for the above-named Local Government District, acting as the Burial Board for that District [or for the _____ of _____ comprised in that District], for the Year ended the 25th day of March, 18 .

RECEIPTS OTHER THAN FROM LOANS.

				Totals. £	s.	d.
From Poor Rate						
From Burial Board Rate or General District Rate						
From Burial Fees						
From all other sources:—	£	s.	d.			
_____						
_____						
_____						
Gross Receipts . . £						

EXPENDITURE OTHER THAN FROM LOANS.

	Amounts. £	s.	d.	Totals. £	s.	d.
Expenses in respect of Burial Grounds and Buildings						
Salaries; viz.:— Clerk						
Superintendent of Cemetery						
Keeper of Cemetery						
_____						
Establishment Charges, other than Salaries						
Repayment of Loans, with Interest *						
Burial Fees paid to Ministers and Incumbents						
Other Payments:—	£	s.	d.			
_____						
_____						
_____						
Total Expenditure included in this Statement						

* The particulars required with respect to Loans are to be supplied in the "Loan Account," Form (Q.) annexed.

_____ Clerk [*or* _____] to the Burial Board,

_____ day of _____ 18 .

Examined by me in connection with the Financial Statement for the year ended the 25th day of March, 18 , and found correct.

_____ District Auditor,

_____ day of _____ 18 .

FORM (Q.)

——————— —— Local Government District.

Loan

Statement with reference to Loans obtained by the Local Board
Year ended the Twenty-fifth

Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,† or otherwise.	For what object.‡	For what Period.	Rate of Interest.	Mode of repayment, whether by annuity or otherwise.
£						

* *Statement with reference to Loans obtained by the Local Board*
Year ended the Twenty-fifth

Amount originally advanced.	When advanced.	Whether by Public Works Loan Commissioners, a Company,† or otherwise.	For what object.‡	For what Period.	Rate of Interest.	Mode of repayment, whether by annuity or otherwise.
£						

* Where the Local Board do not act as a Burial Board, the second of the above Tabular those statements.

† If by a Company, insert the name.

‡ Where all or any portion of the Loan has been expended during the year, state the nature of the Works and the amount expended in each case.

Nature of Works.	Amount expended.
	£

Note.—It is only required that money be entered in the Form above to the nearest £; or more than 10*s*., they are to be taken as equal to £1; if less than 10*s*., they are to be

FORM (Q.)

ACCOUNT.

*for the above-named District [otherwise than as a Burial Board].**
day of March, 18 .

Amounts paid this Year.		Amount of Principal still owing.	Sinking Fund.			
Principal.	Interest.		Amount annually set apart.	Rate of Interest on which Fund is based.	Total Sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
£	£	£	£		£	

or the above-named District, acting as the Burial Board.
day of March, 18 .

Amounts paid this Year.		Amount of Principal still owing.	Sinking Fund.			
Principal.	Interest.		Amount annually set apart.	Rate of Interest on which Fund is based.	Total Sum in Fund.	Securities in which Fund is invested, and Rate of Interest payable on them.
£	£	£	£		£	

Statements is to be omitted, as well as the words within brackets at the head of the first of

_____ Clerk to the Local Board,

_____ day of _____ 18 .

Examined by me in connection with the Financial Statement for the year ended the 25th day of March, 18 , and found correct.

_____ District Auditor,

_____ day of _____ 18

whenever the fractional parts, in abstracting from the Books, amount in their total to 10*s.*, rejected. Thus, £175 10*s.* should be entered as £176, but £175 9*s.* 11*d.* as £175 only.

FORM (R.)

_____ *Audit District.*

_____ LOCAL GOVERNMENT DISTRICT.

A STATEMENT of the DISTRICT AUDITOR in reference to the Books and Accounts for the year ended the 25th day of March, 18 . As to the Books and Accounts to be kept by the CLERK,

Mr._____,

By the TREASURER,

Mr._____,

By the SURVEYOR,

Mr._____,

By the COLLECTOR,

Mr._____.

OBSERVATIONS.

	CLERK.
Minute Book.	
Ledger.	
Wages Account (portion of) if required.	
Highway Repairs Expenditure Account.	
General Receipt Check Book.	
Order Check Book.	
Cash Account.	
	TREASURER.
Treasurer's Account.	
	SURVEYOR.
Wages Account.	
Stores Account.	
Cash Account (if required).	
General Receipt Check Book (if required).	
	COLLECTOR.
Rate Collection Account.	
Rate Receipt Check Book.	
General Receipt Check Book.	
Collecting and Deposit Account.	
	OTHER OFFICERS (naming them).
General Receipt Check Book (if required).	
Cash Account.	

The Audit of the above Books and Accounts was concluded the day of 18 .

_____ *District Auditor.*

*Date*_____18 .

Against the name of any Book or Account contained in this Statement which is not kept at all, or is imperfectly kept, the District Auditor is to write in the former case "not kept," and in the latter "imperfectly." In case of any Book or Account being imperfectly kept, the general nature of the imperfection is to be set forth *on the other side*, together with such observations as the District Auditor considers requisite. Where there is no defect, the District Auditor should state the fact. And where any officer has in any respect disobeyed, neglected, or departed from any of the regulations of this Order applicable to his office, the District Auditor should report the facts on the other side.

GENERAL ORDER FOR ACCOUNTS.

BOARDS FOR REPAIR OF THE HIGHWAYS.

(5 & 6 Will. IV. c. 50, s. 18.)

To the boards for repair of the highways (for the time being) formed under section 18 of "The Highway Act, 1835";—

To the district auditors within whose districts the districts for which the said boards act are, for the time being, respectively included;—

And to all others whom it may concern.

Whereas by section 9 of "The Highways and Locomotives (Amendment) Act, 1878," it is enacted that the accounts of the highway authority of every highway district and highway parish shall be made up in such form as the Local Government Board shall from time to time prescribe, and shall be balanced to the twenty-fifth day of March in each year;—

And whereas by section 5 of "The District Auditors Act, 1879," it is enacted as follows:—

"Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section 98 of the Poor Law Amendment Act, 1834."

Now therefore, we, the Local Government Board, hereby order as follows:—

Art. 1.—The several regulations in this Order shall, subject to the provision contained in Art. 11 with respect to the financial statement for the year ended the 25th day of March, 1880, be observed from and after the 29th day of September, 1880, in regard to the accounts of every board for repair of the highways (for the time being) formed under section 18 of "The Highway Act, 1835," and of the officers of such board, and to the audit of such accounts, except in so far as the Local Government Board may from time to time assent to any departure from such regulations.

Accounts to be kept by the Clerk.

Art. 2.—The clerk shall enter from time to time at proper dates in the minute book of the board a statement of the books and accounts inspected and examined by him, and of all orders drawn on the treasurer, and of all moneys paid or received, and of all minutes relating to the allocation or division of charges, or any other pecuniary transaction of the board, and shall insert marginal notes of reference to the folios of the ledger in which the items relating to any of such orders, payments, receipts, or other pecuniary transactions are entered.

Art. 3.—The clerk shall also punctually enter up and accurately keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this Order and in the schedule thereto, namely:—

(1.) A ledger, Form (A.), in which the items contained in the minute book of the various transactions relating to the receipt or payment of moneys by the board, and the receipt and disposal of goods or materials, or the execution of works, or performance of services, on their behalf, shall be entered and posted up according to their proper dates under the following heads of account (or as many thereof as may be requisite), and such additional heads as may be or may from time to time become necessary:—

Assistant surveyor's cash account.
Manual labour account.
Team labour account.
Materials account.
Tradesmen's bills account.
Law charges account.
Salaries account.
Clerk's petty cash account.
Main roads account.
County authority's account.
Treasurer's account.
General balance account.

And in connection with the several items in each of the said accounts, the respective dates of the transactions shall be inserted, together with references to the folios of the minute book in which the entries relating to such transactions are contained, and to the folios of the corresponding credits and debits respectively.

(2.) An order check book, in the Form (B.), which shall contain all orders given by the board for stores or other articles or for work, and counterfoils of such orders, and forms of the invoices to accompany commodities supplied, or to be delivered when work is done. Such orders, when signed by the clerk, together with the forms of invoice, shall be detached from the said book, and issued to the tradesmen or other persons dealt with or employed, to be returned and disposed of in the manner described thereon; and the counterfoils, certified by the clerk's initials, shall be retained in the said book.

(3.) A petty cash book, in which shall be entered promptly, and in order of date, an account of the sums received and paid by the clerk for petty disbursements, which account shall be balanced quarterly, and laid before the board at their ordinary meetings.

Treasurer's Account.

Art. 4.—The treasurer of the board shall keep an account according to the Form (C.) in the said schedule, in which shall be entered punctually and accurately all moneys received and paid by him on account of the board. He shall balance and sign this account quarterly, and shall cause the book to be laid before the board when required by them.

Assistant Surveyor's Accounts.

Art. 5.—The assistant surveyor shall punctually enter up and accurately keep the following books and accounts, according to the forms and directions relating to such books and accounts respectively in this Order and in the schedule thereto, namely:—

(1.) A cash book, Form (D.), in which shall be entered in order of date under the several headings indicated in the form, all sums received or paid by him on behalf of the board (excepting those entered in his petty cash book, which may be transferred in gross sums), with the date of receipt or payment, and a reference as regards items of expenditure to the folios of the wages book or contract book in which the detailed particulars are entered: and as regards "tradesmen's bills and miscellaneous" expenses of repairs, a reference to the number of the invoice in each case. This book shall be balanced at the end of each quarter, and at such other times as the board may direct.

(2.) A contract book, Form (E.), the pages of which shall be arranged so as to form divisions under the two following headings, viz.,

1. Team labour,
2. Materials,

and under those several headings the particulars of the work performed under contract, as well as the amounts payable in respect thereof, and the payments (if any) made to contractors by the assistant surveyor, shall be entered from time to time according to the arrangement of the columns in each division, the particulars as respects main roads and parish highways being shown separately in the columns provided for that purpose. The date of payment and the folio of the cash book to which the payments are transferred shall also be inserted in connection with each entry.

There shall also be entered under the heading of "materials" the particulars indicated in the form as to materials supplied by contractors.

The sums entered under each of the two headings above named in the columns headed "amounts payable under contract," shall be cast up at the foot of each page, and the totals, as brought forward, cast up at the end of each quarter.

(3.) A wages book, Form (F.), in which shall be entered the names of the labourers employed and paid by the assistant surveyor, the days on and places at which they were so employed, the rate of pay and the amount of wages earned, together with the date of payment and a reference to the folio in the cash book to which the payments are transferred

The assistant surveyor, or other person making the payments on his behalf, shall, at the time of payment, obtain the signatures of the labourers in the column provided for that purpose, or if any of them are unable to write, their marks shall be affixed, attested by the initials of the assistant surveyor or of such other person.

(4.) A receipt check book, Form (G.), containing receipts and counterfoils in the form prescribed, each receipt and counterfoil bearing a corresponding number, and the numbers being printed thereon in consecutive order. Whenever money is received by the assistant surveyor from any other source than the board, he shall duly fill up one of the receipts and counterfoils, and shall deliver the receipt (stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary) to the person making the payment, and shall retain the counterfoil in the book.

(5.) A stock and stores account, in the Form (H.), in which the assistant surveyor shall keep an account of all materials, tools, or other articles intrusted to his charge, and shall show how the same shall have been disposed of and what remains in store. This book shall be balanced yearly and laid before the board from time to time as required by them.

(6.) A petty cash book, in which shall be entered promptly and in order of date, an account of the sums received and paid by the assistant surveyor for petty disbursements, which account shall be balanced quarterly, and laid before the board at their ordinary meetings.

Accounts of Collectors or other Officers in reference to Highway Rates.

Art. 6.—The clerk, or other officer directed by the board to do so, shall punctually enter up and accurately keep in the rate book a rate collection account, in the Form (I.) in the schedule to this Order.

Such account shall be duly signed by the clerk or other officer before the book is presented to the district auditor.

Art. 7.—Every collector shall use a rate receipt check book, in the Form (K.) in the said schedule.

The receipts and counterfoils in this book shall be numbered consecutively with numbers corresponding with those in the rate book, and demand notes shall be printed in the rate receipt check book, in the form prescribed in the said schedule, and such demand notes shall be signed by the collector, and numbered so as to correspond with the numbers of the respective receipts.

When the amount of the rate shall be received from any person assessed, the receipt applicable to such person's assessment shall, at that time and not before, be signed by the collector and detached from the rate receipt check book, and shall be delivered, stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary, to the person making the payment, and the counterfoil shall be retained in the book.

In the receipt so delivered and in the counterfoil so retained, the true date of the payment shall be inserted.

If upon the closing of any rate not collected, there shall remain in the rate receipt check book any receipts made out for such rate unused, the collector shall enter upon each of such receipts the reason for not using it, and date and sign such entry.

The collector, before he shall proceed to issue demand notes or to collect any rate, shall prepare demand notes and receipts in one book, or in several, if so directed by the board, in the aforesaid Form (K.), such demand notes, as well as the receipts and the counterfoils thereof, being numbered with consecutive numbers corresponding with those in the rate book, and properly fill in the same respectively with the names of the several ratepayers, and the sum to be collected from each. He shall then submit every such rate receipt check book, so numbered and filled up, to the clerk or other officer referred to in Art. 6, before he proceeds to collect the rate; and the clerk or such other officer shall cause the correctness of the numbering, and the correspondence of the sums, and of the names filled in, with the rate book to which they relate, to be ascertained, and on the leaf next after the last of the receipts so made out in respect of any one rate the clerk or other officer as aforesaid shall certify the fact that such rate receipt check book has been examined and ascertained to be correct, and shall state in words at length

the number of receipts filled up for the rate then to be collected, which certificate shall be in the form set forth in the said schedule, and shall be signed by the clerk or other officer as aforesaid, and correctly dated.

Art. 8.—If, in the opinion of the board, the circumstances of the parish render it expedient, the receipts (and corresponding counterfoils) in the rate receipt check book, instead of being prepared before the collection of the rate and numbered consecutively according to the rate book, may each of them be filled up at the time when the payment of the assessment to which it relates is actually made, the numbers being printed beforehand on the receipts and counterfoils in consecutive order.

Provided that in such cases:

(1.) Whenever the collector receives the rate, he shall insert in the receipt given and in the counterfoil retained the number (or numbers) in the rate book of the assessment or assessments to which they relate.

(2.) Where more than one rate receipt check book is required for one rate, the printed consecutive numbers shall run on without interruption throughout all the receipt check books used for such rate.

(3.) When a new rate is made, all the unused receipts for the former rate shall, where the rate receipt check book is used by the collector, be delivered by him to the clerk.

(4.) The demand notes shall form a separate book, still bearing the same numbers as those in the rate book.

Art. 9.—Every collector shall keep a book, to be called the collecting and deposit book, in the Form (L.) in the said schedule, in which shall be entered accurately, and under their true dates, all sums received and deposited with the treasurer by him as such collector, and also the number of every receipt given by him as such collector out of the rate receipt check book, and he shall balance such book at such times as may be directed by the board.

Closing and Examination of Accounts.

Art. 10.—All the accounts of the board and their officers shall be made up and balanced to the twenty-fifth day of March in every year, and shall be submitted to the board at their first meeting after that day.

Financial Statement.

Art. 11.—The financial statement required to be prepared and submitted to the district auditor in duplicate by the board as a local authority under section 3 of "The District Auditors Act, 1879," shall, as regards the year ended the 25th day of March, 1880, and all subsequent years, be in the Form (M.) in the schedule to this Order, and shall contain the particulars therein set forth; and the certificate of the district auditor to be appended to each such duplicate shall be in the terms set forth at the foot of the said form.

Notice of Audit: Production of Books.

Art. 12.—The district auditor shall audit the accounts of the board and their officers once in every year, that is to say, as soon as may be after the twenty-fifth day of March. Provided always, that if the district auditor shall be required by the Local Government Board to hold an extraordinary audit, either of the whole or of any portion of the accounts, in addition to the ordinary audit, all the provisions herein contained, with reference to the ordinary audit, shall, so far as they may be applicable, apply to such extraordinary audit.

Art. 13.—The district auditor, in respect of every ordinary audit, shall give the clerk, the treasurer, and the assistant surveyor fourteen days' notice in writing of the time and place on and at which he intends to commence the audit of the accounts.

Art. 14.—The clerk and the other officers of the board who by law are liable to account to the district auditor shall attend at the time and place appointed by him for the audit of their accounts, and shall submit to him all books, documents, and vouchers containing or relating to their accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer having an interest in such accounts, but to such extent and in such manner only as will not, in the judgment of the district auditor, interfere with the audit.

Mode of Audit.

Art. 15.—In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form, that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority. He shall ascertain whether all sums received, or which ought to have been received, are brought into

acconnt, and shall examine whether the expenditure is in all cases such as might lawfully be made. He shall also reduce such payments and charges as are exorbitant; shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss; and shall disallow and strike out such payments as are not authorised by law.

Art. 16.—When the district auditor disallows any payment or surcharges any sum upon any person he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit, and shall report such disallowance or surcharge to the Local Government Board.

Art. 17.—The district auditor shall examine and collate the several books and papers of account: and shall ascertain that the several entries correspond with and balance each other, where such balance may be required; but in case of any error caused by inadvertence or accident in any account he may require the officer rendering it to correct the same, and the officer shall make the necessary correction, and the district auditor shall then deal with the acconnt so corrected. But if the officer shall refuse to do so, the district auditor shall himself make the correction, and report the circumstances of the case to the Local Government Board.

Art. 18.—The district auditor shall compute the several accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time to which the audit relates; and he shall state the balance in words at length, and certify the same by his signature or initials, and add the date of the audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificate and his reasons for the same (when they are reqnired) in some part of the book of account which shall be free from other writing.

Art. 19.—The district auditor shall receive any objection made by a ratepayer, or any person aggrieved, against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same; and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge.

Art. 20.—If he shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels relating to the parish or the board to appear before him, and shall call npon such person to produce any accounts, books, or papers which he may lawfully require; and he shall examine such officer or person as may then appear, and such accounts, books, and papers as may be produced before him, respecting such account, item, or charge.

Art. 21.—If the district auditor find that any money, goods, or chattels belonging to the board have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any officer or other person accounting, and shall surcharge such officer or person with such amount or value in his account, he shall submit a statement of such surcharge to the board as soon as he conveniently can do so.

Art. 22.—In the case of an officer accountable under this Order dying before the audit of his accounts, his personal representatives shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer, and all regulations affecting the accounts of such officer shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

Art. 23.—The district auditor shall, at the close of each audit, transmit to the Local Government Board a statement in the Form (N.) in the said schedule, showing which of the books directed by this Order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Local Government Board.

Interpretation of Terms.

Art. 24.—In this Order and in the forms set forth in the schedule thereto, —

"Board" means the board for repair of the highways.

"Clerk" means the clerk to the board.

"Collector" means a collector of highway rates duly appointed under the statutes in that behalf.

"Main roads" means roads so constituted under "The Highways and Locomotives (Amendment) Act, 1878."

"Manual labour" means manual labour employed in the actual execution of repairs, as distinct from such labour employed in obtaining, delivering, or preparing materials for repairs.

"Team labour" means labour of that kind employed in the collection, delivery, or distribution of materials for the purpose of executing repairs, and includes such labour employed under any contract entered into for those purposes exclusively.

"Materials" means stone or other materials for repairs, and includes the cost of purchasing, getting, carrying, or preparing such materials, and of delivering the same other than by means of team labour. It also includes any such cost incurred under any contract entered into for those purposes exclusively, as well as damage to land in getting materials for the purpose of repairs, and royalty or rent of pits or quarries for that purpose.

"Tradesmen's bills" includes the cost of tools, implements, and other stock supplied by tradesmen for repairs, and not hereinbefore included in the term "materials," and the cost incurred in repairs of drains, bridges, and fences, executed by tradesmen; and when used in connection with "main roads" means tradesmen's bills for repairs incurred for main roads exclusively.

Given under the Seal of Office of the Local Government Board, this thirteenth day of September, in the year one thousand eight hundred and eighty.

(L.S.) J. G. DODSON, *President.*

JOHN LAMBERT, *Secretary.*

SCHEDULE.

FORM (A.)

The Ledger.

PARISH OF _____

(Board for Repair of the Highways.)

Fo. _____ *Dr.*

Date.	Folio of Minute Book.	Folio of Corresponding *Credit.*	Corresponding *Credit* and Items.	(*a*)			(*b*)			Totals. (*c*)		
			To	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	*d.*

PARISH OF _____

(Board for Repair of the Highways.)

CONTRA. *Cr.* Fo. _____

Date.	Folio of Minute Book.	Folio of Corresponding *Debit.*	Corresponding *Debit* and Items.	(*a*)			(*b*)			Totals. (*c*)		
			By	£	*s.*	*d.*	£	*s.*	*d.*	£	*s.*	.

NOTE.—As regards manual labour, team labour, and other heads of account in the ledger embracing items for maintenance or repairs, which in the case of main roads will be partly repayable by the county authority, under sect. 13 of the 41 & 42 Vict. c. 77, it will be necessary to show in a separate column, in the pages devoted to such headings, the items relating to main roads, as distinct from those relating to parish highways. An additional column is accordingly introduced into this Form for that purpose, the column (*a*) being intended for the main roads, and the column (*b*) for parish highways.

(*a*) (*b*) (*c*) When to any account any sum is debited, part of which is credited to one account and the remainder to another or others, the several sums so credited are to be entered separately in columns (*a*) or (*b*), as the case may be, and their total in the column (*c*). The several accounts to which such parts are credited are to be written against them respectively, together with the requisite explanation in the column for "Corresponding *Credit* and Items."

(*a*) (*b*) (*c*) When to any account any sum is credited, part of which is debited to one account and the remainder to another or others, the several sums so debited are to be entered separately in columns (*a*) or (*b*), as the case may be, and their total in the column (*c*). The several accounts to which such parts are debited are to be written against them respectively, together with the requisite explanation in the column for "Corresponding *Debit* and Items."

FORM (B.)

The Order Check Book.

PARISH OF _____.

No.* _____ 18 .

Mr.† _____

(*Signature*)

No.* _____ 18 .

Mr.† _____

Please to †

(*Signature*)

* This No. may be consecutive for a quarter of the year, or for the half-year, or for the year, as the Board shall direct. Where no direction is given it shall continue for the whole year.

† Insert in these spaces the name of the tradesman, the goods to be supplied, and the place at which they are to be delivered, or the work is to be done, as the case may be.

NOTE.—This order, with the invoice or account in blank, is to be detached from the counterfoil thereof, and sent to the tradesman; the order is to be kept by the tradesman, and the invoice or account returned when the order is completely executed; a ticket being sent containing the like entries with every delivery, when there is more than one.

The particulars and price of the goods or work are to be inserted, and the invoice or account returned when the order is executed.

No.* _____ 18 .

The Board for Repair of the Highways.

Drs. To†

Date.	Articles supplied or work done.		£	s.	d.
		Total - £			

No. _____ §

Examined and Entered - { _____

Assistant Surveyor.

_____ 18 .

Correct, _____ *Clerk.*

§ This No. must be entered by the Assistant Surveyor according to the order of the receipt, and be consecutive as in the Note* in the order check book.

FORM (C.)

The Treasurer's Account.

PARISH OF _____.

(Board for Repair of the Highways).

Account of Receipts and Payments on behalf of the Board for Repair of the Highways in the Parish of for the year ended the 25th day of March, 18 .

_____ *Treasurer.*

RECEIPTS.						PAYMENTS.					
Date.	From whom.	On what Account.	Amount.			Date of Payment.	Date of Order.	Name of Payee.	Amount.		
			£	s.	d.				£	s.	d.
								Balance .			
		TOTAL .						TOTAL .			

Signed this _____ day of _____ 18 . _____ *Treasurer.*

Note.—This account is to be balanced at the end of every quarter, and the balance signed by the Treasurer.

FORM (D.)

Cash Book.

PARISH OF ____________ ____________ *Assistant Surveyor.*

(Board for Repair of the Highways.)

RECEIPTS.							PAYMENTS.																																						
Date.	No in Receipt Check Book.	From whom received.	On what account.	Amount.			Date.	To whom paid.	Amount.			REPAIRS.																									Folio in Wages Book.	Folio in Contract Book.	General Expenses.				Totals.		
												Manual Labour.						Team Labour.						Materials.						Tradesmen's Bills and Miscellaneous.									Purpose.	Amount.					
												Main Roads.			Parish Highways.			Main Roads.			Parish Highways.			Main Roads.			Parish Highways.			Main Roads.			Parish Highways.			No. of Invoice.									
				£	s.	d.			£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s	d.	£	s.	d.	£	s.	d.	£	.	d.	£	s.	d.					£	s.	d.	£	s.	d.
			Total.					Total.																															Totals						

FORM (E.)

Contract Book.

PARISH OF _____ *Quarter ended the* _____ *day of* _____ 18 . _____ *Assistant Surveyor.*

(Board for Repair of the Highways.)

TEAM LABOUR.

Name of Contractor.	Road on which Work was performed.	Nature of Work.	Number of			Rate per			Amounts payable under Contract.									If paid by Assistant Surveyor, Date of Payment.	Folio in Cash Book.
			Yards.	Loads.	Days.	Yard.	Load.	Day.	Main Roads.			Parish Highways.			Total.				
									£	s.	d.	£	s.	d.	£	s.	d.		

MATERIALS.

Name of Contractor.	Road where Materials were used, or where Work was performed.	Description of Materials or Work.	Number of			Rate per			Amounts payable under Contract.									If paid by Assistant Surveyor, Date of Payment.	Folio in Cash Book.
			Yards.	Loads.	Days.	Yard.	Load.	Day.	Main Roads.			Parish Highways.			Total.				
									£	s.	d.	£	s.	d.	£	s.	d.		

FORM (F.)

Wages Book.

PARISH OF _____ _____ *Weeks ending the* *day of* , 18 , *being the* , , , *and*

(Board for Repair of the Highways.) *weeks of the Quarter ending the* *day of* 18 .

Labourers' Names.	Employment. On what Road employed.	Employment. How employed.	Week, ending of 18 .						Week, ending of 18 .						Week, ending of 18 .						Week, ending of 18 .						Number of Yards.	Number of Loads.	Number of Days.	Rate per Yard.	Rate per Load.	Rate per Day.	Amounts. Main Roads.			Amounts. Parish Highways.			Amounts. Total.			When paid.	Folio in Cash Book.	Labourers' Signatures.
			M	T.	W.	Th.	F.	S.	M.	T.	W.	Th.	F.	S.	M.	T.	W.	Th.	F.	S.	M.	T.	W.	Th.	F.	S.							£	s.	d.	£	s.	d.	£	s.	d.			
																															Totals														

I hereby certify that the above particulars with regard to the work performed and the wages earned are correct, and that the amounts due have been paid to the labourers respectively.

_____ *Assistant Surveyor.*

The columns appropriated for the days in each week are intended to show the days on which the labourers are employed, and should be filled up thus: (1) or ($\frac{1}{2}$), according as the labourers are employed for the day or part of the day.

FORM (G.)

Receipt Check Book.

Counterfoil.

No._____.

Parish of _____.

_____day of _____18 .

Of Mr. _____

£ _____

for _____.

Receipt.

No._____.

Parish of _____(Board for Repair of the Highways.)

_____day of _____18 .

Received of Mr. _____

the sum of _____pounds _____ shillings and _____pence,

for _____

_____

Assistant Surveyor.

£ _____

FORM (H.)

Stock and Stores Account.

Year ended at _____18 .

Parish of _____.
(Board for Repair of the Highways.)

_____*Assistant Surveyor.*

Articles.*	Stock brought forward.	New Stock.	No. of Invoice (if any), or Name of Contractor or Tradesman supplying.	Totals of Stock brought forward and New Stock.	Consumed.		Remaining in Store.	Totals consumed and remaining in Store.	Observations.
					Quantity.	Where used.			

* As regards flints, gravel, or other materials, a separate page of this book, or a division of a page, should be assigned to each, so as to keep together the entries under the respective heads.

FORM (I.)

Rate Book and Rate Collection Account.

PARISH OF _____

(Board for Repair of the Highways.)

AN ASSESSMENT for carrying the several purposes of the Act 5 & 6 Will. IV. c. 50, into execution, made by the Board for Repair of the Highways, in the Parish of , in the County of , this day of 18 , being an equal assessment at the rate of in the Pound on the full annual value of the property in the said Highway Parish liable to be rated for the Highways therein.

Number.	RATE BOOK.					RATE COLLECTION ACCOUNT.																											
																				Uncollected at finally balancing this Book.													
																							Irrecoverable at finally balancing this Book.										
																										Otherwise not recoverable.							
	Name of Occupier.	Description of the Premises and Property rated.	Annual Value.			Rate at in the Pound.			Recoverable Arrears of former Rates.			Total Amount to be collected.			Amount actually collected.			Date of Collection (Day, Month and Year).	Uncollected at first balancing this Book.			Recoverable Arrears at finally balancing this Book.			Amount legally excused.			Amount.			Causes.
1.	2.	3.	4.			5.			6.			7.			8.			9.	10.			11.			12.			13.			14.
			£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
		TOTALS												*																	
														*																	

(*Signed*) _____

Clerk [or other Officer].

* The sub-division of totals is here introduced to meet a case where it may be found desirable to balance the Book before the closing of the Rate. In such a case the upper division is intended for the amount collected at the first balancing, and the lower one for the amount collected since the first balancing.

FORM (K.)

Rate Receipt Check Book.

This part is to be retained by the Collector.

COUNTERFOIL.

No. ____

Parish of _____

____ *day of* _____ 18___.

Mr. _____

Rate made on the

_____ *day of* _____

_____

_____

£ _____

RECEIPT.

No. ____

Parish of _____

_____ *day of* _____ 18____.

Received of _____

the Sum of _____ *in respect of the Highway Rate of the above Parish, viz.:—*

£ s. d.

Rate made the ____

day of _____ 18___ *at*

_____ *in the Pound*

on £_____ *Annual Value* . . .

_____

Collector.

DEMAND NOTE.

No. ____

Parish of _____

____ *day of* _____ 18____.

Mr. _____

_____ *Street.*

The Collector demands payment of the Highway Rate, made the _____ *day of* _____ 18___, *now due from you.*

£ s. d.

At ___ *in the Pound*

on £_____ *Annual Value* . . .

_____

Collector.

Form of Certificate.

*I hereby certify that I have examined this Rate Receipt Check Book, and have ascertained the correctness of the numbering and the correspondence of the sums and names in such receipts with the Rate Book, and I certify that the Number of Receipts in this Book so filled up for this Rate amounts to**

Dated this _____ *day of* _____

_____

Clerk [or other Officer].

* Here state the Number in Words at length.

FORM (L.)

Collecting and Deposit Book.

PARISH OF _____

(Board for Repair of the Highways.) _____ *Collector.*

RECEIPTS.						DEPOSITS.			
Date of Receipt.	Date of the Rate.	No. of Receipt.	Amount.			Date of Deposit with Treasurer.	Amount.		
			£	s.	d.		£	s.	d.

FORM (M.)

PARISH OF _____.

(Board for Repair of the Highways.)

FINANCIAL

Statement of Account showing the Receipts and

RECEIPTS.	£	s.	d.
Highway Rates			
Contributions from County Authority			
Receipts from Turnpike Trusts			
Receipts (either by way of composition or otherwise, under section 23 of 41 & 42 Vict. c. 77) on account of damage caused by excessive weight or extraordinary traffic			
Other Receipts			
Note.			
Mileage { Main Roads . . . . . Miles. Furlongs.			
Mileage { Parish Highways			
Gross Receipts . .			

FORM (M.)

STATEMENT.

Expenditure for the Year ended 25th March, 18 .

EXPENDITURE.				£	s.	d.
MAIN ROADS (Repairs):—	£	s.	d.			
Manual Labour						
Team Labour						
Materials						
Tradesmen's Bills and Miscellaneous						
Deduct amount of repairs of Main Roads borne by County Authority . .						
Net Amount						
PARISH HIGHWAYS (Repairs):—	£	s.	d.			
Manual Labour						
Team Labour						
Materials						
Tradesmen's Bills and Miscellaneous						
Salaries { Clerk						
Salaries { Assistant Surveyor						
Salaries { Collector (or Collectors)						
Other Expenses (less Contributions to Turnpike Trusts)*						
£ s. d.						
* Contributions to Turnpike Trusts . .						
Total . . .						

_____ Clerk. _____ day of _____ 18 .

I hereby certify that I have compared the entries in the above Statement with the Vouchers and other documents relating thereto, and that the regulations with respect to such Statement have been duly complied with.

I hereby further certify that I have ascertained by Audit the correctness of such Statement, and that the amount expended by the Board for Repairs of Highways for the Parish of during the year ended the 25th day of March, 18 , as included in such Statement and allowed by me at the Audit, is [*here insert the amount in words at length*].

As witness my hand this _____ day of _____ 18 .

_____ Stamp. _____ *District Auditor.*

FORM (N.)

_____ *Audit District.*

A STATEMENT of the DISTRICT AUDITOR,
in reference to the Books of the HIGHWAY PARISH of for the year
ended the 25th day of March, 18 .
As to the Books required to be kept by the CLERK,
Mr._____

By the TREASURER,
Mr._____

By the ASSISTANT SURVEYOR,
Mr._____

By the COLLECTOR (or COLLECTORS).
Mr._____

OBSERVATIONS.

	CLERK.
Minute Book.	
Ledger.	
Order Check Book.	
Petty Cash Book.	
Rate Collection Account.	
	TREASURER.
The Treasurer's Account.	
	ASSISTANT SURVEYOR.
Cash Book.	
Petty Cash Book.	
Contract Book.	
Wages Book.	
Receipt Check Book.	
Stock and Stores Account.	
	COLLECTOR OR COLLECTORS.
Rate Receipt Check Book.	
Collecting and Deposit Book.	

The Audit of the above Books was concluded the *day of* 18 .

_____ *District Auditor.*

Date _____ 18 .

Against the name of any Book contained in this Statement which is not kept at all, or is imperfectly kept, the District Auditor is to write in the former case "not kept," and in the latter "imperfectly." In case of any Book being imperfectly kept, the general nature of the imperfection is to be set forth *on the other side*, together with such observations as the District Auditor considers requisite. Where there is no defect, the District Auditor should state the fact. And where any officer has in any respect disobeyed, neglected, or departed from any of the regulations of this Order applicable to his office, the District Auditor should report the facts on the other side.

FORMS TO BE APPENDED TO ANNUAL REPORTS OF MEDICAL OFFICERS OF HEALTH.

Local Government Board, Whitehall, S. W.,
16th December, 1880.

SIR,

I am directed by the Local Government Board to forward to you, herewith, copies of forms to be appended to the annual reports for 1880, required to be made by medical officers of health; and I am to request that three copies of each form may be sent without delay to the medical officer of health for the urban sanitary district.

The Board attach much importance to the annual reports of medical officers of health. If carefully made, in accordance with the official instructions, these reports will afford valuable information and assistance both to the sanitary authority and to the Board. It is also important that they should be made within a reasonable time from the close of the year to which they relate, and the Board rely upon receiving, within the time specified in the instructions, the copies which are to be transmitted to them.

I am, &c.
JOHN LAMBERT,
Secretary.

The Clerk to the
Urban Sanitary Authority.

(Similar circular and enclosures sent to rural sanitary authorities.)

TABLE (A.)

TABLE OF DEATHS during the Year 1880, in the _____ Division of the Diseases, Ages, and Localities, and showing also the Population

Names of Localities adopted for the purpose of these Statistics; public institutions being shown as separate localities. (*See note 5 on p. 1612.*)	Population at all Ages		Registered Births.	Mortality from all causes, at subjoined Ages.							Mortality from			
	Census 1871.	Estimated to middle of 1880.		At all Ages.	Under 1 year.	1 and under 5.	5 and under 15.	15 and under 25.	25 and under 60.	60 and upwards.		Smallpox.	Measles.	Scarlatina.
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.
											Under 5			
											5 upwards			
											Under 5			
											5 upwards			
											Under 5			
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											5 upwards			
											Under 5			
											5 upwards			
											Under 5			
											5 upwards			
Totals											Under 5			
											5 upwards			
The subjoined numbers have also to be taken into account in judging of the mortality														
Deaths occurring outside the division or district among persons belonging thereto.											Under 5			
											5 upwards			
Deaths occurring within the divison or district among persons not belonging thereto.											Under 5			
											5 upwards			

TABLE (A.)

__________ Sanitary District of __________ classified according to
of such Localities, and the Births therein during the Year.

SUBJOINED CAUSES, DISTINGUISHING DEATHS OF CHILDREN UNDER FIVE YEARS OF AGE.

Diphtheria.	Croup (not Spasmodic).	Whooping Cough.	Continued Fevers.			Diarrhœa and Dysentery.	Cholera.	Rheumatic Fever.	Erysipelas.	Pyæmia.	Puerperal Fever.	Ague.	Phthisis.	Bronchitis, Pneumonia, and Pleurisy.	Heart Disease.	Injuries.	Other Diseases.
			Typhus.	Enteric or Typhoid.	Other or Doubtful.												
16.	17.	18.	19.	20.	21.	22.	23.	24.	25.	26.	27.	28.	29.	30.	31.	32.	33.
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of this Division of the Sanitary District. *See note* 6 *on p.* 1612.

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NOTES ON TABLE (A.)

NOTE.—1. Medical officers of health of "combined districts" must make a separate return for the district of each sanitary authority.

2. Medical officers of health acting for the whole district of a sanitary authority should strike out the words [Division of the] in the heading of the Table.

3. Medical officers of health acting for a portion only of the district of a sanitary authority should write, in the heading of the Table, the number or other designation of the division for which they act.

4. The words "urban" or "rural" must be inserted in the appropriate space in the heading, according as the sanitary authority for the district is urban or rural.

5. The "localities" adopted for the purpose of these statistics should be areas of known population; such as parishes, groups of parishes, townships or wards.

As stated in the heading of column 1, public institutions should be regarded as separate localities, and the deaths in them should be separately recorded. Workhouses, hospitals, infirmaries, asylums, and other establishments into which numbers of people, and especially of sick people, are received, are public institutions for the purpose of these statistics.

6. The deaths which have to be classified in this Table, and summed-up in the horizontal line of "totals," are the whole of those registered as having actually occurred in the several localities comprised within the division or district. But the registered number of deaths frequently requires correction before it can give an exact view of the mortality of a division or district; and the two lowest horizontal lines are provided for the purpose of enabling medical officers of health to indicate, to the best of their ability, what the extent of such corrections should be. Details concerning the corrective figures, *e.g.*, the institutions that have been considered, or the particular localities to which the corrections apply, may appear in the text of the report or in supplementary tables.

7. The annexed Schedule should be filled up, and the return be signed by the medical officer of health.

Area and population of the district or division to which this Return relates.

Area in acres _____

Population (1871) _____

_____ Medical Officer of Health.

(Date) _____ 1881.

TABLE of NEW CASES OF SICKNESS coming to the knowledge of the Medical Officer of Health during the year 1880, in the _____ Division of the _____ Sanitary District of _____; classified according to LOCALITIES and DISEASES.

SOURCES OF INFORMATION.

(*See Notes on p.* 1614.)

The figures of the columns following column 12 will have been derived from the returns of Poor Law Medical Officers, from the practice of Public Institutions in or near the Sanitary District, and from other medical practice.

The Officer of Health making this report is desired to state below the number of persons BELONGING to this division or district who have during the year newly come under treatment for ALL KINDS of disease and injury, and of whose cases he has had information.

_____in Workhouse and Workhouse Infirmary.
_____among Out-door Paupers.
_____as In patients of_____Hospital.
_____as Out-patients of_____Hospital.
_____as Out-patients of_____ Dispensary.
_____in other practice.

* This refers to cases of sickness not included in the previous classes, if the Medical Officer of Health has information of such cases from other sources.

	New Cases of Sickness in Persons belonging to the District, distinguishing those in Children under Five Years of Age.																		
								Continued Fevers.											
NAMES OF LOCALITIES.		Small-pox.	Measles.	Scarlatina.	Diphtheria.	Croup (not Spasmodic).	Whooping-Cough.	Typhus.	Enteric or Typhoid.	Other or Doubtful.	Diarrhœa and Dysentery.	Cholera.	Rheumatic Fever.	Erysipelas.	Pyæmia.	Puerperal Fever.	Ague.	Other Diseases, such as Chicken Pox, or Pneumonia, which the Medical Officer of Health thinks well to record.	
1.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	25.	26.	27.	28.		
	Under 5																		
	5 upwards.																		
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	5 upwards.																		
TOTAL.	Under 5																		
	5 upwards																		

NOTES ON TABLE (B.)

NOTE.—1. Medical officers of health of "combined districts" must make a separate return for the district of each sanitary authority.

2. Medical officers of health acting for the whole district of a sanitary authority should strike out the words [Division of the] in the heading of the Table..

3. Medical officers of health acting for a portion only of the district of a sanitary authority should write, in the heading of the Table, the number or other designation of the division for which they act.

4. The words "urban" or "rural" must be inserted in the appropriate space in the heading, according as the sanitary authority for the district is urban or rural.

5. The present Table (B.) is concerned solely with the new cases of sickness that have come to the knowledge of the medical officer of health. It will have reference exclusively to persons belonging to the sanitary division or district to which the Table relates. The figures in the left hand portion of the Table will show the chief sources of information, necessarily varying in various sanitary districts, of which the medical officer of health has availed himself.

6. The "localities" adopted for the purposes of Table (B.) should be the same as those adopted in Table (A.), and new cases taken for treatment into any public institution should be distributed among the localities from which they were taken. Hence workhouses, hospitals, and the like will not appear in this Table, as in Table (A.), except in the case of sickness originating or spreading within the workhouse or hospital; or in the case of sickness among inmates whose previous residence cannot be ascertained. The right hand portion of the Table is now identical in form with that of Table (A.), and to facilitate reference from one Table to the other, the headings of the several columns are numbered from 12 to 28, as in Table (A.)

7. In filling the Schedule care must be taken to avoid (so far as is practicable) counting the same case of sickness twice over, *e.g.*, once when attended at the patient's own house, and again when removed to a public institution.

In recording the facts under the various headings, attention has been given to the foregoing points.

_____ Medical Officer of Health.

(Date)_____1881.

ANNUAL REPORTS OF MEDICAL OFFICERS OF HEATH.

Local Government Board, Whitehall, S.W.,
16th December, 1880.

SIR,

I am directed by the Local Government Board to call your attention to Section III., Article 12, of their General Order of the 25th September, 1878 (1), under which it is the duty of the medical officer of health to make to the port sanitary authority an annual report to the 31st of December in each year, giving information as to the sickness and mortality on shipboard in the district, and an account of the proceedings which have been taken by him, or which he has advised, during the year, under the Public Health Act.

I am further to point out that, under Article 13 (1) of the Order, it is also the duty of the medical officer of health to send a copy of such report to the Local Government Board; and I am to request that the medical officer of health may be directed to forward to the Board a copy of his report for the year 1880, within six weeks from the close of the year.

I am, &c.
JOHN LAMBERT,
Secretary.

The Clerk to the
Port Sanitary Authority.

(1) *Ante*, p. 1505.

HIGHWAY PARISHES.

GENERAL ORDER FOR ACCOUNTS.

To the surveyors of highways, for the time being, of the several highway parishes not in highway districts;—

To the collectors of highway rates, for the time being, of the said highway parishes, respectively;—

To the several district auditors authorised, for the time being, to audit the accounts of the said surveyors and collectors, respectively;—

And to all others whom it may concern.

Whereas by section 9 of "The Highways and Locomotives (Amendment) Act, 1878," it is enacted that the accounts of the highway authority of every highway district and highway parish shall be made up in such form as the Local Government Board shall from time to time prescribe, and shall be balanced to the twenty-fifth day of March in each year:

And whereas by section 5 of "The District Auditors Act, 1879," it is enacted as follows:—

"Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834."

And whereas in pursuance of the above-recited enactments the Local Government Board, by an Order dated the 26th day of May, 1879, prescribed regulations with respect to the mode of keeping and auditing the accounts of the surveyors of highways of the several highway parishes not included in highway districts, and of the collectors of highway rates in those parishes;

And whereas it is expedient that the said Order should be rescinded to the extent hereinafter specified, and that other regulations should be substituted for those contained in that Order:

Now therefore, We, the Local Government Board, hereby order as follows:—

Art. 1.—The said Order dated the 26th day of May, 1879, is hereby rescinded.

Provided as follows:—

1. The financial statement for the year ended the 25th day of March, 1881, shall be in the form prescribed by the said Order.
2. In any highway parish where the surveyor may think fit, the accounts of such surveyor, or of the collector, for the year ending the 25th day of March, 1882, may be kept in the forms prescribed by the said Order, dated the 26th day of May, 1879, and in such case the provisions of that Order shall apply till the termination of that year, and the financial statement for the year shall be in the form prescribed by such Order.
3. Where the form of any book or account prescribed by this Order differs from that prescribed for such book or account by the Order rescinded as above, the form now in use may forthwith be altered and adapted as nearly as may be to the form herein prescribed for such book or account.

Art. 2.—Subject to the provisoes to Article 1 of this Order, the following regulations shall henceforth be observed in regard to the accounts of the surveyor of every highway parish not included in any highway district, such surveyor being a highway authority within the terms of the section last above recited, as well as to such accounts as may be kept by collectors of highway rates, for the time being, in such parishes respectively, and to the audit of such accounts, except in so far as the Local Government Board may from time to time assent to any departure from such regulations.

Art. 3.—The surveyor shall punctually enter up and accurately keep a *rate book and rate collection account*, in the Form (A.) in the schedule to this Order.

In the portion of the said form headed "rate book" shall be inserted the particulars indicated by the headings of the several columns numbered from 1 to 5, both inclusive, and before any rate is presented to the justices for allowance, the surveyor shall sign a declaration, in words at length, of the total amount of the rate so presented for allowance, according to the form of declaration set forth in the said Form (A.), or to the like effect.

If the surveyor shall deem it convenient, the rate may be divided into several portions corres-

ponding with the several divisions of the parish, if any, so as to bring all the rateable property of each division together, and there may be separate series of numbers for the assessments in every division; and he may in like manner bring together in the rate separate classes of rateable property.

The several columns of the *rate book and rate collection account* which contain the annual value, the rate in the pound assessed, the recoverable arrears, and the total amount to be collected, shall be added up at the foot of every page, and the several totals shall be ascertained and set forth at the foot of the rate, before any sum of money in respect of the said rate is collected.

Where there is a collector, the portion of the said Form (A.) headed "rate collection account" shall, if the surveyor so direct, be entered up by such collector instead of by the surveyor; and the collector shall also enter in the other portion of the said form all such particulars of every assessment as he shall be directed by the surveyor to enter therein.

The portion of the said Form (A.) headed "rate collection account" shall, whether it be entered up by the surveyor or by the collector, be signed by the surveyor before the book is presented to the district auditor.

Art. 4.—In every case where there is no collector, the following regulations numbered (1), (2), (3), (4), and (5) shall apply:

(1.) Where there are more than thirty ratepayers on the *rate book* the surveyor shall, and where there is a less number of ratepayers the surveyor may, use a *rate receipt check book*, in the Form (B.) in the said schedule.

(2.) The receipts and counterfoils in this book shall be numbered consecutively with numbers corresponding with those in the *rate book*, and *demand notes* shall be printed in the *rate receipt check book*, in the form prescribed in the said schedule, and such *demand notes* shall be signed by the surveyor and numbered so as to correspond with the numbers of the respective receipts.

(3.) When the amount of the rate shall be received from any person assessed, the receipt applicable to such person's assessment shall, at that time and not before, be signed by the surveyor and detached from the *rate receipt check book*, and shall be delivered, stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary, to the person making the payment, and the counterfoil shall be retained in the book.

(4.) In the receipt so delivered and in the counterfoil so retained the true date of the payment shall be inserted.

(5.) If upon the closing of any rate not collected there shall remain in the *rate receipt check book* any receipts made out for such rate unused, the surveyor shall enter upon each of such receipts the reason for not using it, and date and sign such entry.

Art. 5.—Where there is a collector, the regulations contained in Art. 4, Nos. (2), (3), (4), and (5) shall apply to him, and the *rate receipt check book* shall be filled up and used by him instead of by the surveyor.

The collector, before he shall proceed to issue *demand notes* or to collect any rate, shall prepare *demand notes* and receipts in one book, or in several, if so directed by the surveyor, in the aforesaid Form (B.), such *demand notes*, as well as the receipts and the counterfoils thereof, being numbered with consecutive numbers corresponding with those in the *rate book*, and properly fill in the same respectively with the names of the several ratepayers, and the sum to be collected from each. He shall then submit every such *rate receipt check book*, so numbered and filled up, to the surveyor before he proceeds to collect the rate; and the surveyor shall cause the correctness of the numbering, and the correspondence of the sums, and of the names filled in, with the *rate book* to which they relate, to be ascertained, and on the leaf next after the last of the receipts so made out in respect of any one rate the surveyor shall certify the fact that such *rate receipt check book* has been examined and ascertained to be correct, and shall state in words at length the number of receipts filled up for the rate then to be collected, which certificate shall be in the form set forth in the said schedule, and shall be signed by the surveyor and correctly dated.

Art. 6.—Where, in the opinion of the surveyor, the circumstances of the parish render it expedient, the receipts (and corresponding counterfoils) in the *rate receipt check book*, instead of being prepared before the collection of the rate and numbered consecutively according to the *rate book*, may each of them be filled up at the time when the payment of the assessment to which it relates is actually made, the numbers being printed beforehand on the receipts and counterfoils in consecutive order.

Provided that in such cases:

(1.) Whenever the surveyor or the collector (as the case may be) receives the rate, he shall insert in the receipt given and in the counterfoil retained the number (or numbers) in the *rate book* of the assessment or assessments to which they relate.

(2.) Where more than one *rate receipt check book* is required for one rate, the printed con-

secutive numbers shall run on without interruption throughout all the *receipt check books* used for such rate.

(3.) When a new rate is made, all the unused receipts for the former rate shall, where the *rate receipt check book* is used by the collector, be delivered by him to the surveyor.

(4.) The *demand notes* shall form a separate book, still bearing the same numbers of the assessments as are entered in the *rate book*.

Art. 7.—The surveyor shall also punctually enter up and accurately keep the following accounts according to the forms and directions relating to such accounts respectively in this Order and in the schedule thereto; namely,—

(1.) *A repairs expenditure account*, in the Form (C.), the pages of which shall be arranged so as to form divisions under the four following headings:

1. Manual labour;
2. Team labour;
3. Materials;
4. Tradesmen's bills and miscellaneous expenses for repairs;

and under those several headings the particulars of the expenditure incurred in respect of each shall be entered from time to time in order of date and according to the arrangement of the columns in each division, the amounts paid being shown separately as regards main roads and parish highways in the columns provided for that purpose, with date of payment.

The surveyor at the time of making the payments to the labourers shall obtain their signatures in the column provided for that purpose, or if any of them are unable to write they shall affix their marks, which must be attested by the initials of the surveyor or other person making the payments on his behalf: Provided that in parishes where the surveyor does not receive any remuneration for the performance of his duties, and there is no paid collector of the highway rate, the surveyor may abstain from obtaining such signatures or marks.

The sums entered under each of the four headings above-named in the columns headed "Amounts Paid," shall be added up and the totals for the year carried into the *receipt and expenditure account*.

(2.) *A receipt and expenditure account*, Form (D.), in which shall be entered in order of date all sums received or paid by the surveyor on behalf of the parish, whether in respect of repairs or otherwise, with the date of receipt or payment, and a reference as regards items of expenditure for repairs to the folio of the *repairs expenditure account* in which the detailed particulars are entered. This book shall be balanced up to the twenty-fifth day of March in each year, and with the *repairs expenditure account* shall be submitted to the district auditor with full bills of particulars and receipts for all payments charged other than wages.

(3.) *A stores account*, Form (E.), in which shall be entered the quantity or number of materials, tools, implements, and other stores for the repair of the highways received and consumed during each year, with other particulars set forth in the Form.

Financial Statement.

And whereas by section 3 of "The District Auditors Act, 1879," it is enacted as follows:—

"Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of section 6 of the Poor Law Amendment Act, 1866) a financial statement in duplicate in the prescribed form and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed; and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement."

Now therefore, We, the Local Government Board, hereby further order as follows:—

Art. 8.—The *financial statement* to be prepared and submitted to the district auditor in duplicate by the surveyor as a local authority under section 3 above recited, shall for the year ending the twenty-fifth day of March, 1882 (subject to the proviso No. 2 to Article 1 of this Order), and henceforth be in the Form (F.) in the schedule to this Order, and shall contain the particulars therein set forth; and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.

Closing and Examination of Accounts.

Art. 9.—All the accounts of the surveyor and the collector shall be made up and balanced to the twenty-fifth day of March in every year.

Notice of Audit: Production of Books.

Art. 10.—The district auditor shall audit the accounts of the surveyor and the collector once in every year, that is to say, as soon as may be after the twenty-fifth day of March. Provided always, that if the district auditor shall be required by the Local Government Board to hold an extraordinary audit, either of the whole or of any portion of the accounts, in addition to the ordinary audit, all the provisions herein contained, with reference to the ordinary audit, shall as far as they may be applicable, apply to such extraordinary audit.

Art. 11.—The district auditor, in respect of every ordinary audit, shall give to the surveyor fourteen days' notice in writing of the time and place when and at which he attends to commence the audit of the accounts.

Art. 12.—The surveyor and collector shall attend at the time and place appointed by the district auditor for the audit of their accounts, and shall submit to him all books, documents, and vouchers containing or relating to their accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer having an interest in such accounts, but to such extent and in such manner only as will not, in the judgment of the district auditor, interfere with the audit.

Mode of Audit.

Art. 13.—In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form, that the particular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vouchers and authority; and he shall ascertain whether all sums received, or which ought to have been received, are brought into account, and he shall examine whether the expenditure is in all cases such as might lawfully be made; and he shall also reduce such payments and charges as are exorbitant; shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss; and shall disallow and strike out such payments as are not authorised by law.

Art. 14.—When the district auditor disallows any payment or surcharges any sum upon any person he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit, and shall report such disallowance or surcharge to the Local Government Board.

Art. 15.—The district auditor shall examine and collate the several books and papers of account; and shall ascertain that the several entries correspond with and balance each other, where such balance may be required; but in case of any error caused by inadvertence or accident in any account he may require the officer rendering it to correct the same, and the officer shall make the necessary correction, and the district auditor shall then deal with the account so corrected. But if the officer shall refuse to do so, the district auditor shall himself make the correction, and report the circumstances of the case to the Local Government Board.

Art. 16.—The district auditor shall compute the several accounts so as to verify the arithmetical accuracy thereof, and the balance due to or from the officers rendering the same at the time to which the audit relates; and he shall in the *receipt and expenditure account* state the balance in words at length, and certify the same by his signature or initials, and add the date of his audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificate and his reasons for the same (when they are required) in some part of the book of account which shall be free from other writing.

Art. 17.—The district auditor shall receive any objection made by a ratepayer, or any person aggrieved, against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same; and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge.

Art. 18.—If he shall doubt the correctness of any account, or any item or charge in any account, he shall require the officer rendering the account, or any other person holding or accountable for any money, books, deeds, or chattels relating to the highway parish to appear before him, and shall call upon such person to produce any accounts, books or papers which he may lawfully require; and he shall examine such officer or person as may then appear, and such accounts, books, and papers as may be produced before him, respecting such account, item, or charge.

Art. 19.—If the auditor find that any money, goods, or chattels belonging to the highway parish have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has

been incurred by the negligence or misconduct of any officer or other person accounting, he shall surcharge such officer or person with such amount or value in his account.

Art. 20.—The personal representatives of an officer accountable under this Order, dying before the audit of his accounts, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased officer, and all regulations affecting the accounts of such officer shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

Art. 21.—The district auditor shall, at the close of the audit of the accounts relating to each highway parish where there are any defects in such accounts, transmit to the Local Government Board a statement in the Form (G.) in the said schedule, showing which of the books directed by this Order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Local Government Board. He shall also transmit to the Local Government Board at the close of each audit a certificate in the Form (H.) in the said schedule in respect of the several highway parishes within each poor law union as to which he finds that there has been no default.

Interpretation of Terms.

Art. 22.—In this Order and in the forms set forth in the schedule thereto,—

"Highway parish" means a parish or place capable of being included in a highway district in pursuance of the Highway Acts, 1862 and 1864, or one of such Acts.

"Surveyor" means any surveyor or surveyors of highways, being the highway authority for the time being.

"Collector" means a collector of highway rates duly appointed under the statutes in that behalf.

"Main roads" means roads so constituted under "The Highways and Locomotives (Amendment) Act, 1878."

"Manual labour" means manual labour employed in the actual execution of repairs, as distinct from such labour employed in obtaining, delivering, or preparing materials for repairs.

"Team labour" means labour of that kind employed in the collection, delivery, or distribution of materials for the purpose of executing repairs, and includes such labour employed under any contract entered into for those purposes exclusively under section 46 of "The Highway Act, 1835."

"Materials" means stone or other materials for repairs, and includes the cost of purchasing, getting, carrying, or preparing such materials, and of delivering the same other than by means of team labour. It also includes any such cost incurred under any contract entered into under the section last above mentioned where the contract is not made exclusively for the purposes above described under the head of "team labour," as well as damage to land in getting materials for the purpose of repairs, and royalty or rent of pits or quarries for that purpose.

"Tradesmen's bills" includes the cost of tools, implements, and other stores supplied by tradesmen for repairs, and not hereinbefore included in the term "materials," and the cost incurred in repairs of drains, bridges, and fences, executed by tradesmen; and when used in connection with "main roads," means tradesmen's bills for repairs incurred for main roads exclusively.

SCHEDULE.

FORM A.)

Rate Book and Rate Collection Account.

HIGHWAY PARISH OF _____

AN ASSESSMENT for carrying the several purposes of the Act 5 & 6 Will IV. c. 50, into execution, in the Highway Parish of , in the County of , made this day of 18 , being an equal assessment or rate at in the Pound on the full annual value of the property in the said Highway Parish liable to be rated for the Highways therein.

Number.	RATE BOOK.					RATE COLLECTION ACCOUNT.																										
	Name of Occupier.	Description of the Premises and Property rated.	Annual Value.			Rate at in the Pound.			Recoverable Arrears of former Rates.			Total Amount to be collected.			Amount actually collected.			Date of Collection (Day, Month and Year).	Uncollected at first balancing this Book.			Uncollected at finally balancing this Book.									
																						Recoverable Arrears at finally balancing this Book.			Irrecoverable at finally balancing this Book.						
																									Amount legally excused.			Otherwise not recoverable.			
																												Amount.			Causes.
1.	2.	3.	4.			5.			6.			7.			8.			9.	10.			11.			12.			13.			14.
			£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
		TOTALS .												*																	
														*																	

Form of Declaration at the foot of the "Rate."

I, the undersigned, hereby declare that the total of the above Rate as shown in Column 5 amounts to the sum of Pounds Shillings and Pence.

_____ *Surveyor.*

_____

Surveyor [*or* Surveyors] of Highways, of the above named parish.

* The sub-division of totals is here introduced to meet a case where it may be found desirable to balance the Book before the closing of the Rate. In such a case the upper division is intended for the amount collected at the first balancing, and the lower one for the amount collected since the first balancing.

This part is to be retained by the Surveyor or his Collector.

FORM (B.)

Rate Receipt Check Book.

This part is to be retained by the Surveyor or the Collector, as the case may be.

COUNTERFOIL.	RECEIPT.	DEMAND NOTE.
*No.*____	*No.*____	*No.*____
*Highway Parish of*_____.	*Highway Parish of*_____.	*Highway Parish of*_____.
____*day of*____18___.	_____*day of*_____18___.	_____*day of*_____18___.
*Mr.*_____	*Received of*_____	*Mr.*_____
Rate made on the	*the Sum of*_____*in respect of the Highway Rate of the above Parish, viz.:—*	_____*Street.*
_____*day of*_____	£ s. d.	*The Surveyor of Highways demands payment of the Highway Rate, made the*_____*day of*_____18___, *and of the arrears of former Rates as below, now due from you.*
_____	*Rate made the*_____ *day of*_____18___*at* _____*in the Pound on £*_____*Annual Value*	£ s. d.
*Arrear £*_____	*Arrear of former Rate*	*At*___*in the Pound on £*_____*Annual Value* . . .
_____	_____	*Arrears* . . .
£	*Total* .	_____
	_____	£
	Surveyor [or Collector.]	_____.
		Surveyor [or Collector.]

Form of Certificate to be signed by the Surveyor.

*I, the Surveyor of the Highways of the Parish aforesaid, do hereby certify that I have examined this Rate Receipt Check Book, and have ascertained the correctness of the numbering and the correspondence of the sums and names in such receipts with the Rate Book, and I certify that the Number of Receipts in this Book so filled up for this Rate is**

*Dated this*_____*day of*_____

_____

Surveyor.

* Here state the Number in Words at length.

FORM (C.)

Repairs
for the year ending

HIGHWAY PARISH OF _____

MANUAL LABOUR . . . . . .

Names of Labourers.	Employment.	
	Name of Road.	Mode.

TEAM LABOUR . . . . . .

Names of Team Owners.	Employment.	
	Name of Road.	Mode.

MATERIALS . . . . . .

Names.		Description of Materials or Work.	Road where Materials were used, or place where Work was performed.
Persons supplying Materials by Contract or otherwise.	Labourers employed in getting, carrying, or preparing Materials.		

TRADESMEN'S BILLS AND MISCELLANEOUS

Names of Tradesmen, &c.	Number of Invoice.*	Description of Charge.

N.B.—Under section 40 of the Highway Act of 1835, any Surveyor of Highways who shall neglect to forfeit and pay any sum not exceed-

The columns appropriated for the days in each week are intended to show on what days the labourers for the day or

* The Invoices, as they are received, should be numbered consecutively,

FORM (C.)

Expenditure Account
the 25th day of March, 18 .

_____ *Surveyor.*

. . . . . MANUAL LABOUR.

Week, ending	Days of Week on which employed.						Number of			Rate per			Amounts paid.						When paid.	Labourers' Signatures
							Yards.	Loads.	Days.	Yard.	Load.	Day.	Main Roads.			Parish High-ways.				
	M.	T.	W.	Th.	F.	S.							£	s.	d.	£	s.	d.		
day of 18 .																				
Totals for the year . . .																				

. . . . . TEAM LABOUR.

Dates on which employed.	Number of			Rate per			Amounts paid.						When paid.
	Yards.	Loads.	Days.	Yard.	Load.	Day.	Main Roads.			Parish Highways.			
							£	s.	d.	£	s.	d.	
Totals for the year													

. . . . . MATERIALS.

Dates of supply or when employed.	Number of			Rate per			Amounts paid.						When paid.	Labourers' Signatures for Wages.
	Yards.	Loads.	Days.	Yard.	Load.	Day.	Main Roads.			Parish Highways.				
							£	s.	d.	£	s.	d.		
Totals for the year														

EXPENSES FOR REPAIRS.

Date of Charge.	Amounts paid.						When paid.
	Main Roads.			Parish Highways.			
	£	s.	d.	£	s.	d.	
Totals for the year . .							

enter in his account every sum paid by him, within one week after the same shall be paid, will be liable to
ing Five Pounds for each default.
were employed, and should be filled up thus: (1) or ($\frac{1}{2}$), according as the labourers were employed
part of the day.
and kept arranged in that order, for convenience of reference.

FORM (D.)

Receipt and

HIGHWAY PARISH OF _____ *Year ending the 25th*

RECEIPTS.

_____

	£	s.	d.
Balance (if any) received from late Surveyor			
Amount from Rate allowed day of , 18 , as shown in *Rate Collection Account*			

OTHER RECEIPTS.

Date.	From whom.	On what account.	£	s.	d.
		Total Receipts			
		Balance in favour of Surveyor .			
		TOTAL .			

I [*or* We] declare that the entries in the foregoing

I find the Balance of this Account to be pounds shillings and pence, against to his successor in office before this day. Dated 18

N.B.—Under section 40 of the Highway Act of 1835, any Surveyor of Highways who shall neglect to enter or paid, will be liable to forfeit and pay any sum not exceeding Five Pounds for each default.

FORM (D.)

Expenditure Account.

day of March, 18 . _____ *Surveyor.*

EXPENDITURE.

	£	s.	d.
Balance over-paid (if any) on last account			

REPAIRS.

—	Folio of Repairs Expenditure Account.	Main Roads. £	s.	d.	Folio of Repairs Expenditure Account.	Parish Highways. £	s.	d.
Manual Labour								
Team Labour								
Materials								
Tradesmen's Bills and Miscellaneous Expenses for Repairs								
Totals . .								

GENERAL EXPENSES.

Purposes.	To whom paid.	Date of payment.	Amount. £	s.	d.
Salaries					
Contributions to Turnpike Trusts.					
Other payments, specifying purposes:—					
		Total Expenditure . .			
		Balance against Surveyor .			
		TOTAL			

account are true, just, and complete.

(Signed) *A.B.* Surveyor.
C.D.

(*or* in favour of, *as the case may be*) the Surveyor, of which sum I find that has been paid by him
District Auditor.

in his account every sum received or paid by him, within one week after the same shall have been received

FORM (F.)

_____ UNION.

_____ HIGHWAY PARISH.

FINANCIAL

"The District Auditors

Statement of Account showing the Receipts and

RECEIPTS.	£	s.	d.
Balance (if any) received from late Surveyor			
From Highway Rates			
Contributions from County Authority			
Receipts from Turnpike Trusts			
Receipts (either by way of composition or otherwise, under section 23 of 41 & 42 Vict. c. 77) on account of damage caused by excessive weight or extraordinary traffic			
Other Receipts, namely:—			
TOTAL RECEIPTS			
Balance in favour of Surveyor			
TOTAL . . .			

Memorandum. £

Rateable Value of the Parish for Highway purposes . }

		Miles.	Furlongs.
Mileage.	Main Roads . . .		
	Parish Highways . .		

I hereby certify that I have compared the entries in the above Statement with the Vouchers have been duly complied with.

I hereby further certify that I havo ascertained by Audit the correctness of such Statement, March, 18 , and allowed by me at the Audit, is £ s. d. [*here insert the amount of* allowed by me, is [*here insert in words at length the amount of the net Expenditure*].

FORM (F.)

STATEMENT.

Act, 1879" (42 Vict. c. 6).

Expenditure for the year ended 25th March, 18 .

EXPENDITURE.	£	s.	d.	£	s.	d.
BALANCE overpaid (if any) on last Account						
MAIN ROADS (Repairs):—	£	s.	d.			
Manual Labour						
Team Labour						
Materials						
Tradesmen's Bills and Miscellaneous						
PARISH HIGHWAYS (Repairs):—	£	s.	d.			
Manual Labour						
Team Labour						
Materials						
Tradesmen's Bills and Miscellaneous						
GENERAL EXPENSES:—	£	s.	d.			
Contributions to Turnpike Trusts						
Salaries { Surveyor						
Salaries { Collector (if any)						
Other Expenses						
TOTAL EXPENDITURE						
Balance against Surveyor . . .						
TOTAL . . .						
Deduct—	£	s.	d.			
Amount borne by County Authority						
Contributions to Turnpike Trusts						
Balance overpaid (if any) on last Account . . .						
Balance against Surveyor						
NET EXPENDITURE TO BE CERTIFIED FOR THE PURPOSES OF THE ABOVE ACT						

_____Surveyor. _____day of_____18 .

and other documents relating thereto, and that the regulations with respect to such Statement

and that the total amount expended by the Surveyor during the year ended the 25th day of *the total Expenditure*], and that the Expenditure for the purposes of the Act 42 Vict. c. 6, and

As witness my hand this_____day of_____, 18 .

Stamp.

_____ _____*District Auditor.*

FORM (E.)

Stores Account.

As to Materials, Tools, Implements, and other Stores for the Repair of the Highways.

Year ended the Twenty-fifth day of March, 18 .

HIGHWAY PARISH OF _____.

_____ *Surveyor.*

NAMES OF ARTICLES.	Quantity or Number of Stock at commencement of Year.	New Stock.	From whom or how supplied, and where there is an Invoice, the number of it.	Totals of Stock brought forward and New Stock.	Consumed.		Quantity or Number Remaining in Store at end of Year.	Totals consumed and remaining in Store.	Observations.
					Quantity or Number.	How used.			

(FORM G)

_____ UNION.

_____ *Audit District.*

HIGHWAY PARISH OF _____

A STATEMENT of the AUDITOR for the year ended the 25th day of March, 18 , in reference to the Books required to be kept by the Surveyor of Highways and Collector of Highway Rates of the above-mentioned Parish.

_____ *Surveyor.*
_____ *Collector.*

The Surveyor [*or* other Highway Authority] and the Collector above named attended the Audit.*

Rate Book and Rate Collection Account.	
Rate Receipt Check Book.	
Repairs Expenditure Account.	
Receipt and Expenditure Account.	
Stores Account.	

The Audit of the above Books was commenced on the *day of* 18 , *and was concluded on the same day* [or *on the* *day of* 18 .]

_____ *District Auditor.*
Date _____ 18 .

Against the name of any Book mentioned in this Statement which is not kept at all, or is imperfectly kept, the District Auditor is to write in the former case "not kept," and in the latter "imperfectly." In case of any Book being imperfectly kept, the general nature of the imperfection is to be set forth *on the other side*, together with such observations as the District Auditor considers requisite. He is also to report whether the officer has in any respect disobeyed, neglected, or departed from any of the regulations of this Order applicable to his office.

* If this is not so, alter the Statement according to the fact.

FORM (H.)

_____ *Audit District.*
_____ *Union.*

TO THE LOCAL GOVERNMENT BOARD.

I CERTIFY that I have audited the Accounts of the Surveyors of Highways and Collectors for the several Highway Parishes in the above-named Union, and have carefully examined all the Books and Accounts required by the Order of the Local Government Board to be kept, and find no defect in the Books and Accounts required to be kept by the following Officers:

Highway Parish.	Office.	Name.	Highway Parish.	Office.	Name.

Audit completed this *day of* 18 .

_____ *District Auditor.*
Date _____ 18 .

Given under the Seal of Office of the Local Government Board, this Ninth day of April, in the year One thousand eight hundred and eighty-one.

(L.S.) J. G. DODSON, *President.*

JOHN LAMBERT, *Secretary.*

ALKALI, &c., WORKS REGULATION ACT, 1881.

(44 & 45 VICT. c. 37.) (1).

Local Government Board, Whitehall, S.W.,
24th October, 1881.

SIR,

I am directed by the Local Government Board to state that, with a view of giving effect to the provisions of the Alkali, &c., Works Regulation Act, 1881 (1), they are desirous of ascertaining the number of works in the several sanitary districts in England and Wales which will be affected by the Act, and the names and addresses of the proprietors or managers of such works.

By the Alkali Acts, 1863 and 1874, all alkali works, viz.: works for the manufacture of alkali, sulphate of soda, or sulphate of potash, in which muriatic acid gas is evolved, were placed under the inspection of inspectors, appointed by the central authority, in order to insure the condensation of the noxious gases evolved by such works either within a prescribed limit, or according to the best practicable and available means.

The Alkali Works, &c., Regulation Act, 1881, passed during the last session, has consolidated the Acts of 1863 and 1874, and largely extended the beneficial policy of those Acts by providing for the inspection of various other works in which noxious or offensive gases are evolved so that the adoption of the best practicable and available means of condensation may be secured.

The works to which the Act applies, and which, in addition to alkali works, will now be brought under skilled inspection from and after the first day of January next, are the following :—

(1.) Sulphuric acid works.
(2.) Chemical manure works.
(3.) Gas liquor works.
(4.) Nitric acid works.
(5.) Sulphate of ammonia works and muriate of ammonia works ; and
(6.) Chlorine works, or works in which chlorine, bleaching powder, or bleaching liquor is made.

As regards the foregoing works it will be the duty of the inspector to see that the noxious and offensive gases evolved from them are condensed in accordance with the requirements of the Act, and to take proceedings against the proprietors in cases of default.

The Act further provides for the inspection of—

(1.) Salt works in which the extraction of salt from brine is carried on, and
(2.) Cement works, or works in which aluminous deposits are treated for the purpose of making cement.

In these cases, however, the Act itself does not impose any limit with regard to the escape of the noxious gases evolved ; but enables the Local Government Board, under certain restrictions, to require by Provisional Order that the best means for rendering such gases harmless or inoffensive shall be adopted.

In order that the several works before referred to may be brought under inspection, the Act requires that every work shall be duly registered in manner prescribed by the Board, and that from and after the first day of April, 1882, no work shall be carried on unless it is certified to be so registered.

For the purpose of enabling the Board to determine what arrangements it will be necessary to make for the inspection of all the works to which the Act applies, it is essential that they should be in possession of accurate information as to the number and description of such works. They should also know the names and addresses of the proprietors, so that instructions may be issued to them pointing out the steps to be taken to obtain the requisite certificates of registration.

I am, therefore, to request that the sanitary authority will have the goodness to cause the Board to be furnished in the enclosed form with the information required, so far as regards such of the noxious trades of the kinds specified as are carried on within the limits of the district of the sanitary authority.

The Board entertain no doubt that with the assistance of the medical officer of health and inspector of nuisances there will be no difficulty in supplying the particulars asked for, and they will be glad to receive the return duly filled up not later than the 14th of November next.

Before concluding this communication the Board think it right to direct the attention of the sanitary authority to two sections of the Act of the last session which are of considerable

(1) This Act will be found *ante*, p. 644.

importance. The first is section 19, which enacts that if any sanitary authority applies to the central authority for an additional inspector under the Act, and undertakes to pay not less than a moiety of his salary, the Local Government Board may, with the sanction of the Lords Commissioners of Her Majesty's Treasury, appoint an additional inspector, who is to reside within a convenient distance of the works he is required to inspect.

The second is section 28, which provides that where a nuisance arising from any noxious or offensive gas or gases is wholly or partially caused by the acts or defaults of several persons, any person injured may proceed against any one or more of such persons, and may recover damages from each defendant, in proportion to his contribution to the nuisance, notwithstanding that the act or default of such defendant would not separately have caused a nuisance. This section, however, does not apply to a defendant who can produce a certificate from the chief inspector that, in the works of such defendant, the requirements of the Act have been complied with and were complied with when the nuisance arose.

It may also be mentioned, that where it appears to any sanitary authority on the representation of any of their officers, or of any ten inhabitants of their district, that any work to which the Act applies is carried on in contravention of it, and that a nuisance is occasioned thereby to any of the inhabitants of their district, the authority may complain to the central authority, who shall make such inquiry into the matters complained of, and after the inquiry, may direct such proceedings to be taken, as they may deem just.

I am, &c.,
JOHN LAMBERT,
Secretary.

To the Clerk
to the Sanitary Authority.

ALKALI, &c., WORKS REGULATION ACT, 1881.

(44 & 45 VICT. c. 37.) (1).

Local Government Board, Whitehall, S.W.,
31st December, 1881.

SIR,

I am directed by the Local Government Board to inform you that the Alkali, &c., Works Regulation Act of last session (1), which comes into operation on the first day of January, 1882, requires that, with a view to inspection, the following works shall be registered, viz.:—

(1.) Alkali works, including works for the manufacture of alkali, sulphate of soda,* or sulphate of potash, in which muriatic acid gas is evolved.
(2.) Sulphuric acid works.
(3.) Chemical manure works.
(4.) Gas liquor works.
(5.) Nitric acid works.
(6.) Sulphate of ammonia works and muriate of ammonia works.
(7.) Chlorine works, or works in which chlorine, bleaching powder, or bleaching liquor is made.
(8.) Works in which the extraction of salt from brine is carried on.
(9.) Cement works, or works in which aluminous deposits are treated for the purpose of making cement.

The Act provides that such works shall not be carried on after the first of April next, unless they are certified to be registered, and that the register shall contain the prescribed particulars, and be conducted, and the certificates issued, in the prescribed manner.

I am further directed to call your attention to the provisions contained in the third and following sub-sections of section 11 of the Act, which are as under:—

(3.) The owner of an alkali work or of a work required to be registered shall in the month of January or February in every year apply for a certificate of registration in the prescribed manner, and on such application and compliance with the conditions as to registration the certificate shall be issued, and shall be in force for one year from the first day of April following the said application.

(4.) The owner of an alkali work, or of a work required to be registered, erected after the commencement of the Act shall before commencing any manufacture or process in such work apply for such certificate in the prescribed manner, and on such application

(1) This Act will be found *ante*, p. 644.

* N.B.—The formation of any sulphate in the treatment of copper ores by common salt, or other chlorides, is to be deemed to be a manufacture of sulphate of soda.

and compliance with the conditions as to registration the certificate shall be issued as soon as may be, and shall be in force until the next first day of April.

There shall be charged in respect of every such certificate, in the case of an alkali work, the duty of five pounds; and in the case of a work required to be registered, not being an alkali work, the duty of three pounds.

(5.) Written notice of any change which occurs in the ownership of a work or in the other particulars stated in the register shall, within one month after such change, be sent by the owner to an inspector, and the register and the certificate shall be altered accordingly in the prescribed manner without charge and without the issue of a new certificate. If such notice is not sent as so required the work shall not be deemed to be certified to be registered.

(6.) The owner of a work which is carried on in contravention of this section shall be deemed guilty of an offence against the Act, and shall be liable to a fine not exceeding five pounds for every day during which it is so carried on.

According to the interpretation clause (section 29), the term "prescribed" means "prescribed by the Local Government Board;" and the Board have decided that the register shall be kept at the offices of the Board, and that the applications for certificates shall be made in the enclosed form. Every such application may either be sent by post or delivered at the offices of the Board.

The term "owner" means the lessee, occupier, or any other person carrying on any work to which the Act applies.

If the application is found to contain the requisite particulars, and it appears that a certificate may properly be issued, the Board will inform the applicant of the manner in which the amount of the stamp for the certificate may be transmitted; and upon the receipt of such amount the necessary certificate will be forwarded.

It should be added that section 12 of the Act provides that a work erected after the commencement of the Act, or which has been closed for twelve months, shall not be registered, unless it is furnished with such appliances as at the time of registration appear to the chief inspector, after his own examination, or that of an inspector, or, in case of difference, to the central authority, to be necessary in order to enable the work to be carried on in accordance with the requirements of the Act.

I am, &c.,
JOHN LAMBERT,
Secretary.

To the owner, lessee, occupier, or other person carrying on any of the works referred to in this circular.

ALKALI, &c., WORKS REGULATION ACT, 1881.

(44 & 45 VICT. c. 37.) (1).

Application for Certificate of Registration.

I (or we) the undersigned hereby apply for a certificate of registration under the above Act of the undermentioned work, and I (or we) do hereby declare that the following particulars are correct:—

(*a.*) The description of the work and its name, if any.

(*b.*) The parish or place where the work is carried on.

(*c.*) The date when the work was erected.

(*d.*) If the work is closed, the date when it was closed.

(*e.*) The name and address of the owner, lessee, occupier, or other person carrying on the work.

Dated this day of 188 .

(Signed)_____

To the Local Government Board,
Whitehall, London, S. W.

N.B.—The application must be signed by the owner, lessee, occupier or other person carrying on the work.

(1) See the preceding Circular.

ALKALI, &c., WORKS REGULATION ACT, 1881.

REGISTRATION OF WORKS.

To the Owners of Works to which "The Alkali, &c., Works Regulation Act, 1881," applies;—

And to all others whom it may concern.

Whereas by sections 11 and 12 of "The Alkali, &c., Works Regulation Act, 1881," provision is made for the registration of the works to which that Act applies, subject to conditions to be prescribed from time to time by the Local Government Board:

Now therefore, we, the Local Government Board, hereby prescribe as follows:—

Art. 1.—The registration of the works shall be at the office of the Local Government Board, Whitehall, London, S.W.

Art. 2.—The application for a certificate of registration of any work shall contain the following particulars:—

(*a.*) The description of the work, and its name, if any.

(*b.*) The parish or place where the work is carried on.

(*c.*) The date when the work was erected.

(*d.*) If the work is closed, the date when it was closed.

(*e.*) The name and address of the owner, lessee, occupier, or other person carrying on the work.

Art. 3.—The application for a certificate shall be addressed to the Local Government Board and sent by post to or delivered at the office of the Board.

Art. 4.—If the application is in due form, and in the case of a work erected after the first day of January, 1882, or which has been closed for a period of twelve months, the work is found to be furnished with such appliances as are required by section 12 of the said Act, a certificate in the Form A. set forth in schedule hereto shall be issued by the Local Government Board upon the receipt by them of a post office order for the amount of the stamp duty payable thereon under the said Act, such order to be made payable to the Postmaster-General at the Parliament Street Post Office, Whitehall, London, S.W.

Art. 5.—Where any change occurs in the ownership of a work, or in any other particulars stated in the register, and written notice thereof is given to an inspector in accordance with the provisions of the said Act, the inspector shall forward such notice to the Local Government Board and the register shall be amended by inserting such alteration accordingly, and an endorsement shall be made by the Local Government Board on the certificate in accordance with the Form B. set forth in the said schedule.

Given under the Seal of Office of the Local Government Board, this seventh day of January, in the year one thousand eight hundred and eighty-two.

(L.S.) J. G. DODSON, *President.*

JOHN LAMBERT, *Secretary.*

SCHEDULE.

FORM (A.)

Certificate under "The Alkali, &c., Works Regulation Act, 1881."

(44 & 45 Vict. c. 37.)

(Stamp.) [England and Wales.]

This is to certify that the work known as the
situate at , of which work
is [*or* are] at present the
[or which work is at present carried on by]
has been duly registered in accordance with the provisions of "The Alkali, &c., Works Regulation Act, 1881," in that behalf.

Dated this day of , in the year one thousand eight hundred and eighty- .

Signed
Assistant Secretary,
Acting on behalf of the Local Government Board under the authority of their General Order dated the 26*th day of May,* 1877.

This certificate will remain in force until the 1st day of April, one thousand eight hundred and eighty- .

FORM (B.)

Endorsement on Certificate in case of Change of Ownership, &c.

This is to certify that has been duly registered as the of the [*or* the person carrying on the] in the place of .

Date

Signed

Assistant Secretary.
Acting on behalf of the Local Government Board under the authority of their General Order dated the 26th day of May, 1877.

PARLIAMENTARY GRANT IN RESPECT OF MAIN ROADS.

ALTERATION OF FORM OF STATUTORY FINANCIAL STATEMENT.

Local Government Board, Whitehall, S.W.,
26th March, 1883.

SIR,

I am directed by the Local Government Board to state that it is requisite for statistical purposes that the contributions received by the urban sanitary authority towards the cost of the repair of main roads should be entered separately in the statutory financial statement, instead of being included with other items as receipts "from all other sources."

I am therefore to request that the following may be added in writing or print to the prescribed form of financial statement as the first two items under the head of "other receipts," viz. :

"From county authority in respect of main roads,"
and
"From parliamentary grant—main roads."

I am also directed to state, in reference to the expenditure side of the financial statement, that the amount received by the urban sanitary authority from the parliamentary grant in aid of the cost of maintenance of main roads may be deducted from the expenditure in respect of highways during the year in which it is received, and that if this be done the words "and parliamentary grant," should be added after the words "less amount borne by county authority," and next below the item "amount borne by county authority," a corresponding item "amount borne by parliamentary grant," and the amount thereof, should be added.

I am, &c.
HUGH OWEN,
Secretary.

To
The Clerk to the Urban Sanitary Authority.

FINANCIAL STATEMENT.

ENTRY OF AMOUNT RECEIVED FROM PARLIAMENTARY GRANT.

Local Government Board, Whitehall, S.W.,
26th March, 1883.

SIR,

I am directed by the Local Government Board to state that it is requisite for statistical purposes that the amount received by the highway board from the parliamentary grant in aid of the cost of maintenance of main roads should be entered separately in the financial statement required by the District Auditors Act, 1879, instead of being included with other items as "other receipts."

I am therefore to request that the words "parliamentary grant in respect of main roads," may be added in writing or print to the prescribed form of financial statement next after the item "contributions from county authority."

I am also directed to state, in reference to the expenditure side of the financial statement, that the amount received from the parliamentary grant may be deducted from the expenditure in respect of main roads during the year in which it is received, and, that if this be done the

deduction should be shown in the same manner as that on account of the sum borne by the county authority.

I am, &c.,
HUGH OWEN,
Secretary.

To
The Clerk to the Highway Board.

ORDER FOR ACCOUNTS.

WAYWARDENS OF HIGHWAY PARISHES.

To the waywardens for the time being, by whom highway rates may be levied in highway parishes ;—

To the several district auditors authorised for the time being to audit the accounts of the said waywardens ;—

And to all others whom it may concern.

Whereas by section 9 of "The Highways and Locomotives (Amendment) Act, 1878," it is enacted that the accounts of the highway anthority of every highway district and highway parish shall be made up in such form as the Local Government Board shall from time to time prescribe ;

And whereas by section 5 of "The District Auditors Act, 1879," it is enacted as follows :—

"Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section 98 of the Poor Law Amendment Act, 1834."

And whereas by sections 3 and 7 of "The Highway Rate Assessment and Expenditure Act, 1882," it is enacted as follows ;—

Section 3.—"Where in any parish the vestry have, under section 4 of the Poor Rate Assessment and Collection Act, 1869, ordered or shall hereafter order that the owners of all rateable hereditaments to which section 3 of that Act extends shall be rated to the poor rate in respect of such hereditaments instead of the occupiers, such order shall be deemed to extend to and include the highway rate, and whilst such order is in force the respective owners of such hereditaments shall be rated and assessed instead of the occupiers thereof to the highway rates made after the passing of this Act for any highway parish which is co-extensive with such parish or with any part thereof, and to which otherwise such occupiers might by law be rated ; subject nevertheless to the abatements or deductions and to the conditions specified in sections 4 and 5 of the the said Act ; and for the purposes of this section the term 'overseers' in section 4 of the said Act shall be construed to mean 'surveyor of highways or other person authorised by law to make and levy a highway rate.'"

"The surveyor of highways, or other person authorised by law to make and levy a highway rate, shall have the same powers, remedies, and privileges for recovering the rates made under this Act upon owners, as the overseers of the poor have under the said Poor Rate Assessment and Collection Act, 1869, for the recovery of a poor rate, and when the overseers are required by law to levy the highway rate, and such rate applies to the whole parish, they may levy the same as part of the poor rate."

"Section 30 of the Highway Act, 1835, relating to the composition for rates in certain cases under local Acts is hereby repealed."

Section 7.—"The provisions of section 9 of the Highways and Locomotives (Amendment) Act, 1878, as amended by the District Auditors Act, 1879, in relation to the audit of the accounts of highway authorities and their officers shall extend to the accounts of a waywarden of any highway parish within a highway district with respect to the highway rates levied by him."

Now therefore, we the Local Government Board, hereby order as follows :

Art. 1.—The following regulations shall henceforth be observed in regard to the accounts with respect to any highway rate levied by any waywarden, for the time being, of a highway parish

in a highway district, except in so far as we may from time to time assent to any departure from such regulations.

Art. 2.—The waywarden shall punctually enter up and accurately keep a *rate book and rate collection account*, which shall be in the form A. in the schedule to this order, subject as hereinafter provided in Art. 4.

In the portion of the form headed "rate-book" shall be inserted the particulars indicated by the headings of the several columns, the numbers of assessments being placed in column 1 in consecutive order, and before any sum in respect of the rate is collected the waywarden shall sign a declaration, in words at length, of the total amount of the rate, according to the form of declaration set forth at the foot of the form of rate, or to the like effect.

Where it is intended that more than one consecutive number and assessment shall, as hereinafter provided, be included in one receipt, there shall be inserted in red ink in the rate book, immediately below the last item of annual rateable value to be included in such receipt, the total of the items of annual rateable value to be so included, and also below the last item of assessment to be so included in such receipt, the total of the items of assessment to be so included.

The several columns of the *rate book and rate collection account* which contain the annual rateable value, the rate assessed, the recoverable arrears, and the total amount to be collected, shall be added up at the foot of every page, and the several totals shall be ascertained and set forth at the foot of the rate, before any sum of money in respect of the said rate is collected.

The portion of the form headed "rate collection account" shall be signed by the waywarden before the book is presented to the district auditor.

Art. 3.—Where there are more than 30 ratepayers on the *rate book* the waywarden shall, and where there is a less number of ratepayers the waywarden may, use a *rate receipt check book*, which shall be in the form B. in the said schedule, subject as hereinafter provided in Art. 4.

The demand notes, receipts, and counterfoils in this book shall be numbered consecutively with numbers corresponding with those in the *rate book*, but several consecutive numbers and assessments, but no others, for which the same person or persons is or are rated, may be included in one demand note and one receipt; and the demand notes shall be signed by the waywarden.

When the amount of the rate shall be received from any person assessed, the receipt, applicable to such person's assessment shall, at that time and not before, be signed, and detached from the *rate receipt check book*, and shall be delivered, stamped with an adhesive stamp where the amount of the payment shall render such stamp necessary, to the person making the payment, and the counterfoil shall be retained in the book.

In the receipt so delivered and in the counterfoil so retained the true date of the payment shall be inserted.

If when a new rate is made, the previous rate be not wholly collected, the waywarden shall enter upon each receipt in respect thereof then remaining in the *rate receipt check book* the reason for not using such receipt, and shall date and sign such entry.

Art. 4.—If in the highway parish the owners of the rateable hereditaments to which section 3 of the "Poor Rate Assessment and Collection Act, 1869," applies, shall not be rateable to the poor rate in respect of such hereditaments instead of the occupiers, in pursuance of section 4 of that Act, the columns numbered 3, 7, and 14 in the form A. of the *rate book and rate collection account* in the schedule to this order, shall not be filled up and may be omitted from the form, but if omitted, the remaining columns shall be numbered as in the prescribed form. And where the owners are not so rateable, so much of the form B. of the *rate receipt check book* in the said schedule as refers to allowances to owners shall not be filled up and may be omitted.

Art. 5.—The waywarden shall also punctually enter up and accurately keep a *receipt and expenditure account* (form C.), in which shall be entered in order of date all sums received or paid by him on behalf of the parish, with the date of receipt or payment. He shall also enter therein the information indicated in the form with respect to the mileage of the roads within the area over which the highway rate is levied by him.

Financial Statement.

And whereas by section 3 of "The District Auditors Act, 1879," it is enacted as follows:—

"Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit, held in pursuance of section 6 of the Poor Law Amendment Act, 1866) a financial statement in duplicate in the prescribed form and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel

that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed; and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement."

Now therefore, we, the Local Government Board, hereby further order as follows:—

Art. 6.—The *financial statement* to be prepared and submitted to the district auditor, in duplicate, by the waywarden, shall, for the year ended the thirtieth day of April, 1883, and thenceforth, be in the form D. in the schedule to this order, and shall contain the particulars therein set forth; and the certificate of the district auditor to be appended to each such duplicate shall be in the form set forth at the foot of the said statement.

Closing of Accounts.

Art. 7.—All the accounts of the waywarden shall be made up and balanced to the thirtieth day of April in every year.

Notice of Audit: Production of Books.

Art. 8.—The district auditor shall audit the accounts of the waywarden once in every year, that is to say, as soon as may be after the thirtieth day of April. Provided always, that if the district auditor shall be required by the Local Government Board to hold an extraordinary audit, either of the whole or of any portion of the accounts, in addition to the ordinary audit all the provisions herein contained with reference to the ordinary audit shall, as far as they may be applicable, apply to such extraordinary audit.

Art. 9.—The district auditor, in respect of every ordinary audit, shall give to the waywarden 14 days' notice in writing of the time when, and the place at which, he intends to commence the audit of the accounts.

Art. 10.—The waywarden shall attend at the time and place appointed by the district auditor for the audit of his accounts, and shall submit to him all books, documents, and vouchers containing or relating to his accounts; and the same shall at the time of the audit be open to the inspection of any owner of property or ratepayer having an interest in such accounts, but to such extent and in such manner only as will not, in the judgment of the district auditor, interfere with the audit.

Mode of Audit.

Art. 11.—In auditing the accounts, the district auditor shall see that they have been kept and are presented in proper form; that the paricular items of receipt and expenditure are stated in sufficient detail, and that the payments are supported by adequate vonchers and anthority; and he shall ascertain whether all sums received, or which ought to have been received, are brought into account; and he shall examine whether the expenditure is in all cases such as might lawfully be made; and he shall reduce such payments and charges as are exorbitant; shall surcharge moneys not duly accounted for, or lost by negligence, upon the person who ought to account for the same, or whose negligence or improper conduct has caused the loss; and shall disallow and strike out such payments as are not authorised by law.

Art. 12.—When the district auditor disallows any payment or surcharges any sum upon any person, he shall declare the ground of his decision, and offer to state such ground in writing, if required by the person aggrieved to do so, in the proper book of account forthwith, or as soon as the arrangements for the business of his audit will permit; and shall report such disallowance or surcharge to the Local Goverment Board.

Art. 13.—The district auditor shall examine and collate the several books and papers of account; and shall ascertain that the several entries correspond with and balance each other, where such balance may be required; but in case of any error caused by inadvertence or accident in any account he may require the waywarden rendering it to correct the same, and the waywarden shall make the necessary correction, and the district anditor shall then deal with the account so corrected. But if the waywarden shall refuse to do so, the district auditor shall himself make the correction, and report the circumstances of the case to the Local Government Board.

Art. 14.—The district auditor shall compute the several accounts so as to verify the arithmetical accuracy thereof and the balance due to or from the waywarden rendering the same at the time to which the audit relates; and he shall in the *receipt and expenditure account* state whether he finds any balance, and if so the amount thereof in words at length, and shall in all cases certify the same by his signature or initials, and add the date of his audit; and when he certifies any sum or other matter to be due he shall, as far as practicable, enter his certificate and his reasons for the same (when they are required) in some part of the book of account which shall be free from other writing.

Art. 15.—The district auditor shall receive any objection made by a ratepayer, or any person aggrieved against the accounts undergoing audit, or any item or charge therein, or any vouchers or authority for the same: and shall examine into the merits of such objection, and make a decision respecting the same, stating the grounds thereof, and offering to enter the same in the book of account then being examined, if required to do so, as in the case of a disallowance or surcharge.

Art. 16.—If he shall doubt the correctness of any account, or any item or charge in any account, he shall require the waywarden rendering the account or any other person holding or accountable for any money, books, deeds, or chattels, relating to the highway parish, to appear before him, and shall call upon such person to produce any accounts, books, or papers which he may lawfully require, and he shall examine such waywarden or other person as may then appear, and such accounts, books, and papers as may be produced before him, respecting such account, item, or charge.

Art. 17.—If the district auditor find that any money, goods, or chattels belonging to the highway parish have been purloined, embezzled, wasted, or misapplied, or that any deficiency or loss has been incurred by the negligence or misconduct of any waywarden or other person accounting, he shall surcharge such waywarden or other person with such amount or value in his account.

Art. 18.—If a waywarden accountable under this order shall die before the audit of his accounts, his personal representatives, shall, so far as they may be by law required, account, in conformity with the provisions herein contained, in the place of such deceased waywarden, and all regulations affecting his accounts shall, so far as may be otherwise lawful, affect the accounts of his personal representatives.

Art. 19.—The district auditor shall, at the close of the audit of the accounts relating to each highway parish, where there are any defects in such accounts, transmit to the Local Government Board a statement in the form E. in the said schedule, showing which of the books directed by this order to be kept is not kept, or is imperfectly kept, or kept in a form different from that prescribed by the Local Government Board. He shall also transmit to the Local Government Board at the close of each audit a certificate in the form F. in the said schedule in respect of the several highway parishes within each highway district, as to which he finds that there has been no default as regards the books of the waywardens.

Art. 20.—In this order and in the forms set forth in the schedule thereto—

"Parish" means a place for which a separate poor rate can be made.

"Highway parish" means a place for which a waywarden may be elected or a separate highway rate be made.

SCHEDULE.—FORM (A.)

Rate Book and Rate Collection Account.

_____ HIGHWAY DISTRICT.

HIGHWAY PARISH OF _____.

AN ASSESSMENT for carrying the several purposes of the Highway Acts into execution in the Highway Parish of , in the county of , made this day of 188 , being an equal assessment or rate at in the pound on the annual rateable value of the property in the said Highway Parish liable to be rated for the highways therein.

RATE BOOK.													RATE COLLECTION ACCOUNT.																													
																									Uncollected at finally balancing this Book.																	
																															Irrecoverable at finally balancing this Book.											
																																		Otherwise not recoverable.							
Number of Assessment.	Name of Occupier.	Name of Owner.	Description of the Premises and Property rated.	Annual Rateable Value.			Rate at in the Pound.			Amount of Rate assessed upon and payable by the Owner, instead of the occupier, by virtue of the Statute or Statutes in that behalf.			Recoverable Arrears of former Rates.			Total Amount to be collected.			Amount actually collected.			Date of Collection (Day Month, and Year).	Uncollected at first balancing this Book.			Recoverable Arrears at finally balancing this Book.			Allowed to Owners.			Amount legally excused.			Amount.			Causes.
1.	2.	3.	4.	5.			6.			7.			8.			9.			10.			11.	12.			13.			14.			15.			16.			17.
				£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	
			TOTALS.																																						

Form of Declaration at the foot of the "Rate."

I, the undersigned, hereby declare that the total of the above Rate as shown in Column 6 amounts to the sum of Pounds Shillings and Pence.

_____ *Waywarden.*

_____ Waywarden of the above-named Parish.

* The sub-division of totals is here introduced to meet a case where it may be found desirable to balance the Book before the closing of the Rate. In such a case the upper division is intended for the amount collected at the first balancing, and the lower one for the amount collected since the first balancing.

FORM B.

Rate Receipt Check Book.

This part is to be retained by the Waywarden.

COUNTERFOIL.

*No.*____.

*Highway Parish of*_____,

*the*____*day of*____, 188–.

*Mr.*_____

£ s. d.

*Rate made on the*_____*day of*_____188–.

*on £*_____

*Annual Rateable Value, at*_____

in the Pound .

Arrears . .

*Allowance to Owner at*_____

per cent. . .

Paid by Owner .

RECEIPT.

*No.*____.

*Highway Parish of*_____,

*the day*_____*of*_____188–.

*Received of Mr.*_____

*the Sum of*_____*pounds*

_____*shillings and*_____*pence*

in respect of the Highway Rate of the above Parish, viz.:—

£ s. d.

*Rate made the*_____

*day of*_____188–,

*on £*_____*Annual Rateable Value, at*

_____*in the Pound* .

Arrears of former Rate

Total . .

*Allowance to Owner at*_____*per cent.* .

Paid by Owner .

(*Signed*)_____

DEMAND NOTE.

*No.*____.

*Highway Parish of*_____,

*the*_____*day of*_____188–.

*Mr.*_____

_____*Street.*

*The Waywarden demands payment of a Highway Rate made the*_____*day of*_____ 188–, *and of the Arrears of former Rates as below, now due from you.*

£ s. d.

*Amount of Rate at*_____*in the Pound*

*on £*_____*Annual Rateable Value*

Arrears . . .

Total . .

Amount payable by Owner, provided it be paid within the time prescribed by the Statute 32 & 33 *Vict. cap.* 41, *sect.* 5.

(*Signed*) _____

FORM (C.)

Receipt and Expenditure Account.

_____ HIGHWAY DISTRICT. Highway Parish of _____

The Waywarden's Account for the Year ending the 30th day of April, 188 .

RECEIPTS.			PAYMENTS.		
Dates.	Items.	Totals.	Dates.	Items.	Totals.
	Amount from Rate made_____day of _____as shown in *Rate Collection Account.*				
	Memorandum.	£			
	Annual Rateable Value of the Parish for Highway purposes				
		Miles. Furlongs.			
	Mileage { Main Roads - Parish Highways				

I declare the entries in the above Account and Memorandum to be true, just, and complete; and in verification thereof, I have hereunto subscribed my name, this day of 188 .

_____ *Waywarden.*

I find this Account to be balanced [*or* I find the Balance of this Account to be_____ pounds_____shillings and_____pence, against_____, which sum I hereby certify to be due from him].

Dated_____188 . _____*District Auditor.*

FORM (D.)

_____ HIGHWAY DISTRICT.
_____ HIGHWAY PARISH.

FINANCIAL STATEMENT.

"The District Auditor's Act, 1879" (42 Vict. c. 6.)

Statement of Account showing the Receipts and Expenditure for the Year ended 30th April, 188 .

RECEIPTS.	£	s.	d.
From Highway Rates			
Other Receipts, namely,—			
TOTAL RECEIPTS			

EXPENDITURE.	£	s.	d.
Payments to Treasurer of Highway Board in respect of Precepts			
_____			
_____			
_____			
Other payments, if any, specifying them :			
Collector's salary			
_____			
_____			
_____			
Balance paid to Treasurer of the Highway Board . .			
TOTAL EXPENDITURE			
Deduct—			
Payments to Treasurer of Highway Board . . .			
NET EXPENDITURE TO BE CERTIFIED FOR THE PURPOSES OF THE ABOVE ACT			

_____ Waywarden, day of 188 .

I hereby certify that I have compared the entries in the above statement with the vouchers and other documents relating thereto, and that the regulations with respect to such statement have been duly complied with.

I hereby further certify that I have ascertained by audit the correctness of such statement, and that the total amount expended by the Waywarden during the year ended the 30th day of April, 188 , and allowed by me at the audit, is £ s. d. [*here insert the amount of the total expenditure*], and that the expenditure for the purposes of the Act 42 Vict. c. 6, and allowed by me, is [*here insert in words at length the amount of the net expenditure*].

As witness my hand this day of 188 .

_____ Stamp. _____ *District Auditor.*

FORM E.

_____ *Audit District.*

_____ HIGHWAY DISTRICT.

HIGHWAY PARISH OF _____.

A STATEMENT of the DISTRICT AUDITOR for the year ended the 30th day of April 188 , in reference to the Books required to be kept by the Waywarden of the above-mentioned Highway Parish.

_____ *Waywarden.*

The Waywarden above named attended the Audit.*

Rate Book and Rate Collection Account	
Rate Receipt Check Book.	
Receipt and Expenditure Account.	

The Audit of the above Books was commenced on the day of 188 *, and was concluded on the same day* [or *on the day of* 188].

_____ *District Auditor.*

Date _____ 188 .

Against the name of any book mentioned in this Statement which is not kept at all, or is imperfectly kept, the District Auditor is to write in the former case "not kept," and in the latter "imperfectly." In case of any Book being imperfectly kept, the general nature of the imperfection is to be set forth *on the other side* of this Statement, together with such observations as the District Auditor considers requisite. He is also to report whether the officer has in any respect disobeyed, neglected, or departed from any of the regulations of this Order applicable to his office.

* If this is not so, alter the statement according to the fact.

FORM F.

_____ *Audit District.*

_____ *Highway District.*

TO THE LOCAL GOVERNMENT BOARD.

For the Year ended the 30th day of April, 188 .

I CERTIFY that I have audited the Accounts of the Waywarden for each of the Highway Parishes in the above-named District in which a Highway Rate is levied by him, and have carefully examined all the Books and Accounts required by the Order of the Local Government Board to be kept, and find no defect in the Books and Accounts required to be kept by the following Waywardens:—

Highway Parish.	Name of Waywarden.	Highway Parish.	Name of Waywarden.

Audit completed this *day of* 188 .

_____ *District Auditor.*

Date _____ 188 .

Given under the Seal of Office of the Local Government Board, this Tenth day of May, in the year One thousand eight hundred and eighty-three.

(L.S.) CHARLES W. DILKE, *President.*

HUGH OWEN, *Secretary,*

ORDER FOR ACCOUNTS (AMENDING).

HIGHWAY PARISHES NOT IN HIGHWAY DISTRICTS.

To the surveyors of highways, for the time being, of the several highway parishes not in highway districts;—

To the collectors of highway rates, for the time being, of the said highway parishes respectively;—

To the several district auditors authorised, for the time being, to audit the accounts of the said surveyors and collectors respectively;

And to all others whom it may concern.

Whereas in pursuance of section 9 of "The Highways and Locomotives (Amendment) Act, 1878," and section 5 of "The District Auditors Act, 1879," the Local Government Board, by an Order dated the 9th day of April, 1881, prescribed regulations with respect to the accounts of the surveyors of highways of the several highway parishes not included in highway districts, and of the collectors of highway rates in those parishes, for the time being;

And whereas by section 3 of "The Highway Rate Assessment and Expenditure Act, 1882," it is provided as follows:—

"Where in any parish the vestry have, under section 4 of the Poor Rate Assessment and Collection Act, 1869, ordered or shall hereafter order that the owners of all rateable hereditaments to which section 3 of that Act extends shall be rated to the poor rate in respect of such hereditaments instead of the occupiers, such order shall be deemed to extend to and include the highway rate, and whilst such order is in force the respective owners of such hereditaments shall be rated and assessed instead of the occupiers thereof to the highway rates made after the passing of this Act for any highway parish which is co-extensive with such parish or with any part thereof, and to which otherwise such occupiers might by law be rated; subject nevertheless to the abatements or deductions and to the conditions specified in sections 4 and 5 of the said Act: and for the purposes of this section the term 'overseers' in section 4 of the said Act shall be construed to mean 'surveyor of highways or other person authorised by law to make and levy a highway rate.'"

"The surveyor of highways, or other person authorised by law to make and levy a highway rate, shall have the same powers, remedies, and privileges for recovering the rates made under this Act upon owners, as the overseers of the poor have under the said Poor Rate Assessment and Collection Act, 1869, for the recovery of a poor rate, and when the overseers are required by law to levy the highway rate, and such rate applies to the whole parish, they may levy the same as part of the poor rate."

"Section 30 of the Highway Act, 1835, relating to the composition for rates in certain cases under local Acts is hereby repealed."

And whereas it is expedient that the said order should be altered as herein-after mentioned:

Now therefore, we, the Local Government Board, hereby order as follows:

From and after the thirty-first day of May, 1883, in every highway parish which is not included in a highway district, and is co-extensive with the whole or any part of a parish in which an order of the vestry under section 4 of the "Poor Rate Assessment and Collection Act, 1869," to the effect that the owners of all rateable hereditaments to which section 3 of that Act extends shall be rated to the poor rate in respect of such hereditaments instead of the occupiers, shall be in force, the following regulations shall be substituted for the regulations contained in Art. 3 of the above cited order, as well as for so much of Art. 4 as prescribes the form of the *rate receipt check book:*

Provided that we may from time to time assent to any departure from these regulations.

Art. 1.—The surveyor shall punctually enter up and accurately keep a *rate book and rate collection account*, in the Form A. in the schedule to this order.

In the portion of the said form headed "rate book" shall be inserted the particulars indicated by the headings of the several columns, the number of assessments being placed in column 1 in consecutive order, and before any rate is presented to the justices for allowance, the surveyor shall sign a declaration, in words at length, of the total amount of the rates so presented for allowance, according to the form of declaration set forth at the foot of the form of rate book, or to the like effect.

Where it is intended that more than one consecutive number and assessment shall, as herein-after provided, be included in one receipt, there shall be inserted in red ink in the rate book, immediately below the last item of annual rateable value to be included in such receipt, the total of the items of annual rateable value to be so included, and also below the last item of

assessment to be so included in such receipt, the total of the items of assessment to be so included.

The several columns of the *rate book and rate collection account* which contain the annual rateable value, the rate assessed, the recoverable arrears, and the total amount to be collected, shall be added up at the foot of every page, and the several totals shall be ascertained and set forth at the foot of the rate, before any sum of money in respect of the said rate is collected.

Where there is a collector, the portion of the said Form A. headed "rate collection account," shall, if the surveyor so direct, be entered up by such collector, instead of by the surveyor.

The portion of the said Form A. headed "rate collection account" shall, whether it be entered up by the surveyor or by the collector, be signed by the surveyor before the book is presented to the district auditor.

Art. 2.—The *rate receipt check book* shall be in the Form B. in the schedule to this order.

Notwithstanding anything in Arts. 4 and 5 of the above cited order, several consecutive numbers and assessments, but no others, for which the same person or persons is or are rated may be included in one demand note and one receipt.

Art. 3.—In this order and in the forms set forth in the schedule thereto—

"Parish" means a place for which a separate poor rate can be made.

"Highway Parish" means a place separately maintaining its own highways, and for which no board for repair of highways has been appointed in pursuance of section 18 of the "Highway Act, 1835."

"Surveyor" means any surveyor or surveyors of highways, or other person authorised by law to make or levy a highway rate.

"Collector" means a collector of highway rates duly appointed under the statutes in that behalf.

SCHEDULE. FORM (A.)

Rate Book and Rate Collection Account.

HIGHWAY PARISH OF ____________________.

AN ASSESSMENT for carrying the several purposes of the Act 5 & 6 Will. 4, c. 50, into execution in the Highway Parish of , in the county of , made this day of 188 , being an equal assessment or rate at in the pound on the annual rateable value of the property in the said Highway Parish liable to be rated for the highways therein.

RATE BOOK.							RATE COLLECTION ACCOUNT.									
												Uncollected at finally balancing this Book.				
														Irrecoverable at finally balancing this Book.		
															Otherwise not recoverable.	
Number of Assessment.	Name of Occupier.	Name of Owner.	Description of the Premises and Property rated.	Annual Rateable Value.	Rate at in the Pound.	Amount of Rate assessed upon and payable by the Owner instead of the Occupier by virtue of the Statute or Statutes in that behalf.	Recoverable Arrears of former Rates.	Total Amount to be collected.	Amount actually collected.	Date of Collection (Day Month, and Year).	Uncollected at first balancing this Book.	Recoverable Arrears at finally balancing this Book.	Allowed to Owners.	Amount legally excused.	Amount.	Causes.
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.
				£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
			TOTALS.					*								
								*								

Form of Declaration at the foot of the "Rate."

I, the undersigned, hereby declare that the total of the above rate as shown in Column 6 amounts to the sum of Pounds shillings and pence.

____________________*Surveyor.*

____________________Surveyor of Highways of the above-named Parish.

* The snbdivision of totals is here introduced to meet a case where it may be found desirable to balance the Book before the closing of the Rate. In such a case the upper division is intended for the amount collected at the first balancing, and the lower one for the amount collected since the first balancing.

FORM B.

Rate Receipt Check Book.

This part is to be retained by the Surveyor or the Collector, as the case may be.

COUNTERFOIL.

*No.*____
*Highway Parish of*____,
*the*____*day of*____188__.

*Mr.*_____

£ s. d.

*Rate made on the*_____*day of*_____188__, *on* £_____ *Annual Rateable Value at*_____ *in the Pound*

Arrears . . _____

*Allowance to Owner at*_____ *per cent.* . . _____

Paid by Owner _____

RECEIPT.

*No*____
*Highway Parish of*_____
*the*_____*day of*_____188__.

*Received of Mr*_____ *the Sum of*_____*pounds*_____*shillings and*_____*pence in respect of the Highway Rate of the above Parish, viz.:—*

£ s. d.

*Rate made the*_____ *day of*_____188__, *on* £_____*Annual Rateable Value at*_____*in the Pound* . . . _____

Arrears of former Rate . . . . _____

Total . . _____

*Allowance to Owner at*____*per cent.* _____

Paid by Owner . _____

(*Signed*)_____
Surveyor.
[or Collector.]

DEMAND NOTE.

*No.*____
*Highway Parish of*_____,
*the*____*day of*_____188__.
*Mr.*_____
_____*Street.*

*The Surveyor of Highways demands payment of a Highway Rate, made the*_____*day of*_____188__ *and of the arrears of former Rates as below, now due from you.*

£ s. d.

*Amount of Rate at*____*in the Pound on* £____*Annual Rateable Value* . . _____

Arrears . . _____

Total . _____

Amount payable by Owner, provided it be paid within the time prescribed by the Statute 32 & 33 Vict. cap. 41. sect. 5. . . . _____

_____
Surveyor.
[or Collector.]

Form of Certificate to be signed by the Surveyor.

*I, the Surveyor of the Highways of the Parish aforesaid, do hereby certify that I have examined this Rate Receipt Check Book, and have ascertained the correctness of the numbering and the correspondence of the sums and names in such receipts with the Rate Book, and I certify that the Number of Receipts in this Book so filled up for this Rate is**

*Dated this*_____ *day of*_____188__.

_____
Surveyor.

* Here state the Number in Words at length.

PROVISIONAL ORDERS.

Local Government Board, Whitehall, S. W.,
30th August, 1883.

SIR,

I am directed by the Local Government Board to state that they deem it desirable to follow a course similar to that adopted by them for several years past, and to fix a day before which all applications for Provisional Orders under the Public Health Act, 1875, or the Artizans and Labourers Dwellings Improvement Act, 1875, must be made, if it is wished that the order should be confirmed during the session of 1884. They have accordingly determined that all such applications must be received by them not later than the 15th of December next, subject to this exception, viz.: That where the application is for an order to put in force the compulsory powers of the Lands Clauses Consolidation Acts, or to confirm an improvement scheme under the Artizans and Labourers Dwellings Improvement Act, and the advertisements were not published until November, the application may be received not later than the 1st of January.

It should be borne in mind, however, that the dates above mentioned are only fixed as the latest at which applications for Provisional Orders can be received. It is not the intention of the Board to interpose any obstacle in the way of these applications being made at earlier periods. On the contrary, where any sanitary authority propose to apply for a Provisional Order, the Board would wish them to make their application as soon as they are in a position to furnish the requisite particulars.

It is particularly important that applications for Provisional Orders to alter Local Acts should be made at the earliest date practicable. These applications often require much consideration, and the Board are able to give more attention to them in the autumn than is possible during the earlier part of the year. It would prove a material assistance to the Board if all applications for Provisional Orders of this kind were sent in before the 15th of October.

The Board direct me at the same time to refer to the provision in section 176 of the Public Health Act, 1875, which enables sanitary authorities to issue in the months of September and October, or of October and November, the advertisements and notices which are required before they can apply for a Provisional Order to enable them to obtain lands by compulsory purchase. It is very desirable that the sanitary authority should avail themselves of this power, if they propose to make an application under the section in question. The same observation applies to applications under the Artizans and Labourers Dwellings Improvement Act.

The Board have found that in some instances a misapprehension has prevailed as to the period within which the advertisements and notices prescribed by section 176 of the Public Health Act must be issued. The section provides that the advertisements shall be published during three successive weeks in the months of September, October, or November, and it is necessary that the three weeks in which the publication takes place should all be included in the same month, whichever of those above mentioned is selected for the purpose. Moreover, the notice to the owners, lessees, and occupiers of the lands which it is proposed to purchase, must in all cases be given in the month immediately following that in which the advertisements are published.

The Board have also found that in some cases the deposit of a plan of the proposed undertaking, which is required by sub-section (2) of section 176, has not been made until after the advertisement referred to in that enactment has been published. They are advised that the deposit should always be made at such time as to enable the plan to be seen at all reasonable hours at the prescribed place as soon as the advertisement is issued.

The Board may take this opportunity of observing, that, if the sanitary authority intend to apply for a Provisional Order to enable them to purchase lands compulsorily in connection with proposed works of sewerage or water supply, some of which will lie outside their district, they will probably find it convenient to satisfy the requirements of sections 32 and 54 of the Public Health Act, when they are issuing the necessary advertisements in respect of the application for a Provisional Order. If this course is taken, it will have the effect of preventing the delay which is occasioned at a subsequent stage of the proceedings, in cases where, after the Provisional Order is confirmed, advertisements and notices under the sections in question have to be issued before the works for which the land is required can be commenced. Section 53 also should be complied with, where it is intended to construct a reservoir to hold more than 100,000 gallons of water.

The requirements of the board with regard to applications for Provisional Orders under the Public Health Act are set forth in instructions which they have issued on the subject, a copy of which is enclosed for the information of the sanitary authority. Similar instructions have also been issued with regard to applications under the Artizans and Labourers Dwellings Improve-

ment Act, and these can be obtained on application to the Board, in cases where they are required.

I am directed to add, that where an urban sanitary authority propose to apply for a Provisional Order for gas purposes under the Gas and Water Works Facilities Acts, the special regulations which have been issued by the Board under those Acts must be complied with. Copies of these regulations can be obtained on application to the Board.

I am, &c.,
HUGH OWEN,
Secretary.

The Clerk to the Sanitary Authority.

INSTRUCTIONS AS TO APPLICATIONS TO THE LOCAL GOVERNMENT BOARD FOR PROVISIONAL ORDERS UNDER THE PUBLIC HEALTH ACT, 1875.

Application for Provisional Orders to put in force the Compulsory Powers of the Lands Clauses Consolidation Acts.

1. The application must be made by a petition under the seal of the sanitary authority, containing the particulars required by section 176 (3) of the Public Health Act, 1875. The lands proposed to be purchased should be specified in a schedule to the petition, which should correspond in all respects with the book of reference mentioned in Instruction 3.

2. The petition must be presented not later than the 15th December, if the advertisements of the proposal were published in September or October, and not later than the 1st January, if they were published in November.

3. The petition should be accompanied by a plan of the proposed undertaking, by a book of reference in duplicate, and by a statutory declaration showing that the requirements of section 176 of the Public Health Act, with respect to advertisements and notices, have been duly complied with. The declaration must be stamped with a half-crown stamp, and copies of the newspapers containing the advertisements, and also of the form of notice, should be annexed to it as exhibits. It should specify the manner in which the notices were served upon the owners, lessees, and occupiers, and, so far as relates to these notices, it should be made by the persons who served them. The service must be effected strictly in accordance with one of the modes prescribed by section 267 of the Act. The plan should be coloured so as to distinguish the land proposed to be actually purchased, and the several properties should be numbered so as to correspond with the schedule to the petition and the book of reference.

Where it is only intended to carry sewers or water mains through lands, such lands should not be included in the petition, as the sanitary authority are empowered by sections 16 and 54 of the Public Health Act to carry sewers or mains through lands without the need of a Provisional Order.

4. The Standing Orders of both Houses of Parliament require that, *at the same time* as the plan of the undertaking and the book of reference are deposited with the Board, duplicates thereof shall be deposited with the Clerk of the Parliaments and at the Private Bill Office, unless the deposit with the Board is made after the prorogation of Parliament, and before the 30th November, in which case the deposit with the Clerk of the Parliaments, and at the Private Bill Office, must be made on the day last mentioned.

In order that compliance with these requirements may be proved before the Examiners of Standing Orders, the Board should, immediately after the deposits have been made, be furnished with an *affidavit*, stamped with a half-crown stamp, and sworn before a justice of the peace or a commissioner for taking affidavits, by the person by whom the deposits have been made.

5. The Board have been advised that two or more sanitary authorities cannot jointly petition for a Provisional Order to enable them to put in force the compulsory powers of the Lands Clauses Consolidation Acts. Either each sanitary authority must present a separate petition in respect of the particular lands which they require, or else the several sanitary authorities must combine under section 285 of the Public Health Act, 1875, for the purpose of carrying the proposed scheme into execution, and a petition must be presented by one of them with regard to all the land required. If this course is taken, an agreement under the section should be entered into before application is made for the Provisional Order.

Applications for Provisional Orders to alter the Areas of Sanitary Districts.

6. The application should be made by a resolution of the sanitary authority, a copy of which should be forwarded to the Board.

7. The application must be made not later than the 15th December, and it is very desirable it should be made before.

8. The application should be accompanied by (*a*) a statement giving the names of the sanitary authorities whose districts are affected by the proposal, and the grounds upon which the application is made, and (*b*) a map showing the present and proposed boundaries of the urban sanitary districts affected. Where part of a rural sanitary district is affected, the name of each contributory place affected should be given. The map should be an Ordnance map, and, where practicable, on the scale of six inches to a mile. The urban sanitary districts affected, and the areas to be added thereto, or taken therefrom, should, as far as possible, be distinguished by separate colours, with well-defined verge lines, so drawn as to show clearly whether the boundary takes the centre or side of any street, river, railway, or fence shown on the map. In the case of a rural sanitary district the area of each contributory place affected should be clearly shown.

9. Where it is desired that the area of a sanitary district should be altered, and there is a Local Act in force relating to the same subject matters as the Public Health Act, application should be made for an alteration of the Local Act at the same time that the application is sent in for an alteration of the sanitary district, if it is wished that the area to which the Local Act applies should be modified, and Instructions 10 and 12 should be complied with.

Applications for Provisional Orders to repeal, alter, or amend Local Acts.

10. The application should be made by a resolution of the sanitary authority, asking the Board in general terms to repeal, alter, or amend the Local Act, wholly or partially, as the case may require. A copy of the resolution should be forwarded to the Board.

11. The application must be made not later than the 15th December, and it is very desirable that it should be sent in before the 15th October.

12. The application should be accompanied by a copy of the Local Act, and by a statement showing the particular sections which it is proposed should be repealed, altered, or amended, and the precise alteration desired, and in the event of the Local Act having been previously altered by Provisional Order, a reference to such order should be given. The statement should also show the grounds upon which the application is made.

13. Where the effect of the proposed repeal or alteration of the Local Act will be to extend or diminish the area of a sanitary district, the particulars referred to in Instruction 8 should also be furnished.

N.B.—It is particularly requested that all petitions, statutory declarations, and other such documents may be written on foolscap paper of the usual size.

HUGH OWEN.
Secretary.

Local Government Board, Whitehall,
30th August, 1883.

STANDING ORDERS OF THE HOUSE OF COMMONS AND HOUSE OF LORDS FOR SESSION 1885, RELATING TO PROVISIONAL ORDERS AND LOCAL GOVERNMENT.

PROVISIONAL ORDERS.

[House of Commons.]

39. Whenever plans, sections, or books of reference are deposited in the case of an application to any public department for a Provisional Order or Provisional Certificate, duplicates of the said documents shall, at the same time be deposited in the Private Bill Office; provided that with regard to such deposits as are so made at any public department after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November.

Deposit of plans, &c., in case of Provisional Orders or Certificate in Private Bill Office.

72. All petitions for additional provision in private Bills, with the proposed clauses annexed, and all private Bills brought from the House of Lords, and all Bills introdnced by leave of the House in lieu of other Bills which shall have been withdrawn, and all Bills to confirm any Provisional Order or Provisional Certificate, after having been read a first time, shall be referred to the examiners, and the examiners shall report to the House whether the Standing Orders have or have not been complied with, and when they have not been complied with the facts upon which his* decision is founded, and any special circumstances connected with the case, and in the case of any Bill which, in pursuance of any report from the Chairman of the Committee of Ways and Means has originated in the House of Lords, the compliance with such Standing Orders only as shall not have been previously inquired into shall be proved.

Petitions for additional provision and private Bills from Lords, &c., to be referred to examiner.

* *Sic.*

73. In all cases of petitions for additional provision in private Bills, and of private Bills brought from the House of Lords, and of Bills introduced by leave of this House in lieu of other Bills which shall have been withdrawn, and of Bills for confirming any Provisional Order or Certificate, the examiner shall give at least two clear days' notice in the Private Bill Office of the day on which the same will be examined, but in the case of a Bill for confirming any Provisional Order or Certificate, he shall not give such notice until after the Bill has been printed and circulated.

Notice in cases of petitions for additional provision in private Bills.

89. The referees shall decide upon all petitions against private Bills or against Provisional Orders or Provisional Certificates as to the rights of the petitioners to be heard upon such petitions, without prejudice however to the power of the Select Committee to which the Bill is referred to decide upon any question as to such rights arising incidentally in the course of their proceedings.

Referees to decide as to rights of petitioners to be heard upon their petitions.

128. No petition against a private Bill or a Bill to confirm any Provisional Order or Provisional Certificate shall be taken into consideration by the Committee on such Bill which shall not distinctly specify the ground on which the petitioners object to any of the provisions thereof and the petitioners shall be only heard on such grounds so stated, and if it shall appear to the said Committee that snch grounds are not specified with sufficient accuracy the Committee may direct that there be given in to the Committee a more specific statement in writing, but limited to such grounds of objection so inaccurately specified.

Petition against Bill to specify grounds of objection.

129. No petitioners against any private Bill or any Bill to confirm any Provisional Order or Provisional Certificate shall be heard before the Committee on the Bill unless their petition shall have been prepared and signed in strict conformity with the rules and orders of this House and shall have been presented to this House by having been deposited in the Private Bill Office, in the case of private Bills not later than ten clear days after the first reading of such Bill, and in the case of Bills to confirm any Provisional Order or Provisional Certificate not later than seven clear days after the examiner shall have given notice of the day on which the Bill will be examined, except where the petitioners shall complain of any matter which may have arisen during the progress of the Bill before the said Committee, or of any proposed additional provision, or of the amendments as proposed in the filled up Bill deposited in the Private Bill Office.

When petition against Bill to be presented.

135. The owner or occupier of any house, shop, or warehouse in any street through which it is proposed to construct any tramway, and who alleges in any petition against a private Bill or Provisional Order that the construction or use of the tramway proposed to be authorised thereby will injuriously affect him in the nse or enjoyment of his premises, or in the conduct of his trade or business shall be entitled to be heard on such allegations before any Select Committee to which such private Bill or the Bill relating to such Provisional Order is referred.

Petition against tramway Bills.

Proceedings on Bills for confirming Provisional Orders, &c.

151. Whenever the House shall order that any Bill for confirming a Provisional Order or a Provisional Certificate be referred to the Committee of Selection with respect to any Order or Certificate to be confirmed thereby, the proceedings of the Select Committee to which the Bill is referred and of the referees shall be conducted in like manner as in the case of private Bills, and shall be subject to the same rules and orders of the House so far as they are applicable, except those which relate to the payment of fees by the promoters of such Provisional Order or Certificate.

Time before second reading.

204. There shall not be less than three clear days nor more than seven between the first and second reading of any private Bill or any Bill to confirm any Provisional Order or Provisional Certificate unless any such private Bill have been referred to the Examiners of Petitions for Private Bills, in which case such Bill shall not be read a second time later than seven clear days after the report of the examiner or of the Select Committee on Standing Orders as the case may be.

Petition relating to Bills to be presented by being deposited in Private Bill Office and name of Bill to be endorsed on every petition.

205. Every petition in favour of or against any private Bill or any Bill to confirm any Provisional Order or Provisional Certificate before the House or otherwise relating thereto (not being a petition for additional provision) shall be presented to this House by depositing the same in the Private Bill Office, and there shall be endorsed thereon the name or short title by which such Bill is entered in the votes, and a statement that such petition is in favour of or against the Bill or otherwise, as the case may be, together with the name of the member, party, or agent depositing the same.

Provisional Order Bills to stand referred to Committee of Selection or General Committee on Railway and Canal Bills, &c.

208*a*. Every Bill for confirming Provisional Orders or Provisional Certificates shall after the second reading, stand referred to the Committee of Selection or to the General Committee on Railway and Canal Bills as the case may require and be subject to the Standing Orders regulating the proceedings upon private Bills so far as they are applicable, provided that when any order or certificate contained in any such Bill is opposed the committee to whom such opposed order or certificate is referred shall consider all the orders or certificates comprised in such Bill.

Petition against Bill if duly deposited in Private Bill Office to stand referred to Committee on Bills, &c.

210. Every petition against a private Bill which shall have been deposited in the Private Bill Office not later than ten clear days after the first reading of such Bill, and every petition against any Bill to confirm any Provisional Order or Provisional Certificate which shall have been deposited in the Private Bill Office not later than seven clear days after the examiner shall have given notice of the day on which the Bill will be examined or which shall have been otherwise deposited in accordance with the Standing Orders of the House and in which the petitioners shall have prayed to be heard by themselves, their counsel or agents, shall stand referred to the committee on such Bill, and such petitioners, subject to the rules and orders of the House, shall be heard upon their petition accordingly if they think fit and counsel heard in favour of the Bill against such petition.

Time between second reading and Committee.

211. There shall be six clear days between the second reading of every private Bill and of every Bill to confirm any Provisional Order or Provisional Certificate, and the sitting of the committee thereupon, except in the case of Name Bills, Naturalization Bills, and Estate Bills (not being Bills relating to crown, church, or corporation property or property held in trust for public or charitable purposes) in respect of which there shall be three clear days between the second reading and the committee.

Provisional Order Bills.

225*a*. All Bills for confirming Provisional Orders or Certificates shall be set down for consideration each day in a separate list after the private business and arranged in the same order as that prescribed by the Standing Orders for Private Bills.

Tolls and charges not in the nature of a tax.

226. This House will not insist on its privileges with regard to any clauses in private Bills or in Bills to confirm any Provisional Orders or Provisional Certificates sent down from the House of Lords which refer to tolls and charges for services performed and are not in the nature of a tax or which refer to rates assessed and levied by local authorities for local purposes.

Time for depositing memorials in certain cases.

232. Every memorial complaining of non-compliance with the Standing Orders of the House in reference to petitions for additional provision in private Bills, to Bills brought from the House of Lords, and to Bills introduced by leave of this House in lieu of other Bills which shall have been withdrawn, and to Bills for confirming any Provisional Order or Provisional Certificate, shall be deposited in the Private Bill Office, together with two copies thereof, before twelve o'clock on the day preceding that appointed for the examination of any such petition or Bill by the examiner, and the examiner shall be at liberty to entertain such memorial although the party (if any), who may be specially affected by the non-compliance with the Standing Orders, shall not have signed the same.

LOCAL GOVERNMENT.

[HOUSE OF COMMONS.]

172. In the case of all Bills whereby any municipal corporation, local board, improvement commissioners, or other local authority in England or Wales, are authorised to borrow money for any purpose to which the several Acts specified in Part I. of the schedule to "The Local Government Board Act, 1871" relate, without the sanction of the Local Government Board, estimates showing the proposed application of the money for permanent works within the meaning of the 57th section of "The Local Government Act, 1858," or as defined by any subsequent Acts, shall be recited in the Bill as introduced into Parliament and proved before the Select Committee to which the Bill is referred.

Estimates of proposed application of money borrowed by local authorities in certain cases to be recited in Bill and proved before Select Committee.

173*a*. In the case of any Bill promoted by or conferring powers on a municipal corporation or local board, improvement commissioners, town commissioners or other local authority, or public body having powers of local government or rating, the committee on the Bill shall consider the clauses of the Bill with reference to the following matters:—

Committee to consider clauses of Bill in reference to various matters affecting local government, &c., and report thereon.

(*a*.) Whether the Bill gives powers in relation to police or sanitary regulations in conflict with, deviation from, or excess of the provisions or powers of the general law.

(*b*.) Whether the Bill gives powers which may be obtained by means of bye-laws made subject to the restrictions of general Acts already existing.

(*c*.) Whether the Bill assigns a period for repayment of any loans under the Bill exceeding the period of sixty years, which term the committee shall not in any case allow to be exceeded, or any period disproportionate to the duration of the works to be executed or other objects of the loan.

(*d*.) Whether the Bill gives borrowing powers for purposes for which such powers already exist, or may be obtained under general Acts, without subjecting the exercise of the powers under the Bill to approval from time to time by the proper Government department.

And the committee shall report specially to the House—

In what manner any clauses relating to the several matters aforesaid have been dealt with by the committee; and

Whether any report from any Government department relative to the Bill has been referred to the committee; and

If so, in what manner the recommendations in that report have been dealt with by the committee; and any other circumstances of which in the opinion of the committee it is desirable that the House should be informed;

And the report of the committee shall be printed, and shall be circulated with the votes.

PROVISIONAL ORDERS.

[HOUSE OF LORDS.]

39. Whenever plans, sections, or books of reference are deposited in the case of an application to any public department for a Provisional Order or Provisional Certificate, duplicates of the said documents shall, at the same time, be deposited in the Private Bill Office; provided that with regard to such deposits as are so made at any public department after the prorogation of Parliament, and before the 30th day of November in any year, such duplicates shall be so deposited on the 30th day of November. This order shall also apply to maps deposited in the case of Electric Lighting Provisional Orders.

Deposit of plans, &c., in case of Provisional Orders in Parliament Office.

70. Every Provisional Order Confirmation Bill and every Local Bill brought from the House of Commons shall after the first reading be referred to the examiners, but in respect of such Standing Orders only as have not been previously inquired into.

Bills brought from the House of Commons.

72. One of the examiners shall give at least two clear days' notice of the day on which any Bill referred to them after the first reading, or any petition for additional provision shall be examined, but in the case of a Bill for confirming any Provisional Order or Certificate he shall not give such notice until after the Bill has been printed by order of this House.

Notice of examination.

88. No Provisional Order Confirmation Bill shall be read a second time until the examiner has certified whether the Standing Orders have or have not been complied with.

Respecting second reading of Provisional Orders, &c., Bills.

91. No Local Bill or Provisional Order Confirmation Bill originating in this House shall be read a second time earlier than the fourth day or later than the seventh day after the first reading thereof, except Bills in the case of which the examiner has certified that the Standing Orders have not been complied with, in which case the second reading shall not be later than the second day on which the House shall sit after the report from the Standing Orders Committee recommending that the Bill be allowed to proceed, and except Bills referred after the

Time for second reading of Bills originating in this House.

first reading to the examiners under Order 62, 63, or 67, which Bills may be read a second time not later than the fourteenth day after the first reading thereof, and in the case of a certificate of non-compliance, the time for second reading of such last mentioned Bills shall be extended as in the former case.

Time for presenting petitions praying to be heard against Bills originating in this House.

92. No petition praying to be heard upon the merits against any Local Bill or Provisional Order Confimation Bill originating in this House, shall be received by this House, unless the same is presented by being deposited in the Private Bill Office, before three o'clock in the afternoon, on or before the seventh day after the day on which such Bill has been read a second time.

Time for presenting petitions praying to be heard against Bills originating in the House of Commons.

93. No petition praying to be heard upon the merits against any Local Bill or any Provisional Order Confirmation Bill brought from the House of Commons shall be received by this House, unless the same be presented by being deposited in the Private Bill Office before three o'clock in the afternoon, on or before the seventh day after the day on which such Bill has been read a first time.

Committees on opposed local Bill.

96. Every Local Bill, or Provisional Order Confirmation Bill which is opposed shall be referred to a Select Committee of five.

Committee of Selection.

97. The Chairman of Committees, and four other lords to be named by the House shall be appointed a committee to select and propose to the House the names of the five lords to form a Select Committee for the consideration of each opposed Local Bill, or Provisional Order Confirmation Bill, and shall appoint the chairman of such committee.

Lords interested exempted from serving.

98. Lords shall be exempted from serving on the committee on any Local Bill or Provisional Order Confirmation Bill wherein they have an interest, and lords shall be excused from serving for any special reasons to be approved of in each case by the House.

Hour of meeting, &c., of Committees on opposed local Bills.

99. Every Select Committee shall meet not later than eleven o'clock every morning, and shall sit till four, and shall not meet at a later hour, nor adjourn at an earlier hour without leave of the House, or without reporting to the House the cause of such later meeting or earlier adjournment. No committee shall adjourn over any day except Saturday, Sunday, Christmas Day, and Good Friday, without leave of the House, or without reporting to the House the cause of such adjournment; but should a committee meet on a Saturday the sitting is to be in conformity with this Order.

LOCAL GOVERNMENT.

[House of Lords.]

Deposits on or before the 21st December.

Deposits of Bills at Treasury and other public departments.

33. On or before the twenty-first day of December, a printed copy of every Local Bill shall be deposited at the office of Her Majesty's Treasury and at the General Post Office; a printed copy of every Local Bill whereby application is made by or on behalf of any municipal corporation, local board, improvement commissioners, or other local authority in England or Wales, for power in respect of any purpose to which the several Acts specified in Part I. of the schedule to "The Local Government Board Act, 1871," relate, and of every Bill relating to turnpike roads, or trusts, highways or bridges in England or Wales at the office of the Local Government Board.

Statement relating to houses inhabited by the labouring class to be deposited in Parliament Office and at Office of Central Authority.

38. In the case of any Bill which contains power to take compulsorily or by agreement, as regards England and Wales inclusive of the metropolis, in any city, borough, or other urban sanitary district, or in any parish or part of a parish not being within an urban sanitary district, ten or more houses, occupied either wholly or partially by persons belonging to the labouring class as defined in Order III., as tenants or lodgers, the promoters shall deposit in the office of the Clerk of the Parliaments and at the Office of the Central Authority, as defined in Order III., on or before the 31st day of December, a statement of the number, description, and situation of such houses, and a copy of so much of the plan (if any) as relates thereto.

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THE END.

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